

No. 25-1460

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

**NESTOR ESAI MENDOZA GUTIERREZ,
Petitioner-Appellee,**

v.

**JUAN BALTASAR, ROBERT HAGAN, MARKWAYNE MULLIN,
TODD LYONS, TODD BLANCHE, SIRCE OWEN, in their official
capacities; Department Of Homeland Security; Aurora
Immigration Court; Immigration & Customs Enforcement,
Respondents-Appellants.**

**On Appeal from the United States District Court
for the District of Colorado
The Honorable Regina M. Rodriguez
D.C. No. 25-CV-2720-RMR**

RESPONDENTS-APPELLANTS' OPENING BRIEF

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INTRODUCTION

Before 1996, the federal immigration laws provided bifurcated paths for aliens who had neither authority nor permission to enter the United States, requiring the detention of aliens who presented at a port of entry but allowing aliens who had unlawfully entered and were already present in the United States to obtain release pending deportation proceedings. Congress overhauled the immigration system in 1996 with passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), in part to end the preferential treatment of aliens who evade inspection and enter unlawfully.

As relevant here, Congress enacted what is now codified at 8 U.S.C. §1225. That provision “deem[s]” any “alien present in the United States who has not been admitted or who arrives in the United States” to be “an applicant for admission.” 8 U.S.C. §1225(a)(1). And it mandates the detention of any “applicant for admission” who has not shown that he or she is “clearly and beyond a doubt entitled to be admitted.” *Id.* §1225(b)(2)(A). Unless the Secretary of Homeland Security exercises the narrow and discretionary parole authority under 8 U.S.C. §1182(d)(5)(A), mandatory detention is the rule for aliens who have never been admitted. Although the

government has previously operated under a different understanding of the law, this Court must apply the language of §1225(b)(2)(A) as written.

There is no dispute that Petitioner is an “applicant for admission” under §1225(a), and that he has not shown—and cannot show—he is “clearly and beyond a doubt” entitled to be admitted. Petitioner entered the country without inspection, was never “admitted,” and thus unambiguously remains an “applicant for admission.” Therefore, as the Fifth and Eighth Circuits have held, he is subject to detention under §1225(b)(2)(A). *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 499 (5th Cir. 2026); *Avila v. Bondi*, 2026 WL 819258, at *6 (8th Cir. Mar. 25, 2026).

Despite the clear language of §1225, the district court held that Petitioner is likely to succeed on his legal theory that his detention is governed by §1226(a), not §1225(b)(2). And the court then compounded its error by entering a preliminary, class-wide order barring the government from transferring not only Petitioner but a whole class of detainees from the District of Colorado. Both decisions warrant reversal.

To start, the lower court’s reading of §1225(b)(2) cannot be justified based on the phrase “seeking admission” in §1225(b)(2)(A). The plain text of §1225 establishes that an applicant for admission, like Petitioner, is seeking

admission. Ignoring the words Congress actually used, the lower court urges an agrammatical reading that is at war with numerous other cases interpreting similar language, not to mention the English language. Nor can the district court’s reading be justified out of a desire to avoid rendering “seeking admission” superfluous. There is no surplusage; the statutory text and context show that each term has independent meaning. But even if it were otherwise, “redundancies are common in statutory drafting” and are “not a license to rewrite or eviscerate another portion of the statute contrary to its text.” *Barton v. Barr*, 590 U.S. 222, 239 (2020).

The district court’s atextual reading also is not necessary to give effect to the separate detention authority in §1226. On its face, that provision applies to numerous aliens *not* subject to §1225(b)(2)(A), including all *admitted* aliens who are now deportable—such as the more than one million aliens in the United States who were lawfully admitted but then overstayed their visas. For those aliens, §1226 alone applies. The mere fact that §1226(c) may overlap in part with §1225(b)(2)(A) does not justify rewriting clear statutory text.

Ultimately, Petitioner’s interpretation would incentivize aliens to evade the immigration laws of the United States—itsself a criminal offense,

see 8 U.S.C. §1325(a)—and reimpose the exact regime that Congress sought to discard by enacting §1225—one that favors aliens who *intentionally* evade inspection and enter the country *in violation of law* by affording them bond hearings, while mandating detention of those who present at a port of entry *in compliance with law*. In Petitioner’s view, “no good deed goes unpunished.” *Winter v. NRDC*, 555 U.S. 7, 31 (2008).

Separate from its statutory holding, the district court exceeded its authority by prohibiting the government from transferring members of the class Petitioner proposed to represent (as modified) from the District of Colorado during the pendency of this action. Section §1252(f)(1) prohibits federal courts from entering classwide injunctive relief that restrains the Executive’s detention authority, including *where* aliens should be detained. *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022). The injunction below does precisely that. There is simply no way to square §1252(f)(1)’s bar on non-individualized relief with the district court’s District of Colorado-wide blanket relief.

STATEMENT OF JURISDICTION

On October 17, 2025, the court granted Petitioner’s Emergency Temporary Restraining Order (“TRO”), ordering his immediate release until

he received a bond hearing before an immigration judge under 8 U.S.C. §1226. App.569 (DC ECF No. 33 at 35). In the same decision, the court ordered that “Respondents are enjoined from removing [petitioner] and the class he proposes to represent from the United States or transferring them from the District of Colorado during the pendency of this action.” App.570 (DC ECF No. 33 at 36). Then, on October 23, 2025, the court issued a second order clarifying the scope of the injunction. App.580-81 (DC ECF No. 35). Those orders became appealable as a preliminary injunction when they remained in effect beyond the time limits prescribed in Fed. R. Civ. P. 65(b)(2). *See* 28 U.S.C. § 1292(a)(1); *Abbott v. Perez*, 585 U.S. 579, 594 (2018); *United States v. Stacy*, 156 F.4th 994, 1006 (10th Cir. 2025).

The district court granted Petitioner’s motion for class certification on November 21, 2025. App.770-84 (DC ECF No. 47). In that order, the court amended the class definition and modified the preliminary injunction to apply to the newly-redefined class, which encompasses anyone “arrested or detained” in Colorado who meets the class definition. App.772-73, App.784 (DC ECF No. 47 at 3-4, 15).

On December 16, 2025, Respondents-Appellants timely filed a notice of appeal from the district court’s first order (the TRO) on October 17, 2025,

and subsequent orders on October 23, 2025 (clarifying proposed class members) and November 21, 2025 (granting class certification and modifying the TRO). The government included the class certification order, App.770-84 (DC ECF No. 47), in the notice of appeal only because the class certification order expressly modified the preliminary injunction to encompass the newly redefined class.

This Court has jurisdiction under 28 U.S.C. §§1292(a)(1) and 2253(a) to review the grant of the preliminary injunction.

STATEMENT OF THE ISSUES

1. Whether Petitioner is likely to succeed on his argument that aliens who are present in the United States without admission are eligible for release on bond under 8 U.S.C. §1226, rather than subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A), with parole under 8 U.S.C. §1182(d)(5) as the exclusive statutory mechanism for release.

2. Whether 8 U.S.C. §1252(f)(1) prohibited the district court from enjoining the government from transferring class members outside the District of Colorado.

STATEMENT OF THE CASE

The INA, as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens who unlawfully enter the United States or are otherwise removable and requirements for when the government is obligated to detain aliens pending removal.

Before 1996, the INA treated aliens differently based on whether the alien presented at a port of entry or evaded inspection and entered the United States. *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216, 222-24 (BIA 2025) (citing 8 U.S.C. §§1225(a), 1251(a) (1994)); see *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010). “Entry” referred to “any coming of an alien into the United States,” 8 U.S.C. §1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) “dictated what type of [immigration] proceeding applied” and whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at 1099.¹

¹ Aliens who arrive at a port of entry have physically “entered” the United States, but under the longstanding “entry fiction” doctrine, “aliens who arrive at ports of entry ... are ‘treated’ for due process purposes as if stopped at the border.” *Dep’t of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139 (2020).

At the time, the INA provided for two types of removal proceedings: exclusion hearings and deportation hearings. *Vartelas v. Holder*, 566 U.S. 257, 261 (2012). An alien who arrived at a port of entry would be placed in “exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole.” *Hurtado*, 29 I.&N. Dec. 223; *see also* 8 U.S.C. §§1225(a)-(b), 1226(a) (1994). In contrast, an alien who evaded inspection and physically entered the United States would be placed in deportation proceedings. *Hurtado*, 29 I.&N. Dec. at 223; *see also Vartelas*, 566 U.S. at 261. Aliens 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 aliens based on “entry” had

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

Hurtado, 29 I.&N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y General of U.S.*, 693 F.3d 408 (3d Cir. 2012)); *Hing Sum*, 602 F.3d at 1100

(similar); H.R. Report (“House Rep.”) No. 104-469, at 225 (1996) (“[I]llegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection ...”).

A. IIRIRA eliminated the preferential treatment of aliens who unlawfully entered the United States and mandated detention of all “applicants for admission”

Congress discarded that prior regime by enacting IIRIRA. Among other things, IIRIRA added §1225 to “ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing” in immigration proceedings. *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

To that end, IIRIRA repealed the definition of “entry,” and replaced it with “admission,” which it defined as “the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. §1101(a)(13)(A) (emphasis added). In other words, the immigration laws no longer distinguish between aliens based on whether they present themselves for inspection to an immigration officer or instead evade detection and enter the country without permission. Instead, the “pivotal factor in determining an alien’s status” is “whether or not the alien has been

lawfully admitted.” House Rep. at 225 (emphasis added); *see also Hing Sum*, 602 F.3d at 1100 (similar).

Additionally, IIRIRA also eliminated the exclusion/deportation hearing dichotomy and consolidated both sets of proceedings into “removal proceedings.” *Hurtado*, 29 I.&N. Dec. at 223. IIRIRA nonetheless retained burdens of proof for aliens in removal proceedings akin to those for excludable and deportable aliens: an alien who is an “applicant for admission” must establish that he is “clearly and beyond a doubt entitled to be admitted” and “not inadmissible,” 8 U.S.C. §1229a(c)(2)(A), while the DHS has “the burden of establishing by clear and convincing evidence that, in the case of an alien who has been admitted to the United States, the alien is deportable,” *id.* §1229a(c)(3)(A).

IIRIRA effected these changes through several provisions codified in §1225.

Section 1225(a): Section 1225(a) codifies Congress’s decision to make “admission,” rather than physical entry, the benchmark. That provision states that an alien “present in the United States who has not been admitted or who arrives in the United States ... shall be deemed ... an applicant for admission”:

An alien 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 an alien 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). Moreover, “[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.” 8 U.S.C. §1225(a)(3). The inspection by the immigration officer is designed to determine whether the alien may be “admitted” to the country or, instead, must be referred to immigration proceedings.

Section 1225(b): IIRIRA also provided for expedited and non-expedited removal 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,” *Thuraissigiam*, 591 U.S. at 109-13, which may be applied to certain aliens—those who (1) are “arriving in the United States,” or (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 alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of

inadmissibility.” 8 U.S.C. §§1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration officer shall “order the alien removed from the U.S. without further hearing or review unless the alien indicates either an intention to apply for asylum ... or a fear of persecution.” 8 U.S.C. §1225(b)(1)(A)(i). In that event, the alien “shall be detained pending a final determination of credible fear of persecution and, if found not to have such fear, until removed.” 8 U.S.C. §1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. §235.3(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for asylum or a fear of persecution or who is determined not to have a credible fear is likewise detained until removed. *See* 8 U.S.C. §§1225(b)(1)(A)(i), (B)(iii)(IV); 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 [§1225(b)(1)].” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).² It requires that those aliens be detained pending removal proceedings:

² Subsection (b)(2)(A) also does not apply to (1) crewmen or (2) stowaways. 8 U.S.C. §1225(b)(2)(B). In addition, DHS has discretion to return aliens who have arrived on land from a contiguous territory to that territory during §1229a removal proceedings. *Id.* §1225(b)(2)(C).

Subject to subparagraphs (B) and (C), 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) (emphasis added); *see Jennings*, 583 U.S. at 302 (holding that §1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin”).

While §1225(b)(2)(A) does not allow for aliens 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 an admission of the alien.” *Id.*; *see Jennings*, 583 U.S. at 288. Moreover, when the Secretary determines that “the purposes of such parole ... have been served,” the “alien 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 aliens generally (not “applicants for

admission” specifically). *See* 8 U.S.C. §1226. This provision governs the detention of aliens who were admitted to the country but later become deportable—for example, admitted aliens who overstay or otherwise violate the terms of their visas.

The statute provides that, “[o]n a warrant issued by the [Secretary], an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. §1226(a). Detention under this provision is generally discretionary. The arrested alien “may” either “continue to [be] detain[ed]” or “may” be released on bond or conditional parole. 8 U.S.C. §§1226(a)(1)-(2).³ DHS makes the initial custody determination. 8 C.F.R. §236.1(d)(1). As a matter of regulation, the alien may seek custody redetermination (a bond hearing) before an immigration judge and can appeal an immigration judge’s custody determination to the Board of Immigration Appeals (Board). 8 C.F.R. §§236.1(c)(8), (d), 1003.19, 1236.1(d)(1).

³ Conditional parole under §1226(a) is distinct from parole under §1182(d)(5)(A). *See Matter of Cabrera-Fernandez*, 28 I.&N. Dec. 747, 749 (BIA 2023); *Matter of Castillo-Padilla*, 25 I.&N. Dec. 257, 259-63 (BIA 2010).

Section 1226(a)'s rule of discretionary detention does not apply to certain criminal aliens. *Jennings*, 583 U.S. at 288; see 8 U.S.C. §1226(c). Section 1226(c) provides that “[t]he [Secretary] shall take into custody” certain classes of criminal aliens—those who are inadmissible or deportable because the alien (1) “committed” certain offenses delineated in 8 U.S.C. §§1182 and 1227; or (2) engaged in terrorism-related activities. *Nielsen v. Preap*, 586 U.S. 392, 398-99 (2019). Such aliens may be released only if DHS determines “that release of the alien from custody is necessary” to protect a witness to a “major criminal activity” or a similar person, and then only if the alien is not a flight risk and “will not pose a danger” to public safety. 8 U.S.C. §1226(c)(4).

Congress recently amended §1226(c) through the Laken Riley Act, Pub. L. No. 119-1, §2, 139 Stat. 3 (2025), which mandates detention of criminal aliens who (1) are inadmissible because they are physically present in the U.S. without admission or parole, 8 U.S.C. §1182(a)(6)(A), have committed a material misrepresentation or fraud, 8 U.S.C. §1182(a)(6)(C), or lack required documentation, 8 U.S.C. §1182(a)(7); 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).

B. The government applies §1225(b)(2)(A) to require detention of all applicants for admission pending removal proceedings

For many years after IIRIRA, the government treated aliens who entered the U.S. without admission 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* 8 C.F.R. §1003.19.

However, the government also acknowledged that its practice was not consistent with the statute’s text. In the preamble to regulations promulgated after IIRIRA became law, the Department of Justice explained that “[d]espite being applicants for admission, aliens who are present without having been admitted ... will be eligible” for bond hearings. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Moreover, the regulations, as promulgated, provided for mandatory detention consistent with the text of §1225(b)(2):

An alien who was not inspected and admitted or paroled into the United States but who establishes that he or she has been continuously physically present in the United States for the 2–year period immediately prior to the date of determination of inadmissibility *shall be detained in accordance with section 235(b)(2) of the Act for a proceeding under section 240 of the Act.*

8 C.F.R. §235.3(b)(1)(ii) (emphasis added).

In July 2025, DHS “revisited its legal position on detention and release authorities” and issued interim guidance that brought practices in line with the statute’s plain text. Todd M. Lyons, Acting Director of U.S. Immigration and Customs Enforcement, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025).⁴ DHS concluded that “applicants for admission are subject to mandatory detention under [8 U.S.C. §1225(b)] and may not be released from DHS custody except by ... parole under 8 U.S.C. §1182(d)(5).” *Id.* As a result, the “only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under [8 U.S.C. §1226(a)] are aliens admitted to the United States and chargeable with deportability under [8 U.S.C. §1227].” *Id.*

⁴ <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

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

Aliens ... 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 States for a lengthy period of time following entry without inspection, by itself, does not constitute an "admission."

29 I. & N. Dec. at 228. Thus, under Board precedent, "[i]mmigration [j]udges lack authority to hear bond requests or to grant bond to aliens ... who are present in the United States without admission." *Id.* at 225.

C. Factual background and procedural history

Petitioner is a native and citizen of El Salvador who unlawfully entered the United States in 1999 without inspection. App.29. In May 2025, state authorities arrested Petitioner based on accusations of indecent exposure at his apartment complex's swimming pool. App.153. Upon his release from state custody, DHS detained Petitioner, initially under §1226(a), charged him with inadmissibility under 8 U.S.C. §1182(a)(6)(A)(i), and placed him in removal proceedings under 8 U.S.C. §1229a. App.156. DHS subsequently determined that Petitioner's detention is controlled by 8 U.S.C. §1225(b)(2).

App.369-70. Petitioner sought a bond hearing, and the immigration court ruled that it lacked jurisdiction to issue a bond because Petitioner was detained pursuant to §1225. App.149-50.

On August 29, 2025, Petitioner filed a petition for a writ of habeas corpus in the U.S. District Court for Colorado, challenging the lawfulness of his detention under 8 U.S.C. §1225(b)(2), and requesting either immediate release or a bond hearing pursuant to §1226(a). App.20-34.

Petitioner then filed an amended complaint and habeas petition asserting claims for violations of (1) §1226(a); (2) DHS bond regulations; (3) the APA; and (4) procedural due process. App.38-63. He also filed emergency motions for a temporary restraining order and for class certification. App.66-81. Petitioner's proposed class was:

All noncitizens in the U.S. without lawful status who are (1) detained by ICE; (2) have or will have proceedings before any immigration court hearing cases within the District of Colorado; (3) whom DHS alleges or will allege have entered the U.S. without inspection; (4) who were not or will not be apprehended upon arrival; and (5) who are not or will not be subject to detention under 8 U.S.C. §§1226(c), 1225(b)(1), or 1231 at the time they are scheduled for or request a bond hearing.

App.352.

On October 17, 2025, the district court granted the motion for a TRO, but deferred ruling on the motion for class certification. App.535-70. In

particular, the court held that Petitioner was “likely to succeed on the merits of his claims that he is unlawfully detained under 8 U.S.C. §1225(b)(2)(A)’s mandatory detention authority and should be subject to 8 U.S.C. §1226(a)’s discretionary scheme.” App.544. The court ordered that Petitioner be immediately released “until he receives a bond hearing before an [immigration judge] under § 1226(a)” under which the government would bear the burden to prove dangerousness or flight risk. App.569. Additionally, the court ordered that “Respondents are enjoined from removing [Petitioner] and the class he proposes to represent from the United States or transferring them from the District of Colorado during the pendency of this action.” App.570. Petitioner was released from ICE custody on October 18, 2025. *See* App.864.

On October 23, 2025, the district court granted, in part, the government’s unopposed motion to clarify the TRO to provide that “individuals who were subject to a final order of removal and detention under 8 U.S.C. § 1231 as of October 17, 2025, are not members of the proposed class and are not subject to the Court’s Order of October 17, 2025[.]” App.581-82 (October 23, 2025, Order). The district court issued a written order granting class certification on November 21, 2025. App.752-61 (November 21, 2025,

Order). The court amended the class definition adopted in the TRO Order and expressly modified the TRO to apply to the newly redefined class.

AR.770-84. The new class definition is as follows:

All people who are arrested or detained by Respondents in Colorado pending a decision on whether they are to be removed from the United States based on alleged violations of the Immigration and Nationality Act, or who are otherwise subject to the jurisdiction of an Immigration Court located in Colorado, where:

(a) For the person's most recent entry into the United States, the government has not alleged that the person was admitted into the United States;

(b) For the person's most recent entry into the United States, the person was not paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A) at the time of entry;

(c) The person is not a person whose most recent arrest occurred at the border while they were arriving in the United States; and,

(d) The person is being detained based on Respondents' assertion that they are subject to 8 U.S.C. § 1225(b)(2)(A).

App.772-73. The court expressly modified its TRO order "to apply only to members of the class defined above." App.784.

The government appealed both of the preliminary injunction orders and the class-certification order. DC ECF Nos. 73, 74.

SUMMARY OF ARGUMENT

I. The INA’s plain language requires DHS to detain aliens, like Petitioner, who are present in the United States without admission. The district court’s contrary conclusion flouts the statute’s text and subverts congressional intent. The Court should join the Fifth and Eighth Circuits and reverse the district court.

A. Section 1225 “deem[s]” all aliens who are “present in the United States” without admission to be “applicant[s] for admission,” and it mandates that all such applicants for admission “shall be detained” during their removal proceedings unless otherwise exempted. 8 U.S.C. §§1225(a)(1), (b)(2)(A). Detention is mandatory, regardless of the duration of the alien’s presence in the United States, the alien’s distance from the border when apprehended, or the affirmative acts he takes to secure admission.

B. The phrase “seeking admission” in §1225(b)(2) does not undermine the government’s reading. The statute makes clear that an alien who is an “applicant for admission” is necessarily “seeking admission.” *See* 8 U.S.C. §1225(a)(3). No additional, affirmative act is needed. That is consistent with the everyday meaning of the terms—as a matter of plain English, a person who is applying for something is necessarily seeking it. This

reading does not render the term “seeking admission” redundant; every term or phrase has independent meaning. Even if there were redundancy, “[r]edundancies are common in statutory drafting,” and “[r]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text.” *Barton*, 590 U.S. at 223.

In any event, Petitioner is still “seeking admission” by virtue of pursuing immigration relief with the ultimate objective of obtaining admission.

C. The government’s reading of §1225(b)(2) does not render §1226 superfluous. Section 1226(c)’s mandatory detention provisions govern a significant swath of aliens who are *not* covered by §1225(b)(2)—for example, admitted aliens who overstayed visas and are removable on grounds of deportability. The mere fact that the provisions overlap is not a basis for rewriting §1225(b)(2)’s clear text. *Barton*, 590 U.S. at 239. Even as to the areas of overlap, §1226(c) does considerable independent work by limiting release from detention on parole. Likewise, the Laken Riley Act does not undermine the government’s reading. That Act became law at a time when the government was not applying §1225(b)(2) consistent with its clear text; at the time of enactment, the Act had considerable work to do.

D. The district court’s interpretation would reimpose the same illogical regime that IIRIRA sought to eliminate—requiring the detention of aliens who present at a port of entry as the law requires but authorizing the release of those aliens who enter unlawfully and make *no effort* to prove admissibility. The Court should not endorse such a nonsensical reading of the statute, rewarding those who purposefully evade and flout our Nation’s immigration laws and authorities, particularly where the consequence of the district court’s interpretation so clearly subverts congressional intent.

E. The government’s interpretation of §1225(b)(2) is not undermined by *Jennings*, 583 U.S. 281. That case did not address the scope of §1225 and §1226’s detention authority. Even so, *Jennings* characterized §1225(b)(2) consistent with the government’s interpretation as “mandat[ing] detention of applicants for admission” until removal proceedings have concluded. *Id.* at 297.

II. The district court also lacked jurisdiction to grant class-wide injunctive relief restraining the operation of 8 U.S.C. §1231(g). Section 1252(f)(1) provides that “no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of [Sections 1221 through 1232] other than with respect to the application of such provisions

to an individual alien against whom proceedings under such part have been initiated.” The injunction the district court entered below—which bars the transfer of any class member out of the District of Colorado—violates that prohibition. Section 1231 (which is among the provisions covered by section 1252(f)(1)) governs transfer of detainees and provides that “[t]he Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal.” 8 U.S.C. §1231(g)(1). The statute thus confers discretion on the government to determine the proper placement of immigration detainees. Because the district court’s injunction displaces that discretion and orders the government not to take actions that section 1231(g)(1) empowers it to take, it runs afoul of §1252(f)(1)’s prohibition.

STANDARD OF REVIEW

The Court reviews the grant or denial of a preliminary injunction for abuse of discretion. *See Citizens United v. Gessler*, 773 F.3d 200, 209 (10th Cir. 2014). “[A] district court always abuses its discretion when it errs on a legal question, and [the court decides] the presence or absence of legal error de novo.” *El Encanto, Inc. v. Hatch Chile Co.*, 825 F.3d 1161, 1162 (10th Cir. 2016); *see Colo. Motor Carriers Ass’n v. Town of Vail*, 153 F.4th 1052, 1058

(10th Cir. 2025) (reviewing statutory interpretation issue de novo on appeal of preliminary injunction). Likewise, the Court reviews de novo whether a district court has exceeded its statutory authority. *See United States v. Jalilian*, 896 F.2d 447, 448 (10th Cir. 1990).

ARGUMENT

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

Under the plain language of §1225(b)(2), DHS is required to detain all aliens, like Petitioner, who are present in the United States without admission pending their removal proceedings—regardless of how long they have been in the United States or how far inland from the border they managed to migrate before being detained. 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.”). The district courts’ contrary interpretation is incompatible with the statutory text and subverts Congress’s manifest purposes in adopting §1225(b)(2)(A). App.544-56.

A. The plain language of §1225(b)(2) mandates detention of applicants for admission

Section 1225(a) “deem[s]” all aliens who are “present in the United States [and] ha[ve] not been admitted or who arrive[] in the United States” to be “applicant[s] for admission.” 8 U.S.C. §1225(a)(1). And “admission” under the INA means not mere physical entry, but “lawful entry ... after inspection” by immigration authorities. 8 U.S.C. §1101(a)(13)(A). Thus, an alien who enters the country without admission is and remains an applicant for admission, regardless of the duration of the alien’s presence in the U.S. or the alien’s physical distance from the border.

In turn, §1225(b)(2) provides that “an alien who is an applicant for admission ... shall be detained” pending removal proceedings if the “alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §1225(b)(2)(A). The statute’s use of the term “shall” denotes that detention is mandatory. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998); *Jennings*, 583 U.S. at 302 (stating that §1225(b)(2) “mandate[s] detention”). And like subsection (a), subsection (b)(2) makes no exception for either the alien’s duration of presence in the country or the distance of his incursion. Instead, the statute narrowly cabins exceptions in subparagraphs (B) and (C). Therefore, except for those aliens

expressly exempted, the statute’s plain text mandates that DHS detain all “applicants for admission” who are not “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §1225(b)(2)(A); *see, e.g., Buenrostro-Mendez*, 166 F.4th 494; *Avila*, 2026 WL 819258, at *3-5; *Montoya v. Holt*, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025) (Dishman, J.).

Petitioner falls squarely within the statute’s definition. He is “present in the United States,” there is no dispute that he has “not been admitted,” and he does not fall within any of the exceptions to §1225(b)(2)(A). *See* 8 U.S.C. §§1225(a), (b)(2)(B); App.29. Moreover, Petitioner did not (and could not) prove that he is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §1225(b)(2)(A). Therefore, the statute commands that Petitioner “shall be detained for a [removal] proceeding under [8 U.S.C. §1229a].” 8 U.S.C. §1225(b)(2)(A).

B. The district court’s decision disregards the clear text of §1225(b)(2)(A)

Despite the clear language of §1225, the district court concluded that Petitioner’s detention is governed by §1226(a) on the theory that §1225(b)(2) applies only to aliens who are making “active efforts” to gain admission to the United States. App.547-48. That reading contradicts the statute, as the

Fifth and Eighth Circuits correctly held. *Buenrostro-Mendez*, 166 F.4th at 502-04; *Avila*, 2026 WL 819258, at *6. This Court should reverse.

1. Section 1225(b)(2)’s reference to aliens “seeking admission” does not limit the statute to aliens actively attempting to gain admission

The district court, following the reasoning of other district courts, held that the phrase “seeking admission” in §1225(b)(2)(A) applies only to applicants for admission who are making “active efforts” to obtain admission—not an alien, like Petitioner, who was residing unlawfully in the United States *without* making any effort to gain admission. App.547-48. That is wrong. The statute itself makes clear that an alien who is an “applicant for admission” is “seeking admission.”

a. Section 1225(a) provides that “[a]ll aliens ... who are applicants for admission *or otherwise* seeking admission or readmission ... shall be inspected.” 8 U.S.C. §1225(a)(3) (emphasis added). The phrase “or otherwise” “operates as a catchall: the specific items that precede it are meant to be subsumed by what comes after the ‘or otherwise’” clause. *Kleber v. CareFusion Corp.*, 914 F.3d 480, 483 (7th Cir. 2019); *see also Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) (“or otherwise” means “the first action is a subset of the second

action”). Being an “applicant for admission” is thus one way of seeking admission, such that any alien who is an “applicant for admission” is “seeking admission” for purposes of §1225(b)(2)(A). *See Buenrostro-Mendez*, 166 F.4th at 503-04; *Avila*, 2026 WL 819258, at *3 n.4; *see also Montoya*, 2025 WL 3733302, at *8-9 (“The word ‘otherwise’ establishes that ‘aliens ... seeking admission’ is the category to which ‘applicants for admission’ belong.”).

“The everyday meaning of the statute’s terms confirms that being an ‘applicant for admission’ is not a condition independent from ‘seeking admission.’” *Buenrostro-Mendez*, 166 F.4th at 502. One may “seek” something without “applying” for it—however, one who is *applying* for something is necessarily *seeking* it. *Compare* Webster’s New World College Dictionary 69 (4th ed.) (stating that “apply” means “[t]o make a formal request (to someone for something)”), *with id.* at 1298 (stating that “seek” means “to request; ask for”). That is especially true when the object is “admission.” Thus, 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) (stating that “apply” means “[t]o request or *seek* employment, acceptance, or *admission*”) (emphasis

added). Likewise, an alien who is “applying” for admission to the United States (*i.e.*, an “applicant for admission”) is necessarily “seeking admission” to the United States. *See Buenrostro-Mendez*, 166 F.4th at 502; *Avila*, 2026 WL 819258, at *5 (“the text here is clear that an ‘applicant for admission’ is also an alien who is ‘seeking admission’”); *see also Montoya*, 2025 WL 3733302, at *8, 10 (“What individual is ‘applying’ for a given legal status without ‘seeking’ such status?”).

Section 1225(a)(5) confirms this understanding, as it states that “[a]n applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the *applicant in seeking admission* to the United States” 8 U.S.C. §1225(a)(5) (emphasis added). “Th[is] language strongly suggests that those who are applicants for admission are ‘seeking admission.’” *Buenrostro-Mendez*, 166 F.4th at 503. It presumes that any applicant for admission has “purposes and intentions ... in seeking admission.” 8 U.S.C. §1225(a)(5).

Other provisions of the INA confirm that “seeking admission” does not denote some kind of “active effort” to obtain admission. Take §1225(b)(2)(B), which excludes “stowaway[s]” from the scope of §1225(b)(2)(A). As the Eighth Circuit recognized, “if ‘seeking admission’ only refers to aliens who

are taking ‘present-tense, affirmative action’ to gain lawful entry into the country, why would an exception be needed for stowaways, who are unquestionably not doing so?” *Avila*, 2026 WL 819258, at *4. “The obvious explanation” is that “seeking admission” does not mean what the district court held. Rather, like an “applicant for admission,” a stowaway seeks admission under the statute “simply by being ‘present in the United States’ while having ‘not been admitted.’” *Id.* (quoting 8 U.S.C. § 1225(a)(1)).

“Seeking admission” thus includes not only aliens who “entered the United States with visas or other entry documents before their presence became lawful,” but also aliens who “entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of [§1225](a)(1).” *Matter of Lemus-Losa*, 25 I.&N. Dec. 734, 743 n.6 (BIA 2012) (emphases omitted). As a result, “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.” *Id.* at 743. For example, an alien who previously unlawfully entered the United States and is never admitted, departs, and subsequently submits a literal application for admission to the United States—*e.g.*, applies for a visa—is deemed to be “*again* seek[ing] admission”

to the United States. *Id.* at 743-44 & n.6 (emphasis added) (discussing 8 U.S.C. §§1182(a)(9)(B)(i)(I)-(II)). Mere presence without admission is seeking admission “by operation of law.” *Id.*; see *Buenrostro-Mendez*, 166 F.4th at 502 (“That ‘seeking admission’ is equivalent to being an ‘applicant for admission’ by operation of law was confirmed by the [Board] over a decade ago in *Lemus-Losa*[.]”).

b. The district court’s reading is not only foreclosed by §1225 itself, but it is also irreconcilable with the relationship between §1225(b)(2) and the expedited removal provision in §1225(b)(1). Section 1225(b)(1) applies to aliens arriving in the United States (or present for up to two years who have not been admitted or paroled) who are inadmissible because they cannot show proper documentation or because of a material misrepresentation. 8 U.S.C. §1225(b)(1)(A)(i) (citing 8 U.S.C. §§ 1182(a)(6)(C), (a)(7)). But if “seeking admission” narrows §1225(b)(1)(A) to aliens who are presenting to an immigration officer at the border and actively trying to obtain admission, then §1225(b)(1) swallows §1225(b)(2). Worse still, that reading inverts the relationship between §1225(b)(1) and §1225(b)(2). Recall that §1225(b)(2) “serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1).” *Jennings*, 583 U.S. at 287; see also 8 U.S.C.

§1225(b)(2)(B)–(C). Under Petitioner’s reading, however, §1225(b)(2) is no broader than §1225(b)(1).

All of this confirms that neither the duration of an alien’s unlawful presence in the United States nor his distance from the border when apprehended alters the legal reality that an “applicant for admission” is “seeking admission.” 8 U.S.C. §§1225(a)(1), (b)(2)(A). “Congress knows how to limit the scope” of the INA “geographically and temporally when it wants to.” *Mejia Olalde*, 2025 WL 3131942, at *4. For example, §1225(b)(1) may apply to certain aliens “arriving in the United States” or who “ha[ve] been physically present in the United States continuously for [a] 2-year period.” 8 U.S.C. §1225(b)(1). So, “[i]f Congress meant to say that an alien no longer is ‘seeking admission’ after some amount of time in the United States, Congress knew how to do so.” *Mejia Olalde*, 2025 WL 3131942, at *4. It did not. To the contrary, §1225(a)(1)’s inclusion of *both* aliens “arriving” and those “present in the United States” confirms that *all* aliens who are not admitted are “applicants for admission,” regardless of the length of their presence in the country.

c. The government’s reading does not render the term “seeking admission” redundant of the phrase “applicant for admission” in

§1225(b)(2)(A). “[T]he structure of §1225(b)(2)(A) does not indicate that ‘seeking admission’ is a separate requirement for detention under the statute,” *Avila*, 2026 WL 819258, at *3—“seeking admission” in §1225(b)(2)(A) simply describes what *all* “applicants for admission” do. And “there is ‘no canon of interpretation that forbids interpreting different words used in different parts of the same statute to mean roughly the same thing.’” *Buenrostro-Mendez*, 166 F.4th at 503 (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018)).

Even if “seeking admission” were a separate element, the structure of §1225(b)(2)(A) demonstrates that each phrase has independent meaning. Section 1225(b)(2)(A) is composed of a primary (operative) clause, which is modified by two prefatory clauses offset by commas. The operative clause requires detention of aliens “seeking admission” who do not show their admissibility (“if the examining immigration officer ... , [then] the alien shall be detained”). That mandate is modified by two prefatory clauses. The first excludes aliens covered by subparagraphs (B) and (C). 8 U.S.C. §1225(b)(2)(A) (“[s]ubject to ...”). Like the first, the second prefatory clause narrows the operative clause to a subset of “case[s]”—namely, “in the case of an alien who is an applicant for admission” *Id.* Section 1225(b)(2) thus lays

out a general command (the operative clause), and then qualifies that directive: “[I]f an alien seeking admission is not clearly and beyond a doubt entitled to be admitted,” then “the alien shall be detained”—but only if (i) the alien is not covered by subparagraphs (B) or (C); and (ii) the alien is “an applicant for admission” under §1225(a)(1). No portion of the statute is redundant.

Even if there were redundancy under the Respondent’s reading, the canon against surplusage “is not a silver bullet.” *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*, 590 U.S. at 239. Thus, “[t]he Court has often recognized: Sometimes the better overall reading of a statute contains some redundancy.” *Id.* (quoting *Rimini St., Inc.*, 586 U.S. at 346) (internal quotations omitted). For that reason, “the surplusage canon ... 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 239.

Those principles apply with full force here. Under a straightforward reading of the statute, being an “applicant for admission” is “seeking admission.” Even if that reading produced some redundancy in §1225(b)(2)(A), that is “not a license to rewrite” §1225 “contrary to its text.” *Barton*, 590 U.S. at 239. After all, “there is no ‘canon of interpretation that forbids interpreting different words used in different parts of the same statute to mean roughly the same thing.’” *Jennings*, 583 U.S. at 303; *see also Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) (“Th[e] principle [that drafters do repeat themselves] carries extra weight where ... the arguably redundant words that the drafters employed ... are functional synonyms.”). And that is especially true here, where that re-writing would be so clearly contrary to Congress’s objective in passing the law. *Supra*, Statement of the Case I(B).

d. To be sure, the government previously operated under a narrower application of §1225(b)(2)(A), such that aliens present in the U.S. who had entered without admission could be detained under §1226(a). But “authority granted by Congress cannot evaporate through lack of

administrative exercise,” *Bankamerica Corp. v. United States*, 462 U.S. 122, 131 (1983), and even “longstanding agency interpretations must fall to the extent they conflict with statutory language.” *Pub. Emps. Ret. Sys. of Ohio v. Betts*, 492 U.S. 158, 171 (1989); see *Pereira v. Sessions*, 585 U.S. 198, 204-05 (2018) (rejecting interpretation of INA consistent with 21-year government practice); *Villarreal*, 839 F.3d 958 (rejecting 50-year interpretation of EEOC). As the Fifth Circuit recognized, “[y]ears of consistent practice cannot vindicate an interpretation that is inconsistent with a statute’s plain text.” *Buenrostro-Mendez*, 166 F.4th at 506; see also *Avila*, 2026 WL 819258, at *5 (same). “That prior Administrations decided to use less than their full enforcement authority under §1225(b)(2)(A) does not mean they lacked the authority to do more.” *Buenrostro-Mendez*, 166 F.4th at 506. That is especially true where, as here, neither the former Immigration and Naturalization Service (INS) nor DHS wholly “fail[ed] ... to exercise the power it now claims.” *Bankamerica Corp.*, 462 U.S. at 131. Prior administrations still detained the aliens subject to §1225(b)(2)(A)—just under §1226(a). And those administrations interpreted and applied §1225(b)(2)(A) to mandate detention of *some* aliens—just a subset of all those subject to §1225(b)(2)(A).

2. The statute’s headings do not support the district court’s interpretation

The title and headings of §1225 do not support the district court’s interpretation. *See* App.549-50 (citing *Zumba v. Bondi*, 2025 WL 2753496, at *5 (D. NJ 2025)). The reference to “arriving aliens” in §1225’s title—“expedited removal of inadmissible arriving aliens”—cannot limit the statute’s reach to aliens arriving in the United States. After all, a statute’s title is “of use only when [it] shed[s] light on some ambiguous word or phrase”; “the title of a statute and the heading of a section cannot limit the plain meaning of the text.” *Trainmen*, 331 U.S. at 528-29.

Here, §1225’s text makes clear that it applies to aliens who are already physically present in the U.S., not just to those who are arriving. Section 1225(a)(1) explicitly “deem[s]” aliens already “present in the United States who have not been admitted” to be applicants for admission. 8 U.S.C. §1225(a)(1); *Avila*, 2026 WL 819258, at *3. And nothing in §1225(b)(2)(A) refers exclusively to “arriving aliens.” *Buenrostro-Mendez*, 166 F.4th at 504 n.10 (“If §1225 truly only concerns aliens arriving in the United States, then the definition in §1225(a)(1) could have excluded unadmitted aliens present in the United States entirely.”). Likewise, §1225(b)(1) expedited removal procedures may be applied not just to aliens “arriving in” the United States,

but also to aliens who have been “physically present in the United States” for up to two years. 8 U.S.C. §§1225(b)(1)(A)(i), (iii)(II). The statute’s title “cannot undo or limit that which the text makes plain.” *Trainmen*, 331 U.S. at 529.

Section 1225’s title is an especially weak indicator of the statute’s scope. “Where the text is complicated and prolific, headings and titles can do no more than indicate the provisions in a general manner,” and often “neglect to reveal that [the statute] also deals with” a variety of other subjects. *Trainmen*, 331 U.S. at 528 (“That the heading of [a particular section] fails to refer to all matters which the framers of that section wrote into the text is not an unusual fact.”). Here, §1225 covers a multitude of subjects and classes of aliens in addition to arriving aliens; that the statute’s title mentions arriving aliens “cannot limit the plain meaning of the text.” *Id.* Even if it could, the title refers to “arriving aliens” in a clause addressing “*expedited removal* of inadmissible ... aliens,” and expedited removal is governed by subsection (b)(1), not subsection (b)(2). 8 U.S.C. §1225(b)(2)(B)(ii) (emphasis added). If §1225’s title had any limiting effect—and it does not—it would not extend to subsection (b)(2). *See Montoya*, 2025 WL 3733302, at *6.

Likewise, the word “inspection” in the heading of §1225(b)(2) does not narrow the statute’s scope to aliens arriving in the United States. Section 1225 provides that “all aliens ... *who are applicants for admission or otherwise seeking admission or readmission ... shall be inspected* by immigration officers.” 8 U.S.C. §1225(a)(3) (emphasis added). Inspection is required for all applicants for admission, including aliens “present in the United States who have not been admitted,” not just aliens arriving in the United States. 8 U.S.C. §1225(a)(1). This point is reinforced by subsection (b)(1), which requires inspection of certain aliens who “ha[ve] been physically present in the United States” for up to two years, 8 U.S.C. §§1225(b)(1)(A)(i), (iii)(II)—encompassing many aliens who are in no sense “arriving.”

3. The legislative history does not support the district court’s reading.

Shifting the legislative history, the district court seized upon a single sentence from a committee report, stating that “Section 236(a) restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see App.554*. Of course, “legislative history [may] never ... be used to ‘muddy’

the meaning of ‘clear statutory language.’” *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 436 (2019). And it does not support Petitioner’s reading in any event. The predecessor statute refers to grounds of “deportability,” so if §1226(a) really did just “restate” the prior authority, it would only apply to aliens subject to grounds of deportability—*not* applicants for admission. Even if there were an alternative reading, that would just prove that the legislative history is ambiguous, which makes it even less probative of legislative intent. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005).

In addition, only four pages earlier the same committee report states that Congress sought to dispense with the old regime under which “illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings”—including a bond hearing—“that are not available to aliens who present themselves for inspection at a port of entry.” House Rep. 104-469 part 1, at 225. That purpose is incompatible with the district court’s expansive interpretation of §1226 as simply “restat[ing]” the prior regime.

4. Alternatively, Petitioner is “seeking admission” even under the district court’s reading.

Even if “seeking admission” required some separate affirmative conduct by the alien, an applicant for admission who attempts to remain in the United States is, by any definition, “seeking admission.” Petitioner fits squarely within this category.

Section 1225(b)(2)(A) applies to an alien who is present in the United States without admission, even for years. Although the alien may not have been affirmatively seeking admission during those years of illegal presence, §1225(b)(2) is not concerned with the alien’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 alien’s admissibility. 8 U.S.C. §1225(b)(2)(A). At that point, the alien is “seeking”—*i.e.*, presently “endeavor[ing] to obtain,” American Heritage Dictionary at 1174—admission; if it were otherwise, the applicant would attempt to voluntarily “depart immediately from the United States” in lieu of removal proceedings, *see* 8 U.S.C. §1225(a)(4). An applicant who forgoes that statutory option and instead endeavors to remain in the U.S. during the

removal proceedings—in which the alien has the “burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted” or satisfies the criteria for “relief from removal,” 8 U.S.C. §§1229a(c)(2)(A), (c)(4)—is “endeavor[ing] to obtain” admission to the United States. American Heritage Dictionary at 1174.

C. Section 1226 does not support the district court’s reading

Petitioner is likely to argue, as many district courts have held, that the government’s interpretation would render superfluous portions of §1226, which contains a separate mandatory detention provision for certain criminal aliens. That, too, is wrong. Although §1226(c) and §1225(b)(2) overlap for some aliens, each provision has independent effect. Mere overlap is no basis for re-writing unambiguous statutory text.

1. As a threshold matter, there is no colorable argument that the government’s interpretation of §1225(b)(2)(A) renders §1226(a)’s discretionary detention authority superfluous. Section 1226(a) authorizes the Secretary to “arrest[] and detain[]” *any* “alien” pending removal proceedings, but provides that they also “may release the alien” on bond or conditional parole. 8 U.S.C. §1226(a). That provision provides the detention authority for the significant group of aliens who are *not* “applicants for

admission” subject to §1225(b)(2)(A), *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (“the specific governs the general”)—that is, aliens who were admitted to the United States but are now removable. For example, §1226(a) governs the detention of millions⁵ of aliens who have overstayed their visas, because those aliens (unlike Petitioner) *were* admitted. *See Buenrostro-Mendez*, 166 F.4th at 504-05 (holding that “Section 1226(a) undeniably does work independent from §1225(b)(2)(A)” and that “the government’s interpretation does not render portions of §1226 superfluous”); *Avila*, 2026 WL 819258, at *5.

2. Likewise, the government’s reading of §1225(b)(2)(A) does not render §1226(c) superfluous. That provision requires detaining “any alien” who is deportable or inadmissible for having committed specified offenses or engaged in terrorism-related actions. *See* 8 U.S.C. §§1226(c)(1)(A)-(E). Section 1226(c) applies to significant groups of criminal aliens not encompassed by §1225(b)(2). Most obvious, §1226(c)(1) requires detaining aliens who *have been admitted* to the U.S. and are now “deportable.” *See*

⁵ Congressional Research Service, *Nonimmigrant Overstays: Overview and Policy Issues*, CRS Report No. R47848 (Nov. 21, 2023), available at <https://crsreports.congress.gov/product/pdf/R/R47848>.

8 U.S.C. §1226(c)(1)(B). By contrast, §1225(b)(2) has no application to admitted aliens.

In addition, §1226(c) narrows the circumstances under which aliens may be *released* from mandatory detention. For aliens subject to mandatory detention under §1225(b)(2), IIRIRA allows DHS to “temporarily” release them on parole “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. §1182(b)(5)(A). Section 1226(c)(1) takes release off the table for aliens who have committed the offenses or engaged in the conduct specified in §§1226(c)(1)(A)-(E). As to those aliens, §1226(c) authorizes their release only if needed to protect a witness or similar person, the alien will not be a danger to any person or property, and is likely to show up for any scheduled proceeding 8 U.S.C. §1226(c)(4); *see Buenrostro-Mendez*, 166 F.4th at 505 (“Not only does §1226(c) sweep in deportable aliens in addition to the inadmissible aliens covered by §1225(b)(2)(A), it also eliminates the option of parole for those to whom it applies.” (internal citation omitted)); *Avila*, 2026 WL 819258, at *5.

To be sure, §1226(c) does apply to aliens who are removable under certain grounds of inadmissibility. *See* 8 U.S.C. §§1226(c)(1)(A), (D). But again, overlap is “common in statutory drafting,” including out of a

“congressional effort to be doubly sure.” *Barton*, 590 U.S. at 239. That principle applies fully here. After all, the grounds of inadmissibility listed in §1226(c)(1) do not apply to jaywalkers or other petty offenders; they apply to serious criminal offenders—human traffickers, drug traffickers, terrorists, and others. *See* 8 U.S.C. §§1182(a)(2), (a)(3)(B). Those are precisely the kind of criminal and dangerous aliens Congress would want to be “doubly sure” are subject to mandatory detention.

3. The Laken Riley Act does not undermine the government’s interpretation, either. To be sure, the Laken Riley Act’s application to criminal aliens who are inadmissible under §1182(a)(6)(A)—for being “present ... without being admitted or paroled”—overlaps with §1225(b)(2)(A). 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 239; *see also Mejia Olalde*, 2025 WL 3131942, at *4 (“[E]ven assuming there were surplusage, that cannot trump the plain meaning of §1225(b)(2).”). Moreover, the canon against surplusage is “weak” when applied, as here, to “acts of Congress enacted at widely separated times.” *Mejia Olalde*, 2025 WL 3131942, at *5; *see Rojas v. Olsen*, 2025 WL 3033967, at *9 (E.D. Wis. Oct. 30, 2025)

("[L]egislation passed in 2025 has little bearing on the meaning of legislation enacted in 1996."). And it is especially weak where, as here, there will be overlap under *any* possible reading of the statute. *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." (internal quotation marks omitted)). After all, even if §1225(b)(2)(A)'s detention requirement applied only to aliens arriving at the border, this portion of the Laken Riley Act would apply to those aliens, too, if they met the offense criteria. *See* 8 U.S.C. §1226(c)(1)(E)(ii).

Moreover, the Laken Riley Act was enacted against a backdrop in which the government was treating aliens, like Petitioner, as bond-eligible. Thus, "the [Laken Riley] Act did have a substantial effect when passed insofar as it required the detention without bond or parole of certain aliens the administration was *then* treating as bond-eligible." *Buenrostro-Mendez*, 166 F.4th at 505 (emphasis added); *Avila*, 2026 WL 819258, at *5. The Act thus reflects a "congressional effort to be doubly sure," *Barton*, 590 U.S. at 239, that unadmitted criminal aliens are not released from detention through any method.

In any event, §1226(c) still does independent work, despite any overlap, by limiting the ability to release the specified aliens on parole. *Buenrostro-Mendez*, 166 F.4th at 505; *Avila*, 2026 WL 819258, at *5. In fact, Congress’s desire to further limit paroling criminal aliens was one reason it enacted the Laken Riley Act. The Act was adopted in the wake of a heinous murder committed by an inadmissible alien who was “paroled into this country through a shocking abuse of that power,” 171 Cong. Rec. at H278 (daily ed. Jan. 22, 2025) (Rep. McClintock), *available at* 2025 WL 270227, and an abdication of the government’s “fundamental duty under the Constitution to defend its citizens,” 171 Cong. Rec. at H269 (Rep. Roy), *available at* 2025 WL 270222.

D. The district court’s narrow interpretation subverts congressional intent

The district court’s reading is not only textually incorrect, it also thwarts IIRIRA’s express goal of eliminating preferential treatment for aliens who enter the country unlawfully. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to result “that Congress designed the Act to avoid”); *New York State Dep’t of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) (“We cannot interpret federal statutes to negate their own stated purposes.”).

Recall that one of IIRIRA’s express objectives was to dispense with the perverse regime under which aliens who entered unlawfully were given “equities and privileges in immigration proceedings that [were] not available to aliens who present[ed] themselves for inspection” at the border, including the right to secure release on bond. House Rep. at 225; *see also supra*, Statement of the Case I(A)-(B). The district court’s interpretation would restore the regime Congress sought to discard: it would require detention for those who present themselves for inspection at a port of entry in compliance with law, yet grant bond hearings to aliens who evade immigration authorities, enter unlawfully, and remain here unlawfully for years or even decades until an involuntary encounter with immigration authorities. That is *exactly* the “perverse incentive to enter” unlawfully, *Thuraissigiam*, 591 U.S. at 140, that IIRIRA sought to eradicate. This Court should reject any interpretation that is so transparently subversive of Congress’s stated objective. *See King*, 576 U.S. at 492.

The government’s reading, by contrast, not only adheres to the statute’s text but also “better honors [the] predominant goal in the enactment of IIRIRA.” *Buenrostro-Mendez*, 166 F.4th at 508. The government’s interpretation likewise promotes applying the “entry fiction”

to all aliens who have not been admitted and avoids giving favorable treatment to aliens who enter without inspection. Under that doctrine, all “aliens who arrive at ports of entry ... are treated for due process purposes as if stopped at the border,” including aliens “paroled elsewhere in the country for years pending removal” who have developed significant ties to the country. *Thuraissigiam*, 591 U.S. at 139 (internal quotation marks omitted). For example, in *Kaplan v. Tod*, the Supreme Court held that an alien who was paroled for nine years into the United States was still “regarded as stopped at the boundary line” and “had gained no foothold in the United States.” 267 U.S. 228, 230 (1925). The “entry fiction” thus prevents favorable treatment of aliens who have not been admitted—including those who have “entered the country clandestinely.” *Yamataya v. Fisher*, 189 U.S. 86, 100 (1903). IIRIRA sought to implement that same principle with respect to detention. The government’s reading is true to that purpose; the district court’s reading subverts it.

E. The Supreme Court’s decision in *Jennings* supports the government’s interpretation

The government’s interpretation is also consistent with the Supreme Court’s decision in *Jennings*. There, the Court reviewed a Ninth Circuit decision that applied constitutional avoidance to “impos[e] an implicit 6-

month time limit on an alien’s detention” under §1225(b) and §1226. *Jennings*, 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 aliens subject to §1225(b) or §1226. *See Buenrostro-Mendez*, 166 F.4th at 505 (explaining that the language on which Petitioner relies “is part of a general description” and is “[a]t most ... dicta”); *Avila*, 2026 WL 819258, at *5; *Webster v. Fall*, 266 U.S. 507, 511 (1925) (“Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.”).

To be sure, *Jennings* described the detention authorities in §1225(b) and §1226, and in that context summarized §1226 as applying to aliens “already in the country”:

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

583 U.S. at 288-89. But when describing §1226’s scope in particular, *Jennings* refers to aliens “present in the country” who are removable under 8 U.S.C. §1227(a)—a provision that applies *only* to admitted aliens. *See* 583

U.S. at 288. The government’s interpretation is consistent with that understanding: it allows that §1226 is the exclusive source of detention authority for the substantial category of aliens who are were admitted but are now deportable. *Supra*, Statement of the Case I(C). Moreover, nothing in the quoted language suggests that §1226 is the *sole* detention authority for *every* “alien[] already in the country,” and the use of “certain” conveys the opposite.

Moreover, elsewhere in *Jennings* the Supreme Court used language that directly supports the government’s reading of §1225(b)(2). The Court stated that §1225(b)(2) “serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1).” *Jennings*, 583 U.S. at 287. It then described §1225(b) as “appl[ying] primarily to aliens *seeking entry* into the United States (‘applicants for admission’ in the language of the statute),” *id.* at 287—thus *equating* the concept of “seeking entry” with the definition of “applicant for admission.” *See Buenrostro-Mendez*, 166 F.4th at 505-06 (same). And *Jennings* then concluded that “[r]ead most naturally, §§1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded.” 583 U.S. at 297.

At best for Petitioner, the language from *Jennings* on which he could rely is ambiguous and such uncertain dicta is insufficient to displace the

statute’s text and the manifest congressional purpose; that is especially so where nothing in *Jennings* required resolving the precise scope of §1225(b) and §1226. See *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74 (2023) (“The language of an opinion is not always to be parsed [like the] language of a statute,” and instead “must be read with a careful eye to context.”) (internal quotation marks omitted)).

II. The district court lacked jurisdiction to bar the transfer of class members under 8 U.S.C. §1252(f)(1).

Apart from the merits of §1225, the district court exceeded its authority by entering a preliminary injunction prohibiting the government from transferring Petitioner or class members outside the District of Colorado.

Section 1252(f)(1) provides:

Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter [§§1221-1232] ..., other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

The district court’s prohibition on transfer plainly violates §1252(f)(1). By its terms, the court’s order “enjoin[ed]” and “restrain[ed]” the government. App.570 (“Respondents are *enjoined* from ... transferring) (emphasis added). The order also applies to “an entire class of aliens,” *Aleman*

Gonzalez, 596 U.S. at 550-51—*i.e.*, all aliens who are arrested or detained by the government in Colorado pending a decision on whether they are to be removed from the United States, App.570—not to an “individual alien,” 8 U.S.C. §1252(f)(1).

The district court’s order also “restrain[s] the operation” of one of the covered statutory provisions—specifically, §1231(g)(1). That provision authorizes the Secretary to “arrange for appropriate places of detention for aliens detained pending removal or a decision on removal,” 8 U.S.C. §1231(g)(1), and so gives the Secretary “discretionary power to transfer aliens from one locale to another, as she deems appropriate,” *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999). The district court’s order “enjoin[s]” the government from “transferring” Petitioner “and the class he proposes to represent” “from the District of Colorado.” App. 570. Put otherwise, the court ordered the government to “refrain” from “carry[ing] out” its authority under §1231(g)(1) to “arrange for appropriate places of detention for aliens detained pending removal or a decision on removal.” *Aleman Gonzalez*, 596 U.S. at 550.

That is exactly the type of order that *Aleman Gonzalez* held §1252(f)(1) forbids. There, the Supreme Court vacated an order that enjoined the

government class-wide from taking actions under a specified provision (detaining aliens under §1231(a)(6)) until it provided additional process (a bond hearing). 596 U.S. at 547. And here, the district court has issued an injunction barring the government from transferring class-member detainees to facilities outside Colorado. App.570. That is the exact same error. The class-wide order below “enjoin[s] or restrain[s] the operation’ of [§1231(g)(1)]” because it requires a federal official to “refrain from actions that (again in the government’s view) are allowed by [§1231(g)(1)].” *Id.* at 551.

Years before *Aleman Gonzalez*, the Tenth Circuit held that §1252(f)(1) prohibits district courts from enjoining the Secretary’s exercise of the authority under §1231(g)(1). In *Van Dinh*, several aliens brought a *Bivens* class action lawsuit and the district court granted their request for “injunctive relief restraining all alien transfers ... outside the Denver area. 197 F.3d 427 at 429-30. The Tenth Circuit held that because “§1252(f)(1) forecloses jurisdiction to grant class-wide injunctive relief to restrain operation of §§1221-31 by any court other than the Supreme Court,” it is “apparent that a district court has no jurisdiction to restrain the Attorney

General's power to transfer aliens to appropriate facilities by granting injunctive relief....” *Id.* at 433.

Events following the district court's issuance of the injunction demonstrate the practicality of §1252(f)(1)'s prohibition against class-wide orders restricting government discretion to determine the proper placement of immigration detainees. Soon after ordering the injunction, the district court granted the government's emergency motion to modify the injunction to permit transfer of two class members to another judicial district for medical reasons. App.785-87, App.796-97. This circumstance underscores the need for the government to be able to exercise its broad discretion pursuant to §1231(g)(1) to determine whether Colorado facilities lack capacity to handle more individualized detainee concerns, such as certain medical issues, high-security aliens, and aliens who require family housing.

The district court made no attempt, nor could it reasonably, to justify the legality of its injunction against transferring class members outside of the District of Colorado. To the extent the court considered §1252(f)(1) at all, it did so only in the context of potential merits relief, concluding that an eventual declaratory judgment that class members are entitled to bond hearings would not be an injunction or restraint in violation of §1252(f)(1).

App.566, App.782. But that declaratory-judgment rationale does not apply to the part of the preliminary injunction that says defendants “*are enjoined* from removing [Petitioner] and [class members] from the United States or transferring them from the District of Colorado during the pendency of this action.” App.570 (emphasis added).

Petitioner may argue that the district court considered its injunction a necessary measure to prevent the government from moving detainees outside the scope of its declaratory relief regarding the application of sections 1225 and 1226, and thereby circumventing the court’s authority to grant relief with respect to detention without bond hearings. But the order still takes the form of non-individual relief, which is barred by §1252(f)(1). And §1252(f)(1) equally bars injunctive relief on a claim that “the Executive’s action does not comply with the statutory grant of authority.” *Nielsen v. Preap*, 586 U.S. 392, 425 (2019) (Thomas, J., joined by Gorsuch, J., concurring in part and concurring in the judgment). Moreover, to the extent the court issued the sweeping injunction for fear of losing jurisdiction over the class members’ pending habeas petitions, “[i]t is well established that jurisdiction attaches on the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner and the accompanying custodial

change.” *Santillanes v. U.S. Parole Comm’n*, 754 F.2d 887, 888 (10th Cir. 1985); see *Ex Parte Endo*, 323 U.S. 283, 284-88 (1944).⁶

Petitioner may also claim that the injunction applies only to class members who are all “individual alien[s] against whom [removal proceedings] have been initiated,” to whom §1252(f)(1) does *not* bar relief on an individual basis. But the Supreme Court rejected such an argument in *Aleman Gonzalez*, 596 U.S. at 550-551 (“[I]njunctive relief on behalf of an entire class of aliens is not allowed because it is not limited to remedying the unlawful ‘application’ of the relevant statutes to ‘an individual alien.’”); see also *Biden v. Texas*, 597 U.S. 785, 801 (2022) (“Section 1252(f)(1) no doubt deprives the lower courts of ‘jurisdiction’ to grant class[-]wide injunctive relief.”). In sum, the district court cannot grant equitable remedies that “enjoin[] or restrain[] the operation” of government detainee housing arrangements on a class-wide basis.

⁶ In any event, given the existence of a class in this case, the Court retains jurisdiction over whatever relief the class is entitled to.

CONCLUSION

The Court should reverse the district court's orders.

ORAL ARGUMENT STATEMENT

This case raises significant legal issues of first impression regarding the intersection between individual rights of aliens and the important governmental interests underpinning the enforcement of immigration law. Oral argument would aid the court in resolving these important issues.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), I hereby certify that the foregoing Brief for Respondent is proportionally spaced using Georgia typeface, has a typeface of 14 points, and contains 11, 907 words.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system on April 10, 2026. Participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

s/ Rebecca Hoffberg Phillips
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Regina M. Rodriguez**

Civil Action No. 25-CV-2720-RMR

NESTOR ESAI MENDOZA GUTIERREZ, for himself and on behalf of themselves and others similarly situated,

Petitioners-Plaintiffs,

v.

JUAN BALTASAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,

ROBERT GUADIAN, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement, in his official capacity;

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity;

TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;

PAMELA BONDI, Attorney General of the United States, in her official capacity;

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;

SIRCE OWEN, Acting Director for Executive Office of Immigration Review, in her official capacity;

U.S. DEPARTMENT OF HOMELAND SECURITY;

AURORA IMMIGRATION COURT; and,

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, MARK BOWEN, Acting Warden,

Respondents-Defendants.

ORDER

For decades, whenever the United States Immigration and Customs Enforcement (“ICE”) detained a noncitizen¹ within the interior part of the United States who did not have a pending order of removal, the Department of Homeland Security (“DHS”) detained them under Section 236 of the Immigration and Nationality Act (“INA”), [8 U.S.C. § 1226](#). Earlier this year, there was a policy change. Instead of detaining noncitizens apprehended in the interior of the United States under INA § 236, [8 U.S.C. § 1226](#), DHS decided to detain these individuals, under INA § 235, [8 U.S.C. § 1225](#). This statute had traditionally been used for noncitizens seeking admission into the United States who are detained at the border or near the border shortly after entry into the United States. Under [8 U.S.C. § 1225](#), detention is required during the pendency of a noncitizen’s immigration removal proceedings whereas under [8 U.S.C. § 1226](#), noncitizens are entitled to a bond hearing and, if certain criteria are met, may be released on bond pending their immigration removal proceedings. This change in policy has resulted in many noncitizens, many of whom have in the United States for decades, being detained without a hearing. Throughout the United States, noncitizens have challenged DHS’s new policy. One of the only courts that has embraced this new legal interpretation of the INA is the Board of Immigration Appeals (“BIA”) in a decision issued September 5, 2025. See [Matter of Yajure Hurtado](#), 29 I. & N. Dec. 216, 216 (BIA 2025). In contrast, most of the federal district courts that have considered this issue determined that [8 U.S.C. § 1226](#) rather than [8 U.S.C. § 1225](#) applies to noncitizens who have resided in the United States for years, do

¹ This Opinion uses the terms “alien” and “noncitizen” interchangeably.

not have a removal order, and are detained by ICE. Respondents have failed to convince this Court otherwise.

Pending before the Court is Petitioner Nestor Esai Mendoza Gutierrez’s (“Mr. Gutierrez” or “Petitioner”) First Amended Class Action Complaint for Vacatur and Declaratory and *Habeas Corpus* Relief (“Petition” or “Amended Complaint”), ECF No. 6; Plaintiff’s Motion for Temporary Restraining Order and/or Preliminary Injunction (“Emergency TRO”), ECF No. 14; and Plaintiff’s Motion for Class Certification, ECF No. 15. Respondents filed a consolidated response, ECF No. 26, and Petitioner filed a Court-ordered consolidated reply, ECF No. 29. For the following reasons, the Court GRANTS the individual Emergency TRO, DEFERS ruling on the Motion for Class Certification, and further ORDERS pursuant to the All Writs Act, [28 U.S.C. § 1651\(a\)](#), and to preserve the Court’s jurisdiction, that Respondents SHALL be enjoined from removing Mr. Gutierrez and the class he proposes to represent from the United States or transferring them from the District of Colorado during the pendency of this action.

I. BACKGROUND

A. Factual Background

The following facts are derived from the allegations outlined in the Amended Complaint, ECF No. 6, Emergency TRO, ECF No. 14, and the Respondent’s response, ECF No. 26. The Court assumes their truth only for the purpose of issuing this Order.

Mr. Gutierrez is a native of El Salvador who has resided in the Denver Metro Area since 1999. ECF No. 6 at 17. He currently lives with his wife and two teenage children, ages 18 and 16, who are U.S. citizens. *Id.* Mr. Gutierrez owns his own construction firm.

Id. He pays all required taxes, including Social Security, even though he does not benefit from Social Security. *Id.* In 2003, he was convicted in Colorado of Driving with Ability Impaired. ECF No. 26-1 ¶ 5. He received a 90-day suspended sentence. *Id.* In 2017, his son was sexually assaulted by a family friend. ECF No. 6 at 17. The Aurora, CO Police Department has an active warrant for the suspect's arrest. *Id.* Mr. Gutierrez has been subpoenaed to testify as a witness if, or when, the case goes to trial. *Id.* In 2024, Mr. Gutierrez applied for a "Victims of Criminal Activity" U-Visa as a parent of a minor child who is a victim of a crime. ECF No. 14-7 ¶ 10. His application is still pending. *Id.* On May 23, 2025, one of Mr. Gutierrez's neighbors accused him of indecent exposure at the apartment complex's pool. *Id.* ¶ 12. The Broomfield Police Department arrested him. *Id.* On May 25, 2025, he was released from jail and immediately detained by the United States ICE pursuant to [8 U.S.C. § 1226\(a\)](#). ECF No. 26-1 ¶ 7. On June 10, 2025, the indecent exposure case was dismissed. ECF No. 6 at 19. On some unknown date, the DHS "reexamined its detention authority and determined that [8 U.S.C. 1225](#) is the correct detention authority that applies to" Mr. Gutierrez. ECF No. 26-1 ¶ 8. On June 23, 2025, Mr. Gutierrez appeared before the Immigration Judge ("IJ") for a custody redetermination hearing. *Id.* ¶ 13. At the hearing, the IJ found he lacked jurisdiction to issue a bond because Petitioner is detained pursuant to [8 U.S.C. § 1225](#). *Id.* As of September 26, 2025, Petitioner was still detained at the Denver Contract Detention Facility in Aurora, CO, as he has been since ICE apprehended him over four months ago on May 25, 2025. ECF No. 29.

B. Procedural History

On August 29, 2025, Mr. Gutierrez filed his original Verified Petition for Writ of Habeas Corpus (“Original Application”) through the immigration attorney who helped him file his U-Visa application in 2024. ECF No. 1. In it, he alleged a violation of 8 U.S.C. § 1226(a), a violation of the INA bond regulations (8 C.F.R. §§ 236.1, 1236.1, and 1003.19), and a violation of the Administrative Procedure Act (“APA”). On September 2, 2025, this Court ordered the Respondents to file a response two weeks after service of the Original Application. ECF No. 5. That same day, with the assistance of counsel from the American Civil Liberties Union (“ACLU”), Mr. Gutierrez filed his Amended Complaint, adding the class action component and a Fifth Amendment due process claim. ECF No. 6. On September 3, 2025, Mr. Gutierrez filed his Emergency TRO, ECF No. 14, and Motion for Class Certification, ECF No. 15. On September 4, 2025, the Court directed respondents to include in the response to the Original Application a response to the Emergency TRO and Motion for Class Certification. ECF No. 22. The matter is now fully briefed. The Court will address the Petition and Emergency TRO first and then the Motion for Class Certification.

II. Analysis

A. Petition and Emergency TRO

In response to the Petition, Respondents present four primary arguments. First, Respondents contend that the Court lacks jurisdiction to decide Mr. Gutierrez’s habeas petition under 8 U.S.C. § 1252(a)(5), 8 U.S.C. § 1252(b)(9), and 8 U.S.C. § 1252(g). ECF No. 26 at 9-10. Second, that even if the Court has jurisdiction, Petitioner’s challenge to

“DHS’s decision to detain him under [Section 1225\(b\)\(2\)\(A\)](#) rather than [Section 1226\(a\)](#), [] fails because the plain text of [Section 1225\(b\)\(2\)\(A\)](#) makes clear that Petitioner falls within its scope.” *Id.* at 10. Third, Mr. Gutierrez is not entitled to preliminary injunctive relief enjoining Respondents from denying him bond because he is detained under [8 U.S.C. § 1225\(b\)\(2\)\(A\)](#). The Court will first consider Respondents’ jurisdictional arguments and then Petitioner’s request for injunctive relief, which will incorporate Respondents’ statutory arguments.

1. Jurisdiction

The Court first addresses the government’s argument that this Court lacks jurisdiction over requests for relief under [8 U.S.C. § 1252\(a\)\(5\)](#), [8 U.S.C. § 1252\(b\)\(9\)](#), and [8 U.S.C. § 1252\(g\)](#).

a. Sections 1252(a)(5), (b)(9)

Respondents argue that “the decision to detain Petitioner under [Section 1225\(b\)\(2\)\(A\)](#) is a question of law arising from his removal proceedings” and that the “issue could be reviewed by the appropriate court of appeals as part of an appeal of a final order of removal.” ECF No. 26 at 9. District courts indeed lack jurisdiction to review orders of removal. See [8 U.S.C. § 1252\(a\)\(5\)](#) (“[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 . . .”). And that judicial review includes “all questions of law and fact, including interpretation and application of constitutional and statutory provisions” related to that order of removal. [8 U.S.C. § 1252\(b\)\(9\)](#). There are two flaws in Respondents’ argument.

First, 8 U.S.C. § 1252(a)(5) has a specific carve out for “section 2241 of Title 28, or any other habeas corpus provision.” Section 2241 of Title 28 authorizes a court to issue a writ of habeas corpus when a person is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). Here, Mr. Gutierrez is seeking a review of his detention, not a removal order. No removal order has been issued. Second, several courts have rejected Respondents’ 8 U.S.C. § 1252(a)(5) and (b)(9) arguments because Petitioner’s claims “are legal in nature and challenge specific conduct unrelated to removal proceedings.” *Garcia Cortes v. Noem*, No. 1:25-CV-02677-CNS, 2025 WL 2652880, at *2 (D. Colo. Sept. 16, 2025) (citing *Mukantagara v. U.S. Dep’t of Homeland Sec.*, 67 F.4th 1113, 1116 (10th Cir. 2023) (“Congress did not intend the zipper clause ‘to cut off claims that have a tangential relationship with pending removal proceedings.’ . . . A claim only arises from a removal proceeding when the parties in fact are challenging removal proceedings.”)); see also *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670, at *7 (D. Minn. Aug. 27, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (“For present purposes, it is enough to note that respondents are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined. Under these circumstances, § 1252(b)(9) does not present a jurisdictional bar.”) Thus, Sections 1252(a)(5) and (b)(9) do not deprive the Court of jurisdiction here.

b. Section 1252(g)

Section 1252(g) imposes a narrow judicial bar to a federal court’s review of “any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” 8 U.S.C. § 1252(g). Respondents argue that §1252(g)’s bar for a district courts’ review of the Attorney General’s decision to commence proceedings “includes a bar on considering challenges to the *basis on which* ICE chooses to commence removal proceedings.” ECF No. 26 at 9-10 (emphasis in the original). Other courts, including in this District, have rejected similar arguments because the noncitizen did not challenge a decision or action to commence proceedings, but rather challenged “the underlying legal bases” of the decisions. See *Garcia Cortes*, 2025 WL 2652880, at *1 (quoting *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *3 (S.D. Fla. Sept. 9, 2025)). This Court agrees with the analysis in *Garcia Cortes*, § 1252(g) does not deprive the Court of jurisdiction to consider the narrow legal questions of whether Mr. Gutierrez’s detention under 8 U.S.C. § 1225 violates the INA and whether he is entitled to a bond hearing under § 1226’s discretionary detention framework. These “purely legal” questions fit the exception to § 1252(g)’s jurisdiction-stripping provision, as they can be decided in the abstract on an undisputed factual record and do not challenge the Attorney General’s discretionary authority. See *id.*

Having dispensed with the Respondents’ jurisdictional arguments, the Court turns now to the merits of Petitioner’s claims.

2. Preliminary Injunction

a. Legal Standard

“A preliminary injunction requested under Rule 65(a) is an extraordinary remedy that may only be awarded upon a clear showing that the [movant] is entitled to such relief.” *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 112 (10th Cir. 2024) (internal citation and quotation marks omitted); see also *Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 356 F.3d 1256, 1261 (10th Cir. 2004) (“the [movant's] right to relief must be clear and unequivocal” (internal citation omitted)). The movant must show:

(1) a substantial likelihood of success on the merits of their suit; (2) that they are likely to suffer irreparable harm in the absence of preliminary relief; (3) this threatened harm outweighs the harm a preliminary injunction may pose to the opposing party; and (4) if issued, the injunction will not adversely affect the public interest.

Rocky Mountain Gun Owners, 121 F.4th at 112. The likelihood-of-success and irreparable-harm factors are “the most critical” in the analysis. *Id.* (internal citation omitted). And the third and fourth factors “merge” where, like here, the government is the opposing party. *Id.* (internal citation omitted).

When a party seeks a “disfavored” preliminary injunction, the Tenth Circuit requires more. *Free the Nipple—Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 797 (10th Cir. 2019). “Disfavored preliminary injunctions don't merely preserve the parties' relative positions pending trial.” *Id.* Rather, “a disfavored injunction[s] may exhibit any of three characteristics: (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.* “To get a disfavored injunction, the moving party faces a heavier burden on the

likelihood-of-success-on-the-merits and the balance-of-harms factors: [H]e must make a ‘strong showing’ that these tilt in h[is] favor.” *Id.*

Respondents argue that this is a “disfavored injunction” because Petitioner is requesting a change in the status quo, i.e., his immediate release from detention, or, in the alternative, his request mandates action by requiring the Respondents to provide him with a bond hearing within seven days. ECF No. 26 at 20. Petitioner argues that this is not a disfavored preliminary injunction because it would return to the status quo before the controversy, which would be DHS’s decades-long practice of detaining individuals like Mr. Gutierrez under 8 U.S.C. § 1226. In a recent ruling by a court in this District granting a preliminary injunction requesting a constitutionally adequate bond hearing for a noncitizen, the court found that the preliminary injunction was “partly” disfavored. *Arostegui-Maldonado v. Baltazar*, No. 25-CV-2205-WJM-STV, 2025 WL 2280357, at *4 (D. Colo. Aug. 8, 2025). Similarly, here, this Court will require a “strong showing” on the likelihood of success on the merits.

b. Likelihood of Success on the Merits

Petitioner is likely to succeed on the merits of his claims that he is unlawfully detained under 8 U.S.C. § 1225(b)(2)(A)’s mandatory detention authority and should be subject to 8 U.S.C. § 1226(a)’s discretionary scheme. Respondents readily admit that other district courts that have considered this same or similar issue “have concluded that aliens who enter without inspection and then reside in the United States fall within the scope of Section 1226(a) rather than Section 1225(b)(2)(A)” by relying “on the same types of arguments Petitioner makes here.” ECF No. 26 at 10 n.1; see, e.g., *Rodriguez v.*

Bostock, 779 F. Supp. 3d 1239, 1256-61 (W.D. Wash. 2025) (*Rodriguez I*) (on a motion for preliminary injunction, finding a similarly situated plaintiff to Petitioner likely to succeed on the merits based on analysis of the two statutes' plain text, their relationship to one another, legislative history, and longstanding DHS practice). The same is true for district courts in the Tenth Circuit. See *Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729, at *6 (D.N.M. Sept. 17, 2025) (determining petitioner's, who entered the United States without inspection in the late 1980s and raised two U.S. Citizen children, detention "should have been governed by § 1226 [rather than § 1225] and that the denial of a meaningful bond review and his resultant continued detention violates his due process rights"); *Garcia Cortes*, 2025 WL 2652880, at *3 (agreeing "with Petitioner that Respondents were wrong to detain him without an opportunity to seek release on bond" because "[p]etitioner is not subject to § 1225(b)(2)(A)'s mandatory detention provision, nor does he fall outside of § 1226(a)'s discretionary detention provision based on any § 1226(c) exceptions.").

The only authority that Respondents identify supporting their position is the BIA's recent decision in *Yajure Hurtado*, finding that noncitizens such as Petitioner who have been present in the United States for many years are subject to section 1225(b)(2)(A). 29 I. & N. Dec. at 216. Only three of the thirty-eight decisions, none of which are from this Circuit, citing the BIA's decision in *Yajure Hurtado*, have denied the relief requested by the noncitizen. See, e.g., *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228, at *5 (S.D. Cal. Sept. 24, 2025) (denying petitioners' application for TRO); *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351, at *10 (D. Neb. Sept. 30,

2025) (denying petitioner’s petition for writ of habeas corpus); *CRISTOBAL CAMILO LAGUNA ESPINOZA, Petitioner, v. DIRECTOR OF DETROIT FIELD OFFICE, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, et al., Respondents.*, No. 4:25-CV-02107, 2025 WL 2878173, at *4 (N.D. Ohio Oct. 9, 2025) (denying writ of habeas corpus without prejudice). None of the Circuits have had the opportunity to consider the issue, though at least one decision granting relief is pending appeal. See, e.g., *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025) (appeal filed in the First Circuit on September 29, 2025).

i. Plain Language of Section 1225

Previously, this Court has said two sections of INA authorize detention—8 U.S.C. § 1231, which applies once a removal order has been issued, and 8 U.S.C. § 1226, which operates when a removal order has not yet been entered. *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1178 (D. Colo. 2024). Apparently, that was inaccurate, and a third section of the INA authorizes detention—8 U.S.C. § 1225.

Section 1225(b)(2)(A) states:

[I]n 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 [the statute governing standard, non-expedited removal proceedings].

8 U.S.C. § 1225(b)(2)(A) (emphasis added). An applicant for admission is defined by § 1225(a)(1) as “[a]lien present in the United States who has not been admitted or who arrives in the United States.” *Id.* § 1225(a)(1) (emphasis added). Respondents argue that Petitioner falls within the scope of § 1225(b)(2)(A) because he is an “applicant for

admission,” as defined as a noncitizen present in the United States who has not been admitted. ECF No. 26 at 11. Petitioner, instead, argues that the text of § 1225 indicates it is only applicable to noncitizens arriving in the United States and “seeking admission.” ECF Nos. 14 at 10-13.

Respondents have correctly noted that this “case involves a question of statutory interpretation.” ECF No. 26 at 2. And the Court agrees with the reasoning of the courts that have done the hard work in analyzing the statutes and finding that “a proper understanding of the relevant statutes, in light of their plain text, overall structure, and uniform case law interpreting them, compels the conclusion that § 1225’s provision for mandatory detention of noncitizens “seeking admission” does not apply to someone like [Mr. Gutierrez], who has been residing in the United States for more than two years.” *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *3 (S.D.N.Y. Aug. 13, 2025); see also *Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390, at *8 (D.N.H. Sept. 8, 2025) (“Because § 1225(b)(2)(A) applies to applicants for admission who are seeking to enter the United States, it cannot apply to Jimenez, who has already entered the country and has been residing here for over two years.”); *Martinez*, 2025 WL 2084238, at *8 (rejecting the Government’s “novel interpretation” that 1225(b) applies to noncitizens detained while present in the United States); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) (“[T]he plain text of Sections 1225 and 1226, together with the structure of the larger statutory scheme, indicates that Section 1225(b)(2) does not apply to noncitizens who are arrested on a warrant issued by the Attorney General while residing in the United States.”);

Rodriguez I, 779 F. Supp. 3d at 1261 (holding that Section 1226, not 1225(b)(2), governed inadmissible noncitizens residing in the country). The Court also agrees with those district courts that have “join[ed] the numerous other district courts that have rejected the government’s recent interpretation of the relationship between § 1225 and § 1226” after the BIA’s decision in *Yajure Hurtado. JAIME VINICIO ORTIZ DONIS, Petitioner, v. CHRISTOPHER CHESTNUT, ET AL., Respondents.*, No. 1:25-CV-01228 JLT SAB, 2025 WL 2879514, at *11 (E.D. Cal. Oct. 9, 2025); see also *Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496, at *5 (D.N.J. Sept. 26, 2025) (finding that the plain language of § 1225 does not apply to petitioner who entered the United States without inspection 23 years ago and that her mandatory detention violates the INA and the Due Process Clause of the Fifth Amendment).

This statutory interpretation appears to align with the Supreme Court’s prior analysis. In *Jennings*, the Supreme Court wrote “[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). It also authorizes the Government to detain certain *aliens already in the country* pending the outcome of removal proceedings under §§ 1226(a).” 583 U.S. at 289 (emphasis added). Respondents argue that 8 U.S.C. § 1225 does not apply only to noncitizens who are just arriving in the United States, but also to those who entered without inspection and have been residing here. ECF No. 26 at 12. For support, Respondents point to § 1225(b)(1)(A)(iii)(II), which states that § 1225(b)(1) applies to aliens “who ha[ve] not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year

period immediately prior to the date of the determination of inadmissibility under this subparagraph.” This same argument seems to indicate that § 1225 would only apply to noncitizens who have not lived in the United States continuously for two years, and not to noncitizens who have lived in the United States continuously for over two years, let alone decades like Petitioner.

Respondents also argue that § 1225(b)(2) is broader than § 1225(b)(1). ECF No. 26 at 12 (citing *Jennings*, 583 U.S. at 287). “Section 1225(b)(1) applies to aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” 583 U.S. at 287 (citing 1225(b)(1)(A)(i)). “Aliens covered by § 1225(b)(1) are normally ordered removed ‘without further hearing or review’ pursuant to an expedited removal process” unless they “indicate[] either an intention to apply for asylum . . . or a fear of persecution,” in which case they are referred for an asylum interview. *Id.* (quoting § 1225(b)(1)(A)(ii)). It is true “Section 1225(b)(2) is broader,” than § 1225(b)(1). *Id.* Section 1225(b)(2) “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)” *Id.* (citing §§ 1225(b)(2)(A), (B)). However, that does not mean that § 1225(b)(2) applies to all other noncitizens in the United States who have not been admitted.

This Court agrees with the analysis in *Zumba* that the title of § 1225, Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing, indicates Congress intended § 1225 to apply to inspections that occur at the ports of entry or near the border. 2025 WL 2753496, at *5; see also *Dubin v. United States*, 599 U.S. 110, 120-21 (2023) (“This Court has long considered that the title of a

statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute.”) (internal quotations omitted). Additionally, the Court agrees with the analysis in *ORTIZ DONIS*, addressing the BIA’s argument in *Yajure Hurtado* that if the § 1225(b)(2) catchall provision did not apply to noncitizens who have lived for years within the United States, then it is meaningless and does not apply to anyone. *2025 WL 2879514*, at *11. However, the court in *ORTIZ DONIS* correctly points out that:

§ 1225(b)(2) applies to arriving noncitizens who are inadmissible on grounds other than 8 U.S.C. § 1182(a)(6)(C) or 1182(a)(7) (which are the grounds that put an arriving noncitizen on the track for expedited removal). The statute governing inadmissibility lists ten grounds for inadmissibility, many of which have distinct sub-grounds. See 8 U.S.C. § 1182(a)(1)-(10). There are thus arriving noncitizens inadmissible on these other bases who would fall under Section 1225(b)(2), as opposed to Section 1225(b)(1).

Id. Thus, the Court agrees with Petitioner that § 1225(b)(2) only applies to noncitizens “seeking admission” and inspected while trying to enter the country, and not to noncitizens who have lived in the United States continuously for over two years.

Respondents also try to argue that Petitioner is “seeking admission” because he has applied for a U-Visa. ECF No. 26 at 13. This argument is a nonstarter. Mr. Gutierrez’s U-Visa application may make him an “applicant for admission.” But being an “applicant for admission” is not synonymous with “seeking admission” under § 1225(b)(2) because such a reading of the statute “would render the phrase ‘seeking admission’ in § 1225(b) superfluous.” *ORTIZ DONIS*, *2025 WL 2879514*, at *8. Further, that Court has found that “[b]ecause § 1225(b)(2)(A) applies to applicants for admission who are seeking to enter the United States, it cannot apply to [Petitioner], who has already entered the country and has been residing here for over two years.” *Jimenez*, *2025 WL 2639390*, at *8.

ii. Plain Language of Section 1226

The plain language of 8 U.S.C. § 1226—which provides that, “[o]n a warrant issued by the Attorney General, an alien *may* be arrested and detained pending a decision on whether the alien is to be removed from the United States”—indicates Congress's intent to establish a discretionary, rather than mandatory, detention framework for noncitizens arrested on a warrant. See 8 U.S.C. § 1226(a) (emphasis added). Subject to some limited exceptions for noncitizens with certain criminal charges, arrests, convictions, or admissions under § 1226(c), § 1226(a) provides that the Attorney General may release a noncitizen on bond or conditional parole if “his release would not pose a danger to property or persons, and that he is likely to appear for any future proceedings.” *In Re Adeniji*, 22 I. & N. Dec. 1102, 1116 (BIA 1999). If a noncitizen is in removal proceedings and 8 U.S.C. § 1226(c) does not apply, DHS makes the initial decision to detain a noncitizen under 8 U.S.C. § 1226(a). The noncitizen may request a custody redetermination hearing from an IJ at any time before a removal order becomes final. 8 C.F.R. § 236.1(d)(1). That bond decision is appealable to the BIA. 8 C.F.R. § 1003.19(f). Detainees are allowed to seek an additional bond hearing before an IJ whenever they experience a material change in circumstances. 8 C.F.R. § 1003.19(e).

In January 2025, Congress passed the Laken Riley Act, amending 8 U.S.C. 1226(c) to add a category of noncitizens subject to mandatory detention. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). This category includes noncitizens who are (1) inadmissible under §§ 1182(6)(A) [present without admission or parole], (6)(C) [misrepresentation], or (7)(A) [lack of proper documentation] and (2) have been charged

with “burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.” 8 U.S.C. 1226(c)(1)(E)(ii). None of these provisions applies to Mr. Gutierrez. This Court agrees with the other district courts that have conducted the statutory analysis of these two statutes: If 8 U.S.C. § 1225 already mandates detention for noncitizens “already in the country” as the Respondents argue, it would have been superfluous for Congress to pass the Laken Riley Act, amending § 1226 to add another category of noncitizens who must be detained. *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *11 (D. Mass. Aug. 19, 2025); see also *ORTIZ DONIS*, 2025 WL 2879514, at *9 (“[T]he Government's interpretation would ‘nullify’ a recent amendment to the immigration statutes.”); *Rodriguez I*, 779 F. Supp. 3d at 1258 (“[I]f the immigration court's interpretation of Section 1225 is correct and its mandatory detention provisions apply to ‘all noncitizens who have not been admitted,’ then it would render superfluous provisions of Section 1226 that apply to certain categories of inadmissible noncitizens.”) (internal citations omitted).

Respondents implore the Court to read 8 U.S.C. § 1226(a)'s general detention authority alongside § 1225, which they argue is more narrow than § 1226(a) and only applies to “applicants for admission.” ECF No. 26 at 14. However, when the Court reads the two statutes side by side, the Court is further convinced that § 1225 was intended for noncitizens inspected upon entry to the United States or who have lived in the United States for less than two years, and § 1226(a) is intended for the apprehension and detention of aliens “already in the country.” *Jennings*, 583 U.S. at 281. Respondents also rely on the same argument the BIA makes in *Yajure Hurtado*, that the redundancy of

mandating detention for a subset of noncitizens in two different statutes does not “eviscerate” § 1225(b)(2)(A), requiring the detention of “other aliens who entered without inspection.” ECF No. 26 at 15 (citing *Barton v. Barr*, 590 U.S. 222, 239 (2020)). However, as one district court has found, the language in § 1225 and § 1226 is not redundant but contradictory. See *Romero*, 2025 WL 2403827, at *12 (“[B]y creating a specific exception, disallowing bond for certain applicants for admission, Congress clearly evinced its intent that bond remain available for the remainder.”).

iii. Legislative History

Respondents argue that the “legislative history weighs in favor of Respondents’ interpretation of Sections 1225 and 1226.” ECF No. 26 at 17. However, this Court disagrees and instead agrees with the district courts that have found the Government’s argument unpersuasive. See, e.g., *ORTIZ DONIS*, 2025 WL 2879514, at *10; *Jimenez*, 2025 WL 2639390, at *9; *Rodriguez I*, 779 F. Supp. 3d at 1260. Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) in 1996. Before the IIRIRA was passed, the predecessor statute to § 1226, 8 U.S.C. § 1252 (1994), required that “[n]oncitizens who had effected an ‘entry’ into the United States were subject to deportation proceedings, while those who had not made an ‘entry’ were subject to ‘more summary’ exclusion proceedings.” *ORTIZ DONIS*, 2025 WL 2879514, at *10 (citing *Hing Sum v. Holder*, 602 F.3d 1092, 1099 (9th Cir. 2010)). This led to a situation where noncitizens who had overstayed their visas or entered illegally had more due process rights than noncitizens who presented themselves at a port of entry. To remedy this, Congress passed the IIRIRA, substituting “‘admission’ for ‘entry’ and by replacing

deportation and exclusion proceedings with a general ‘removal’ proceeding.” *Hing Sum*, 602 F.3d at 1100. Respondents argue that by replacing “admission” with “entry,” “Congress expanded Section 1225 to address not only those who presented themselves at a port of entry,” but also to include “*all* applicants for admission.” ECF No. 26 at 17 (emphasis in original). However, this ignores that the predecessor statute included discretionary release on bond. See § 1252(a)(1) (1994) (“[A]ny such [noncitizen] taken into custody may, in the discretion of the Attorney General . . . be continued in custody . . . [or] be released under bond[.]”). Upon passing the IIRIRA, Congress declared that the new Section 1226(a) “restates the current provisions in section 242(a)(1) [1252(a)(1)] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States.” H.R. REP. 104-469, 229. See *Rodriguez I*, 779 F. Supp. 3d at 1260 (“Because noncitizens like Rodriguez were entitled to discretionary detention under Section 1226(a)’s predecessor statute and Congress declared its scope unchanged by IIRIRA, this background supports Rodriguez’s position that he too is subject to discretionary detention.”)

iv. Past Practice

In *Yajure Hurtado*, the BIA “acknowledge[d] that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection” and that “the supplemental information for the 1997 Interim Rule titled ‘Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures,’ 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997), reflects that the Immigration and Naturalization Service took the position at that

time that “[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.” *Yajure Hurtado*, 29 I. & N. Dec. at 225 n.6. Respondents argue that whether noncitizens in Petitioner’s position (applicants for admission who have resided in the country for over two years) are eligible for bond is “a matter of administrative discretion, not of statutory interpretation.” ECF No. 26 at 19. Interpretation of the meaning of a statute belongs to the “independent judgment” of the courts, as “agencies have no special competence in resolving statutory ambiguities.” See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385-86, 401 (2024). Therefore, because it is the “responsibility of the court to decide whether the law means what the agency says” the Court disagrees with the holding of *Yajure Hutado* and declines to follow it. *Perez v. Mortgage Bankers Assn.*, 575 U.S. 92, 109, (2015) (Scalia, J., concurring in judgment). As discussed above, this Court joins other courts throughout the nation and finds that DHS has adopted a policy that likely violates federal law.

Also weakening Respondents’ position that 8 U.S.C. § 1225 applies to Petitioner is the fact that when ICE arrested Petitioner on May 25, 2025, they did so pursuant to a Form I-200, “Warrant for Arrest of Alien”, ECF No. 14-8 at 6, and issued a Form I-286 “Notice of Custody Determination,” *id.* at 7. Both forms specifically reference INA § 236, 18 U.S.C. § 1226(a). Respondents represent that “ICE has canceled the Form I-286 initially issued to Petitioner in the case.” ECF No. 26-1 ¶ 24. But, Respondents failed to provide information as to when they canceled the original Form I-286, whether or when they issued another I-286, or issued any other documents notifying Mr. Gutierrez he was

being detained under 8 U.S.C. § 1225, and under what authority they canceled the original I-286. As a recent district court noted, “Courts have given great weight to the manner in which DHS treated the petitioner in determining which detention statute applies.” *Zumba*, 2025 WL 2753496, at *9 (citing *Lopez Benitez*, 2025 WL 2371588, at *3 (holding that § 1225 did not apply because (1) DHS had consistently treated petitioner as subject to discretionary detention under § 1226(a) and (2) the “plain text, overall structure, and uniform case law interpreting” the statutory provision compels the conclusion)).

In sum, the Court is persuaded that Petitioner is likely to succeed on the merits that he is unlawfully detained under 8 U.S.C. § 1225 and that § 1226 actually did and should have governed Petitioner’s detention from the outset. This is a strong showing of Mr. Gutierrez’s likelihood of success on the merits sufficient to justify even a mandatory injunction. The Court will therefore assess the remaining preliminary injunction factors to decide whether Mr. Gutierrez’s request for relief should be granted.

c. Irreparable Harm

“The second preliminary-injunction factor asks whether irreparable injury will befall the movants without an injunction.” *Free the Nipple—Fort Collins*, 916 F.3d at 805. “A plaintiff suffers irreparable injury when the court would be unable to grant an effective monetary remedy after a full trial because such damages would be inadequate or difficult to ascertain.” *Dominion Video Satellite*, 269 F.3d at 1156.

Plaintiff contends that “he is imprisoned in jail-like conditions.” ECF No. 14 at 14. This Court has previously recognized that ICE detention is “more akin to incarceration than civil confinement.” *L.G.*, 744 F. Supp. 3d at 1182 (citing *Daley v. Choate*, No. 22-

CV-03043-RM, 2023 WL 2336052, at *4 (D. Colo. Jan. 6, 2023)). Mr. Gutierrez is the main financial provider for his wife and two kids. ECF No. 14-7 ¶ 18. Each day he is detained, his family experiences increased financial, caregiving, and emotional burdens. See *id.* Respondents argue that detention in and of itself does not constitute irreparable harm and that “petitioner has not established what is unique to his circumstances that constitute irreparable harm.” ECF No. 26 at 23. This Court disagrees. What is unique to Mr. Gutierrez, and other noncitizens like him, is that he is being unlawfully detained without bond. Even if Mr. Gutierrez is not ultimately successful in his efforts to avoid removal, the record here shows that if he had been provided with a bond hearing, he would have been granted a conditional release because he is unlikely to abscond or be a danger to the community. This would give him and his family time to prepare for their future, pending his possible removal.

Federal courts have long recognized that the infringement of a constitutional right is an irreparable injury. See *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury.”); *Free the Nipple—Fort Collins*, 916 F.3d at 805 (“Most courts consider the infringement of a constitutional right enough and require no further showing of irreparable injury.”); *Awad v. Ziriya*, 670 F.3d 1111, 1131 (10th Cir. 2012) (“When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” (citation omitted)). Here, the Court has concluded that Mr. Gutierrez has made a strong showing on the merits of his claim that his detention without a bond hearing violates the INA and his procedural due process rights. Absent an

injunction, this infringement upon his Fifth Amendment rights will continue. Moreover, “[b]ecause Defendants are denying [Petitioner] a hearing that would likely result in his release, he has established irreparable harm absent injunctive relief.” *Rodriguez I*, 779 F. Supp. 3d at 1262. Thus, the second preliminary injunction factor is satisfied.

d. Balance of Equities and the Public Interest

As noted above, the balance of equities and the public interest factors “merge” when the Government is the party opposing the injunction. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Respondents argue that “[t]he Supreme Court has recognized that the public interest in the enforcement of the United States’ immigration laws is significant.” ECF No. 26 at 33 (citing *Nken*, 556 U.S. at 436 (where the Supreme Court acknowledged the tension between the “public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm,” and the “public interest in prompt execution of removal orders”)). And here, Respondents continue, they have a valid statutory basis under United States immigration laws for Gutierrez’s continued detention during removal proceedings, which is “a constitutionally valid aspect of the deportation process.” *Id.* (quoting *Demore v. Kim*, 538 U.S. 510, 523 (2003)).

This Court has previously recognized that there is a public interest in the enforcement of the country’s immigration laws. *L.G.*, 744 F. Supp. 3d at 1185. (noting a public interest “in ensuring removable noncitizens appear for their scheduled removal proceedings and an interest in protecting the community”) However, that does not mean that Respondents enjoy an unfettered right to detain noncitizens in contravention of the

law or in violation of the noncitizens' Fifth Amendment rights. See *Demore*, 538 U.S. at 523 (“It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.” (internal quotation marks omitted)). Here, the harm to Respondents is minimal. Respondents do not argue that the burden of providing a bond hearing is great. Instead, Respondents argue that “[e]joining Respondents from carrying out their statutory obligations would harm the Government.” ECF No. 26 at 23-24. But the Court has already held that the Government’s statutory obligation is to provide Mr. Gutierrez a bond hearing. On the other hand, the harm of unlawfully detaining Mr. Gutierrez under 8 U.S.C. § 1225(b)(2)(A) without the opportunity for release on bond is much greater than the harm the Respondents will suffer by compelling them to return to their past practices of detaining noncitizens who have lived in the United States for several years under § 1226. See *Xuyue Zhang v. Barr*, 612 F. Supp. 3d 1005, 1017 (C.D. Cal. 2020) (“[T]he public interest benefits from a preliminary injunction that expedites a bond hearing to ensure that no individual is detained in violation of the Due Process Clause.”). This is particularly so given the patently harsh conditions Petitioner continues to be subjected to, as outlined above.

For these reasons, the Court finds that the balance of equities and public interest factors favors a preliminary injunction enjoining Respondents from denying Petitioner bond on the basis that he is detained under § 1225(b)(2). See *Rodriguez I*, 779 F. Supp. 3d at 1263. Mr. Gutierrez shall be immediately released from detention until he receives a bond hearing before an IJ under § 1226(a), at which the Government shall bear the burden of justifying by clear and convincing evidence of dangerousness or flight risk.

3. Bond Requirement

In a footnote, Respondents request that if the Court grants Petitioner's request for a preliminary injunction, it require Mr. Gutierrez to put up appropriate security.

Under [Federal Rule of Civil Procedure 65\(c\)](#), “[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” In the Tenth Circuit, district courts have “wide discretion under [Rule 65\(c\)](#) in determining whether to require security.” [Winnebago Tribe of Nebraska v. Stovall](#), 341 F.3d 1202, 1206 (10th Cir. 2003). This includes the discretion to “determine a bond is unnecessary to secure a preliminary injunction ‘if there is an absence of proof showing a likelihood of harm.’” [Coquina Oil Corp. v. Transwestern Pipeline Co.](#), 825 F.2d 1461, 1462 (10th Cir. 1987) (citation omitted).

Here, there is no proof that Respondents are likely to suffer harm if this Order is overturned. To the contrary, “[b]ecause this preliminary injunction enforces fundamental constitutional rights against the government, the court determines [w]aiving the security requirement best accomplishes the purposes of [Rule 65\(c\)](#).” [NetChoice, LLC v. Reyes](#), 748 F. Supp. 3d 1105, 1132 (D. Utah 2024) (internal citation and quotation marks omitted; alterations original); [Entm't Merchants Ass'n v. Henry](#), 2006 WL 2927884, at *4 (W.D. Okla. Oct. 11, 2006) (“the Court has discretion to require only a nominal bond, or no bond at all,” where “issues of overriding public concern or important federal rights are involved”). The Court concludes that, given the important constitutional rights at issue in this case for Mr. Gutierrez, no bond will be required.

B. Class Certification

Petitioner is requesting that the Court certify a Rule 23 class “based on the court’s APA and federal question jurisdiction.” ECF Nos. 15, 29 at 23. The Proposed class definition is:

All noncitizens in the U.S. without lawful status who are (1) detained by ICE; (2) have or will have proceedings before any immigration court hearing cases within the District of Colorado; (3) whom DHS alleges or will allege have entered the U.S. without inspection; (4) who were not or will not be apprehended upon arrival; and (5) who are not or will not be subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231 at the time they are scheduled for or request a bond hearing.

ECF No. 15 at 4.

1. Legal Standard

The class action is “an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979)). To justify a departure from that rule, “a class representative must be part of the class and ‘possess the same interest and suffer the same injury’ as the class members.” *Id.* at 348–49 (quoting *East Tex. Motor Freight System, Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977)); see also *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 408 (2010) (“A class action . . . enables a federal court to adjudicate claims of multiple parties at once, instead of in separate suits.”).

The party seeking certifications must show:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

[Fed. R. Civ. P. 23\(a\)](#). In addition, “the proposed class must satisfy at least one of the three requirements listed in [Rule 23\(b\)](#).” *Wal-Mart*, 564 U.S. at 345. Petitioner seeks to certify a class under [Rule 23\(b\)\(2\)](#), which demands that “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” [Fed. R. Civ. P. 23\(b\)\(2\)](#). “[Rule 23\(b\)\(2\)](#) applies only when a single injunction or declaratory judgment would provide relief to each member of the class.” *Wal-Mart*, 564 U.S. at 360.

The Court's examination of these requirements is not cursory. [Rule 23](#) “does not set forth a mere pleading standard.” *Id.* at 350. Rather, “certification is proper only if the trial court is satisfied, after a rigorous analysis, that the prerequisites of [Rule 23\(a\)](#) have been satisfied.” *Id.* at 350–51 (cleaned up). “Petitioner[] must satisfy the ‘preponderance’ evidentiary standard at the class certification stage.” *D.B.U. v. Trump*, 349 F.R.D. 228, 235 (D. Colo. 2025) (citing *Payne v. Tri-State CareFlight, LLC*, 328 F.R.D. 601, 621 n.12 (D.N.M. 2018) (“[A]lthough the Tenth Circuit has not yet explicitly adopted the preponderance standard for fact-finding in class certification analyses, it most likely will, and the Court will employ that standard here.”) (collecting cases)).

2. Defer Ruling on the Motion to Certify

The Court will defer ruling on the Motion to Certify the class at this time, but not for the reasons put forward by Respondents. Respondents argue the Court should defer ruling on the Motion to Certify for two reasons. First, Respondents argue “the nature of the proposed class action is uncertain at this stage” because it is unclear if Plaintiff is

seeking class certification in the habeas context or an APA civil action, and that “Rule 23 does not directly apply in habeas cases.” ECF No. 26 at 24. The Court rejects this argument for two reasons. First, the Court agrees with the analysis in *D.B.U.*, where the Honorable Charlotte N. Sweeney determined that a petitioner may proceed with their habeas claims on a class basis. *D.B.U.*, 349 F.R.D. at 234-35 (citing *Napier v. Gertrude*, 542 F.2d 825, 827 n.2 (10th Cir. 1976) (“It has been decided in other circuits that Rule 23 class actions are technically inapplicable to habeas corpus proceedings. The court may, however, apply an analogous procedure by reference to Rule 23 in proper circumstances.”)). So, even if Plaintiff is seeking to certify the class in a habeas context, the Court may apply Rule 23. *Id.* Second, Petitioner clarified that he is seeking to certify the class under the APA. ECF No. 29 at 22.

Next, the respondents argue that the Court should defer ruling on the Motion to Certify until after the district court in the Central District of California rules on the motion to certify pending in *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSSBFM, ECF No. 14 (C.D. Cal. July 28, 2025). This argument is nonsensical. The Court cannot look at the motion to certify in *Maldonado* because it is sealed, but it seems unlikely that the proposed class in *Maldonado* will include noncitizens detained in the District of Colorado. The hearing on the motion to certify in *Maldonado Bautista* has been continued until November 14, 2025. *Maldonado*, No. 5:25-cv-01873-SSSBFM, ECF No. 71 (C.D. Cal. Oct. 8, 2025). Moreover, the Supreme Court has limited a district court’s ability to issue nationwide injunctive relief. *Trump v. CASA, Inc.*, 606 U.S. 831, 849 (2025).

3. Section 1252(f)(1)

Respondents argue that 8 U.S.C. § 1252(f) proscribes class-wide relief. ECF No. 26 at 25-27. Section 1252(f) provides, in part, that

[N]o court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of [§§ 1221–31] of this subchapter . . . other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

8 U.S.C. § 1252(f). In other words, “[i]t prohibits federal courts from granting classwide injunctive relief” against certain provisions of the INA, specifically §§ 1221–1231. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); see also *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022) (“§ 1252(f)(1) generally prohibits lower courts from entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions.”). “Those provisions charge the Federal Government with the implementation and enforcement of the immigration laws governing the inspection, apprehension, examination, and removal of aliens.” *Garland*, 596 U.S. at 549–50.

Petitioner responds, arguing he is “not ask[ing] the Court to ‘enjoin’ or ‘restrain’ operations of the INA,” instead, he is “ask[ing] the Court to ‘[d]eclare [Respondents] practice violates the INA and ‘[s]et aside’ their unlawful detention policy under the APA” ECF No. 29 at 15. *Rodriguez v. Bostock (Rodriguez II)* considered a virtually identical argument and concluded that both the Supreme Court and the Ninth Circuit have affirmed that classwide declaratory relief remains available under section 1252(f)(1). 349 F.R.D. 333, 364 (W.D. Wash. 2025). In *Aleman Gonzalez*, the Supreme Court declined to reach

the question of whether § 1252(f) prohibits classwide declaratory relief. 596 U.S. at 551 n.2. The Ninth Circuit decided to follow its own precedent “[b]ecause the Supreme Court’s reservation of a question [was] not clearly irreconcilable with a precedent of [the Ninth Circuit’s precedent] that resolves the same question.” *Rodriguez II*, 349 F.R.D. at 364 (alteration original) (citing *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 120 F.4th 606, 625 (9th Cir. 2024)). And Ninth Circuit precedent holds “it is the text of the IIRIRA itself that most clearly shows that Section 1252(f) was not meant to bar classwide declaratory relief” because it does not include the term “declaratory relief.” *Rodriguez v. Hayes*, 591 F.3d 1105, 1119 (9th Cir. 2010).

The Tenth Circuit does not have an analogous case to *Hayes*. The Tenth Circuit did analyze 8 U.S.C. § 1252(f) in *Van Dinh v. Reno*, where the Tenth Circuit interpreted § 1252 of the INA to deprive the court of jurisdiction, in a class action lawsuit, to restrain the Attorney General’s power to transfer noncitizens to appropriate facilities by granting injunctive relief. 197 F.3d 427, 433–34 (10th Cir. 1999). However, the Tenth Circuit noted that the complaint in *Van Dinh* did not allege that “an actual or continuing constitutional violation had occurred that could be remedied by judicial action,” and declined to decide whether § 1252(f) bars review when constitutional due process issues are raised. *Id.* at 435 (“While the immigration statutes may not preclude collateral review of constitutional issues in § 2241 habeas cases, an issue we do not decide here, they do preclude direct review of the Attorney General’s discretionary decisions in immigration cases by means of a *Bivens* class action suit.”). Thus, the Tenth Circuit’s decision in *Van Dihn* is distinguishable from the case presented here and specifically did not address, let alone

preclude, declaratory relief in a case such as this, which seeks collateral review of constitutional issues.

The Court agrees with the reasoning in *Rodriguez II*. Petitioner’s requested relief does not fall within the bar of § 1252(f). Mr. Gutierrez is not seeking to halt, suspend, or alter the discretionary “operation” of any INA provision. Rather, he has raised procedural due process claims challenging the constitutionality of immigration agencies’ recently enacted policies and procedures. Respondents note, “this case involves a question of statutory interpretation.” ECF No. 26 at 2. And as the Supreme Court has held, “agencies have no special competence in resolving statutory ambiguities. Courts do.” *Loper*, 603 U.S. 369 at 373. An order declaring that class members are subject to detention under § 1226(a) and thus entitled to bond hearings does not “enjoin or restrain” immigration operations; it simply requires defendants to follow the Constitution and the INA as Congress legislated it.

4. Rule 23(a)

Respondents challenge the proposed class’s compliance with Rule 23(a) numerosity, commonality, and typicality requirements. And this is where the Court defers ruling on the class certification because the Court requires a better understanding of the scope and definition of the proposed class.

a. Numerosity

Petitioners argue they satisfy Rule 23(a)’s numerosity requirement because “[t]he proposed class is sufficiently numerous to make joinder impracticable.” ECF No. 15 at 6. Respondents argue that “Petitioner has not shown that this requirement would be met if

the proposed class definition were changed to address the commonality and typicality problems identified.” ECF No. 26 at 29-30. Under [Rule 23\(a\)\(1\)](#), plaintiffs or petitioners must show “that the class is so numerous that joinder of all members is impracticable.” [Fed. R. Civ. P. 23\(a\)\(1\)](#). [Rule 23\(a\)](#)’s numerosity inquiry is not a blunt “question of numbers.” [Horn v. Associated Wholesale Grocers, Inc.](#), 555 F.2d 270, 275 (10th Cir. 1977). Assessing a class’s numerosity is a “fact-specific inquiry,” calling for the consideration of certain factors, including: “the nature of the action, the size of the individual claims, and the location of the members of the class or the property that is the subject matter of the dispute.” [Colorado Cross Disability Coal. v. Abercrombie & Fitch Co.](#), 765 F.3d 1205, 1215 (10th Cir. 2014) (quotations omitted). The Court needs to understand how many noncitizens detained in the District of Colorado have resided in the United States for over two years and were denied bond on the basis that the Immigration Court lacked jurisdiction under [§ 1225](#).

b. Commonality and Typicality

As to commonality, Petitioner asserts that because the proposed class’s claims “include common questions of law and fact,” they meet their commonality burden. ECF No. 15 at 10; *see also* [Fed. R. Civ. P. 23\(a\)\(2\)](#). Respondents resist, arguing the “proposed class appears to sweep in members who have no claim at all” because it includes noncitizens who “have requested and *received* a bond hearing.” ECF No. 26 at 28 (emphasis in the original). And that the proposed class includes noncitizens who are detained “by DHS *anywhere*” but happened to have a hearing in immigration court in the District of Colorado by video conference. *Id.* at 28-29. To remedy these concerns,

Petitioner argues the class definition could be modified to include only noncitizens “who did not receive bond hearings” and have or will be “detained by ICE *in Colorado*.” ECF No. 29 at 17 (emphasis in original).

Rule 23(a)(2) is disjunctive: a plaintiff may satisfy its commonality requirement if “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2); see also *Menocal v. GEO Grp., Inc.*, 882 F.3d 905, 914 (10th Cir. 2018) (“A finding of commonality requires only a single question of law or fact common to the entire class.”) (quotations omitted). Petitioner argues that the common question is “whether § 1225(b)(2)’s mandatory detention provisions apply to [the class] and prevent them from being considered for release on bond under § 1225(a) and its implementing regulations.” ECF No. 15 at 11. In an analogous case, the Western District of Washington found that commonality was satisfied when the common legal question was “whether Defendants’ ‘policy and practice denying bonds for lack of jurisdiction’ violates the INA and APA.” *Rodriguez II*, 349 F.R.D. at 354.

As to typicality, Respondents argue that “Petitioner’s claim is not typical because he appears to be pursuing lawful status in the United States.” ECF No. 26 at 39. This raises another question for the Court: how many members of the proposed class have some kind of pending application for lawful status in the United States, whether it be a U-Visa application like Petitioner, an I-589 (asylum application), an I-130 (petition for alien relative), or some other pending application? See *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *1 n.3 (W.D. Wash. Sept. 30, 2025) (*Rodriguez III*) (citing *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025) (determining individual

was not similarly situated to the class “because his case was focused on the effect of an approved I-120 made on his behalf”). The Court agrees that a common legal issue appears to exist. The Court further acknowledges that “[u]nder [Rule 23\(a\)\(2\)](#), Petitioners are not required to share the same factual circumstances of other class members, particularly where ‘questions of law’ . . . are ‘common to the class.’” *D.B.U.*, 349 F.R.D. at 237 (citing *DG ex rel. Stricklin v. Devaughn*, 594 F.3d 1188, 1196 (10th Cir. 2010)). However, here the scope of the proposed class and the class definition need to be refined.

5. Rule 26(b)(2)

Not being satisfied that the Petitioner has satisfied the [Rule 23\(a\)](#) requirements, the Court will not analyze the Rule 26(b)(2) requirements.

III. CONCLUSION

For the foregoing reasons, the Court concludes that Petitioner has made a strong showing that he is likely to succeed on the merits, that he is unlawfully detained under [Section 1225\(b\)](#)’s mandatory detention authority, and instead should be governed under [Section 1226\(a\)](#)’s discretionary detention scheme. Because he has also shown irreparable harm, and that balance of hardships tips sharply in his favor, the Court GRANTS Mr. Gutierrez’s Emergency TRO, ECF No. 14. The Court further ORDERS that:

- (1) Defendants must release Mr. Gutierrez immediately until he receives a bond hearing before an IJ under [§ 1226\(a\)](#), at which the Government shall bear the burden of justifying by clear and convincing evidence of dangerousness or flight risk;

- (2) Respondents are enjoined from removing Mr. Gutierrez and the class he proposes to represent from the United States or transferring them from the District of Colorado during the pendency of this action;
- (3) The Court will refrain from ruling on the Motion for Class Certification, ECF No. 15, until the Court can hold a hearing on the matter and have its pending questions answered. A hearing on the matter will be scheduled for November 21, 2025 at 1:00 p.m.

DATED: October 17, 2025

BY THE COURT:



REGINA M. RODRIGUEZ
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Regina M. Rodriguez**

Civil Action No. 25-cv-02720-RMR

NESTOR ESAI MENDOZA GUTIERREZ, for himself and on behalf of themselves
and others similarly situated,

Petitioners-Plaintiffs,

v.

JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, in
his official capacity,
ROBERT GUADIAN, Director of the Denver Field Office for U.S. Immigration and
Customs Enforcement, in his official capacity;
KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her
official capacity;
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his
official capacity;
PAMELA BONDI, Attorney General of the United States, in her official capacity;
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;
SIRCE OWEN, Acting Director for Executive Office of Immigration Review, in her
official capacity;
U.S. DEPARTMENT OF HOMELAND SECURITY;
AURORA IMMIGRATION COURT; and,
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents-Defendants.

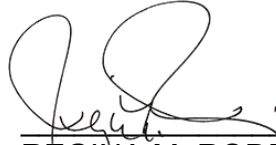
**ORDER GRANTING EMERGENCY MOTION TO CLARIFY OCTOBER 17, 2025,
ORDER, ECF NO. 33, THAT INDIVIDUALS SUBJECT TO A FINAL ORDER OF
REMOVAL ARE NOT CLASS MEMBERS SUBJECT TO THE ORDER**

Having reviewed the Emergency Motion to Clarify October 17, 2025, Order,
ECF No. 33, That Individuals Subject to a Final Order of Removal Are Not Class
Members Subject to the Order, ECF No. 34, the Court hereby GRANTS the motion.

The Order of October 17, 2025, ECF No. 33, is hereby clarified to provide that individuals who were subject to a final order of removal and detention under 8 U.S.C. § 1231 as of October 17, 2025, are not members of the proposed class and are not subject to the Court's Order of October 17, 2025, ECF No. 33. The injunction against the removal of Petitioner himself shall remain in effect should he become the subject of a final order of removal during the pendency of this litigation.

DATED: October 23, 2025

BY THE COURT:



REGINA M. RODRIGUEZ
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Regina M. Rodriguez**

Civil Action No. 25-CV-2720-RMR

NESTOR ESAI MENDOZA GUTIERREZ, for himself and on behalf of themselves and others similarly situated,

Petitioners-Plaintiffs,

v.

JUAN BALTASAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,

ROBERT GUADIAN, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement, in his official capacity;

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity;

TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;

PAMELA BONDI, Attorney General of the United States, in her official capacity;

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;

SIRCE OWEN, Acting Director for Executive Office of Immigration Review, in her official capacity;

U.S. DEPARTMENT OF HOMELAND SECURITY;

AURORA IMMIGRATION COURT; and,

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, MARK BOWEN, Acting Warden,

Respondents-Defendants.

ORDER

Before the Court is Petitioner Nestor Esai Mendoza Gutierrez's ("Mr. Gutierrez" or "Petitioner") Motion for Class Certification (the "Motion"), ECF No. 15. Petitioner is

requesting that the Court certify a class of noncitizens who are, or will be, arrested or detained by the United States Immigration and Customs Enforcement (“ICE”) under Section 235 of the Immigration and Nationality Act (“INA”), [8 U.S.C. § 1225](#), which requires detention during the pendency of a noncitizen’s immigration removal proceedings. These same noncitizens would have likely been detained under INA § 236, [8 U.S.C. § 1226](#), before the Department of Homeland Security (“DHS”) issued a new policy in July 2025. Under [8 U.S.C. § 1226](#), noncitizens are entitled to a bond hearing and, if certain criteria are met, may be released on bond pending their immigration removal proceedings. For the following reasons, the Court will GRANT IN PART the Motion, conditionally certifying the class for declaratory judgment.

I. BACKGROUND

On September 2, 2025, Mr. Guterrez filed his First Amended Class Action Complaint for Vacatur and Declaratory and *Habeas Corpus* Relief. On October 17, 2025, the Court granted Mr. Guterrez’s Emergency Temporary Restraining Order (“TRO”), ordering Mr. Guterrez’s immediate release until he received a bond hearing before an Immigration Judge under [§ 1226](#). [Mendoza Gutierrez v. Baltasar, No. 25-CV-2720-RMR, 2025 WL 2962908, at *14 \(D. Colo. Oct. 17, 2025\)](#). The Court found that Mr. Guterrez is likely to succeed on the merits, that he is unlawfully detained under [Section 1225\(b\)](#)’s mandatory detention authority, and [Section 1226\(a\)](#)’s discretionary detention scheme is more likely applicable. *Id.* The Court deferred ruling on the motion for class certification at that time and scheduled a hearing on the motion for class certification. On November 20, 2025, the Court held a hearing on the motion for class certification. After oral

argument, the Court notified the parties of its intent to conditionally certify a class for declaratory judgment. The Court declines to certify a class for Petitioner’s APA claim at this stage but will address doing so later if it becomes necessary to resolve the matter. The Court ordered the parties to meet and confer to identify the scope of the class and file with the Court a proposed class definition and proposed briefing schedule agreeable to both parties by noon on November 20, 2025. ECF No. 43. The parties filed a proposed order certifying the class, ECF No. 44, along with a Joint Notice of Proposed Class Certification Order, ECF No. 44, notifying the Court that there is a dispute over the words “arrested or” in the proposed definition. The Court held a telephonic hearing to address the dispute. The Respondent objects to the inclusion of the words, “arrested or.” Both sides made a record of the basis for and against the inclusion of this language in the definition of the class. For the reasons stated on the record, the Court will include the words “arrested or” in the class definition at this time.

The Court conditionally certifies the class as defined below:

All people who are arrested or detained by Respondents in Colorado pending a decision on whether they are to be removed from the United States based on alleged violations of the Immigration and Nationality Act, or who are otherwise subject to the jurisdiction of an Immigration Court located in Colorado, where:

- (a) For the person’s most recent entry into the United States, the government has not alleged that the person was admitted into the United States;
- (b) For the person’s most recent entry into the United States, the person was not paroled into the United States pursuant to [8 U.S.C. § 1182\(d\)\(5\)\(A\)](#) at the time of entry;
- (c) The person is not a person whose most recent arrest occurred at the border while they were arriving in the United States; and,

(d) The person is being detained based on Respondents' assertion that they are subject to 8 U.S.C. § 1225(b)(2)(A).

ECF No. 43.

II. Legal Standard

The class action is “an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979)). To justify a departure from that rule, “a class representative must be part of the class and ‘possess the same interest and suffer the same injury’ as the class members.” *Id.* at 348–49 (quoting *East Tex. Motor Freight System, Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977)); see also *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 408 (2010) (“A class action . . . enables a federal court to adjudicate claims of multiple parties at once, instead of in separate suits.”).

The party seeking certifications must show:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). In addition, “the proposed class must satisfy at least one of the three requirements listed in *Rule 23(b)*.” *Wal-Mart*, 564 U.S. at 345. Petitioner seeks to certify a class under *Rule 23(b)(2)*, which demands that “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.”

Fed. R. Civ. P. 23(b)(2). “Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class.” *Wal-Mart*, 564 U.S. at 360.

The Court's examination of these requirements is not cursory. Rule 23 “does not set forth a mere pleading standard.” *Id.* at 350. Rather, “certification is proper only if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied.” *Id.* at 350–51 (cleaned up). “Petitioner[] must satisfy the ‘preponderance’ evidentiary standard at the class certification stage.” *D.B.U. v. Trump*, 349 F.R.D. 228, 235 (D. Colo. 2025) (citing *Payne v. Tri-State CareFlight, LLC*, 328 F.R.D. 601, 621 n.12 (D.N.M. 2018) (“[A]lthough the Tenth Circuit has not yet explicitly adopted the preponderance standard for fact-finding in class certification analyses, it most likely will, and the Court will employ that standard here.”) (collecting cases).

III. Analysis

Respondents argue this action is, at its core, a habeas corpus action. The Tenth Circuit has recognized that while other circuits have ruled that Rule 23 class actions are technically inapplicable to habeas corpus actions, the Court can apply an analogous procedure by reference to Rule 23. Thus, the Court will apply the Rule 23 elements in its analysis. The parties do not appear to disagree with the Rule 23(a) elements. The disagreement is focused on Rule 23(b) and whether the class-wide relief requested is declaratory or injunctive in nature and whether the relief requested is barred by 8 U.S.C. § 1252(f). The court will first briefly discuss the Rule 23(a) elements and then turn its attention to the Rule 23(b) requirement, which took up the bulk of oral argument at the hearing on the Motion.

1. Rule 23(a)

a. Numerosity

There is no argument that the first requirement of [Rule 23\(a\)](#), numerosity, is satisfied here. Under [Rule 23\(a\)\(1\)](#), plaintiffs or petitioners must show “that the class is so numerous that joinder of all members is impracticable.” [Fed. R. Civ. P. 23\(a\)\(1\)](#). As of November 11, 2025, over 500 individuals were detained by ICE in the District of Colorado under [8 U.S.C. § 1225\(b\)\(2\)](#). ECF No. 40 at 14. Joinder of 500 noncitizens is impracticable, and that does not include any future unknown members — noncitizens who will be arrested and detained under [§ 1225\(b\)\(2\)](#) in the District of Colorado in the future.

b. Commonality

During the hearing, Respondents represented that any dispute as to commonality and typicality has to do with the class definition and can likely be resolved through conferral with Petitioner’s counsel to come up with a mutually agreeable class definition. The parties have now come to a resolution on the class definition, except for the term “arrested or,” resolving the Petitioner’s argument that the class definition is too broad. ECF Nos. 44-45. While Respondent’s objection to the inclusion of the “arrested or” language is noted, it does not defeat the commonality element of the class certification.

[Rule 23\(a\)\(2\)](#) is disjunctive: a plaintiff may satisfy its commonality requirement if “there are questions of law or fact common to the class.” [Fed. R. Civ. P. 23\(a\)\(2\)](#); see also [Menocal v. GEO Grp., Inc.](#), 882 F.3d 905, 914 (10th Cir. 2018) (“A finding of commonality requires only a single question of law or fact common to the entire class.”) (quotations omitted). Here, a common legal question exists — whether [§ 1225\(b\)\(2\)](#)’s

mandatory detention provisions apply to the class and prevents them from being considered for release on bond under § 1226(a) and its implementing regulations. In an analogous case, the Western District of Washington found that commonality was satisfied when the common legal question was “whether Defendants’ ‘policy and practice denying bonds for lack of jurisdiction’ violates the INA and APA.” *Rodriguez v. Bostock*, 349 F.R.D. 333, 354 (W.D. Wash. 2025) (*Rodriguez II*¹). In another analogous case, the District of Massachusetts held the common question of law was “does § 1225(b)(2)(A) authorize mandatory detention without a bond hearing during removal proceedings for noncitizens who entered the United States without inspection, were arrested while residing inside the country, and who are not subject to the expedited removal process under § 1225(b)(1), parole revocation under § 1182(d)(5)(A), or mandatory detention under § 1226(c).” *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 3033769, at *9 (D. Mass. Oct. 30, 2025). The Court finds that the class definition does present a common question of law. Thus, the commonality element is met here.

c. Typicality

The typicality requirement calls upon the plaintiff to show that his claims or defenses “are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). As the Supreme Court has noted, “[t]he commonality and typicality requirements of Rule 23(a) tend to merge” *Guerrero*, 2025 WL 3033769, at *10..

¹ The Court will utilize the same naming conventions for the multiple *Rodriguez v. Bostock* orders as it did in *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *12 (D. Colo. Oct. 17, 2025) to avoid confusion.

Initially, Respondents argued that Petitioner’s claim was not typical of the class, in part, because of his pending U-Visa application. ECF No. 26 at 29. In their Supplemental Brief for Class Certification Hearing and at the hearing, Respondents seem to concede that whether a noncitizen has some sort of pending application should not impact the Court’s typicality analysis. ECF No. 40 at 16. As the court previously noted, “[u]nder [Rule 23\(a\)\(2\)](#), Petitioners are not required to share the same factual circumstances of other class members, particularly where questions of law—[whether [§ 1225\(b\)\(2\)](#)’s mandatory detention provisions apply to the class and prevents them from being considered for release on bond under [§ 1226\(a\)](#) and its implementing regulations]—are common to the class.” *D.B.U.*, [349 F.R.D. at 237](#) (internal quotation omitted). It appears that with the new proposed class definition, Respondents no longer dispute that the typicality element is satisfied.

d. Adequacy

The adequacy prong demands that “the representative parties will fairly and adequately protect the interests of the class.” [Fed. R. Civ. P. 23\(a\)\(4\)](#). “Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *White v. Gen. Motors LLC*, No. 21-cv-00410-CNS-MEH, [2023 WL 3278460](#), at *12 (D. Colo. May 5, 2023), *reconsideration denied*, No. 21-cv-00410-CNS-MEH, [2023 WL 4628438](#) (D. Colo. June 30, 2023). Respondents do not contest that Mr. Guiterrez is an adequate class representative. The Court finds that there is no conflict between Mr. Guiterrez’s interests

and the interests of class members. Mr. Guiterrez asserts the same legal theory as the other class members. They “all have suffered or will suffer the same injury from the government’s uniform policy imposing mandatory detention without a bond hearing on them during their removal proceedings.” *Guerrero*, 2025 WL 3033769, at *11.

Respondents do not contest the adequacy of proposed class counsel, who have extensive experience in complex civil litigation, immigration law, and class actions. See *D.B.U.*, 349 F.R.D. at 233 (appointing some of the same counsel as class counsel). Class counsel has litigated this action through the TRO phase and now into certification briefing, not only in this Court but in other District Courts as well. See *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSSBFM, ECF No. 14 (C.D. Cal. July 28, 2025). The Court finds class counsel have vigorously prosecuted this action on behalf of the class—and will continue to—thus satisfying Rule 23(a)(4)’s adequacy requirement. See, e.g., *White*, 2023 WL 3278460, at *12 (concluding named plaintiff and class counsel met adequacy burden where counsel had “vigorously been litigating” and “proffered intelligible [certification] arguments” (quotations omitted)).

For the reasons set forth above, Petitioner, by a preponderance of the evidence, satisfied Rule 23(a)’s threshold certification requirements. See Fed. R. Civ. P. 23(a). The Court now proceeds to its analysis of Petitioner’s class certification motion under Rule 23(b)(2).

2. Rule 23(b)(2)

Having satisfied Rule 23(a)'s requirements, the Court turns to whether Petitioners have met their Rule 23(b)(2) burden. See, e.g., Fed. R. Civ. P. 23(b). This is where things get more complicated.

Plaintiffs bring this class action under Rule 23(b)(2), see ECF No. 15 at 14, which provides maintenance of a class action where “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole,” Fed. R. Civ. P. 23(b)(2). See also *Wal-Mart*, 564 U.S. at 360 (“Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class.”).

a. 8 U.S.C. § 1252(f)(1)

Respondents contend that Petitioner's requested relief is injunctive because it would ultimately require Respondents to provide the class members a bond hearing under 8 U.S.C. § 1226(a). Respondents maintain that 8 U.S.C. § 1252(f)(1) prohibits the Court from awarding a class-wide injunction. Section 1252(f) provides, in part, that:

[N]o court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of [§§ 1221–31] of this subchapter . . . other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

8 U.S.C. § 1252(f). In other words, “[i]t prohibits federal courts from granting classwide injunctive relief” against certain provisions of the INA, specifically §§ 1221–1231. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); see also *Garland*

v. Aleman Gonzalez, 596 U.S. 543, 550 (2022) (“§ 1252(f)(1) generally prohibits lower courts from entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions.”).

On the record, Petitioner clarified the two forms of relief he is seeking: 1) a declaratory judgment, declaring the challenged policies unlawful, and 2) vacatur, or set aside relief, under the APA, seeking the Court to set aside DHS’s new policy and the Board of Immigration Appeals’ (“BIA”) decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 216 (BIA 2025). Petitioner argues that vacatur is necessary because in the Western District of Washington, where a declaratory judgment was issued in an analogous case, the Immigration Judges in that district are ignoring the declaratory judgment. ECF No. 38 at 8 n.12; see also *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *27 (W.D. Wash. Sept. 30, 2025) (*Rodriguez III*) (finding that the class “has shown that the text of section 1226, canons of interpretation, legislative history, and longstanding agency practice demonstrate that they are governed by section 1226(a)’s ‘default’ rule for discretionary detention). Petitioner concedes that his individual habeas claim is still a live issue before the court, but he denies that he is seeking class habeas.

In *Aleman Gonzalez*, the Supreme Court declined to reach the question of whether § 1252(f) prohibits class-wide declaratory relief. 596 U.S. at 551 n.2. Two out-of-circuit district courts have held that § 1252(f) does not prohibit the declaratory relief sought here, each relying on its own circuit’s precedent. The First Circuit and Ninth Circuits have said that § 1252(f) does not prohibit declaratory relief. See *Guerrero*, 2025 WL 3033769, at

*12 (citing *Brito v. Garland*, 22 F.4th 240, 256-257 (1st Cir. 2021); *Rodriguez II*, 349 F.R.D. 333, 364 (W.D. Wash. 2025) (citing *Rodriguez v. Hayes*, 591 F.3d 1105, 1119 (9th Cir. 2010)). In *Van Dinh v. Reno*, the Tenth Circuit declined to decide whether § 1252(f) bars review when constitutional due process issues are raised. 197 F.3d 427, 433–34 (10th Cir. 1999). (“While the immigration statutes may not preclude collateral review of constitutional issues in § 2241 habeas cases, an issue we do not decide here, they do preclude direct review of the Attorney General's discretionary decisions in immigration cases by means of a *Bivens* class action suit.”).

Respondents argue that Plaintiff’s request for declaratory relief is in name only, and that because Petitioner is still asking the Court to compel Respondents to act by providing the class members a bond hearing under 8 U.S.C. 1226(a) that such relief is injunctive, which is barred by 8 U.S.C. § 1252(f). ECF No. 40 at 6-7. Respondents also argue that vacatur is a form of injunctive relief as well. The Court asked Respondents at the hearing, as a practical matter, if the Court, like many other Courts in the nation, has ruled that DHS’s new policy interpreting 8 U.S.C. §§ 1225 and 1226(a) is unlawful, how does the Court ensure the 500 noncitizens to whom this new policy applies get relief? Other than having the Court rule on 500 separate habeas petitions, what mechanism should be used to determine the rights and obligations regarding the other purported class members? Respondents proposed that multidistrict litigation was a possibility, but Respondents did not otherwise provide a satisfactory answer as to what the Court should do with the current situation.

Without addressing the argument that vacatur is a form of injunctive relief, the Court finds that a class-wide declaratory judgment that the new DHS policy violates the INA is not precluded by § 1252(f). The Court agrees with the reasoning in *Rodriguez II* and *Guerrero* that Petitioner’s requested relief does not fall within the bar of § 1252(f). *Rodriguez II*, 349 F.R.D. at 364; *Guerrero*, 2025 WL 3033769, at *12. As the Court previously noted, “Mr. Gutierrez is not seeking to halt, suspend, or alter the discretionary ‘operation’ of any INA provision. Rather, he has raised procedural due process claims challenging the constitutionality of immigration agencies’ recently enacted policies and procedures.” *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *13 (D. Colo. Oct. 17, 2025).

b. Appropriate Relief

Respondents also argue the class cannot be certified under Rule 23(b)(2) because the declaratory judgment would not provide *final* relief to each member of the class. ECF No. 40 at 8. Instead, Respondents argue, members of the class would have to file individual injunctions to secure an order requiring the government to provide a bond hearing in his or her specific case. ECF No. 40 at 8. As the Court emphasized at the hearing, the expectation is in this District that if the Court issues an order of declaratory judgment, the order will be followed. And as the court in *Guerrero* found, “[a] final declaratory judgment establishing a right to a bond hearing would be appropriate on a class-wide basis, and each class member could then secure a coercive remedy enforcing that right in an individual action,” but hopefully, that will not be necessary. *Guerrero*, 2025 WL 3033769, at *13. Thus, the Court finds that “the declaratory relief requested—a ruling

that the policy violates the INA—would provide the entire class with relief.” *Rodriguez II*, 349 F.R.D. at 363.

IV. CONCLUSION

For the foregoing reasons, Petitioner’s Motion for class certification, ECF No. 15, is **GRANTED in PART**. The Court conditionally certifies the following class for purposes of Petitioner’s declaratory judgment claim for relief:

All people who are arrested or detained by Respondents in Colorado pending a decision on whether they are to be removed from the United States based on alleged violations of the Immigration and Nationality Act, or who are otherwise subject to the jurisdiction of an Immigration Court located in Colorado, where:

- (a) For the person’s most recent entry into the United States, the government has not alleged that the person was admitted into the United States;
- (b) For the person’s most recent entry into the United States, the person was not paroled into the United States pursuant to [8 U.S.C. § 1182\(d\)\(5\)\(A\)](#) at the time of entry;
- (c) The person is not a person whose most recent arrest occurred at the border while they were arriving in the United States; and,
- (d) The person is being detained based on Respondents’ assertion that they are subject to [8 U.S.C. § 1225\(b\)\(2\)\(A\)](#).

The Court **DENIES WITHOUT PREJUDICE** to certify the class for Petitioner’s vacatur claim for relief under the APA.

The Court appoints Plaintiff-Petitioner Nestor Esai Mendoza Gutierrez as the class representative for the conditionally-certified class. Pursuant to [Federal Rule of Civil Procedure 23\(g\)](#), Timothy R. Macdonald, Emma Mclean-Riggs, Anna I. Kurtz, Sara Neel, and Scott C. Medlock of the American Civil Liberties Union Foundation (“ACLU”); Michael K.T. Tan and Anand Balakrishnan of the American Civil Liberties Union Foundation; and Hans Meyer and Conor Gleason of the Meyer Law Office as class counsel for the conditionally-certified class.

The Court’s previous order enjoining Respondents from removing the putative class he had originally proposed to represent from the United States or transferring them from the District of Colorado during the pendency of this action, ECF No. 33 at 36, is MODIFIED to apply only to members of the class defined above.

The parties are ordered to brief the merits in accordance with the agreed schedule ECF No. 44 at 2. Petitioner’s opening brief is due November 24, 2025. Respondent’s response is due December 8, 2025. Petitioner’s reply is due December 15, 2025.

DATED: November 21, 2025

BY THE COURT:



REGINA M. RODRIGUEZ
United States District Judge