

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-02720-RMR

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

Petitioner-Plaintiff,

v.

JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, in his official capacity;  
GEORGE VALDEZ, Acting 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;  
DAREN K. MARGOLIN, Director for Executive Office of Immigration Review, in his official capacity;  
U.S. DEPARTMENT OF HOMELAND SECURITY;  
AURORA IMMIGRATION COURT; and,  
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents-Defendants.

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**DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT,  
ECF No. 89**

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Pursuant to Federal Rule of Civil Procedure 12(b)(6) Respondents-Defendants ("Defendants") move to dismiss Petitioner-Plaintiff's ("Plaintiff's") Second Amended

Class Action Complaint for Vacatur and Declaratory and Habeas Corpus Relief, ECF No. 89 (the "Second Amended Complaint").<sup>1</sup>

The Court should conclude that each of Plaintiff's claims should be dismissed. Plaintiff's claims under the Administrative Procedure Act ("APA") cannot proceed because those claims challenge the legality of detention and thus must be brought through a habeas petition. Plaintiff has otherwise failed to state statutory, regulatory, or due process claims on which relief can be granted.

## BACKGROUND

### I. Proceedings before the appeal.

This case was originally filed as a habeas petition. ECF No. 1. Plaintiff, a noncitizen who entered the country without inspection, challenged his detention on the ground that he was improperly being detained under a provision of the Immigration and Nationality Act ("INA") that does not provide for release on bond (8 U.S.C. § 1225(b)(2)) and should, instead, have been detained under a different provision that does (8 U.S.C. § 1226(a)). *See generally id.* He sought immediate release from Immigration and Customs Enforcement ("ICE") custody or, in the alternative, a bond hearing. ECF No. 1 at 15 (prayer for relief).

On September 2, 2026, Plaintiff then filed a First Amended Complaint, now styled as a class-action civil complaint, but in which he still challenged the legal basis of his

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<sup>1</sup> Pursuant to the Court's Civ. Practice Standard 7.1B(b), undersigned counsel for Defendants conferred with counsel for Plaintiff via email regarding this motion. Counsel for Plaintiff indicated that Plaintiff opposes the request for dismissal.

detention. ECF No. 6. Plaintiff continued to seek the same relief for himself, but also challenged—on behalf of himself and a putative class—detention without bond on the grounds that such detention violated (1) 8 U.S.C. § 1226(a) (Count 1); (2) regulatory provisions implementing 8 U.S.C. § 1226(a) (Count II); (3) the APA (Count III); and (4) the Due Process Clause (Count IV). ECF No. 6 ¶¶ 73-89. As relief, Plaintiff requested that the Court issue a writ of habeas corpus requiring Defendants to release Plaintiff immediately or grant him a bond hearing under 8 U.S.C. § 1226. *Id.* at 26 (prayer for relief). He also requested that the Court “[d]eclare that Defendants’ policy and practice of denying consideration for bond on the basis of § 1225(b)(2) to Plaintiff . . . and the Class, violates the INA, its implementing regulations, the APA, and the Due Process Clause of the Fifth Amendment.” *Id.* at 25. He also requested that the Court “[s]et aside application of Defendants’ unlawful detention policy as to the class members pursuant to 5 U.S.C. § 706(2), as contrary to law, arbitrary and capricious, and contrary to constitutional rights.” *Id.* at 26.

On September 3, 2025, Plaintiff moved for a temporary restraining order and preliminary injunction, ECF No. 14, and for class certification for other noncitizens who also are, or will be (in the government’s view), ineligible for bond because they are detained under 8 U.S.C. § 1225(b)(2) rather than 8 U.S.C. § 1226(a), ECF No. 15.

The Court subsequently granted Petitioner release from detention. Specifically, it granted preliminary injunctive relief, ordering Plaintiff’s immediate release pending a bond hearing and enjoining the transfer or removal of members of the proposed class. ECF No. 33 at 35–36. In weighing Plaintiff’s likelihood of success on the merits, the

Court addressed only Count I—Plaintiff’s contention that he was unlawfully detained under § 1225(b)(2) rather than § 1226(a). *See id.* at 10-22. Plaintiff was subsequently released. ECF No. 49 at 10.

On November 21, 2025, the Court granted class certification “for purposes of [Plaintiff’s] declaratory judgment claim for relief.” ECF No. 47 at 14. The Court “decline[d] to certify a class for [the] APA claim at this stage” but indicated that it would “address doing so later if it becomes necessary to resolve the matter.” *Id.* at 3. Accordingly, the Court denied, without prejudice, Plaintiff’s request to certify the class for his vacatur claim for relief under the APA. *Id.* at 14.

## **II. The appeal**

Defendants have filed an appeal of both the Court’s Order granting the Motion for a Temporary Restraining Order, ECF No. 33, and Order granting the Motion for Class Certification, ECF No. 47, to the Tenth Circuit Court of Appeals. ECF No. 68. That appeal remains pending. *See Mendoza-Gutierrez v. Baltasar*, No. 25-1460, Doc. 23 (10th Cir. Feb. 18, 2025) (ordering appellant’s brief due by April 10, 2026). The appeal involves a challenge to this Court’s order determining that Plaintiff should be released from detention based on this Court’s interpretation of 8 U.S.C. § 1225(b)(2) and a challenge to this Court’s order enjoining transfer or removal of class members. *See id.*, Doc. 10 at 5 (10th Cir. Dec. 30, 2025) (docket statement identifying issues presented).

## **III. Proceedings in the district court since the appeal was filed.**

Since the appeal was filed, certain filings have been made in this district court case, despite the Tenth Circuit appeal.

On November 24, 2025, Plaintiff filed a motion for partial summary judgment on behalf of himself and the class. ECF No. 49. In that motion, Plaintiff argued that declaratory judgment was warranted based on an interpretation of 8 U.S.C. §§ 1225 and 1226 and the implementing regulations. *Id.* at 11-21. Plaintiff also contended that the “dispute is fundamentally legal in nature and can be decided summarily.” *Id.* at 11 (internal quotation marks omitted). Defendants responded to the motion, arguing—among other things—that this case is a habeas case and thus a declaratory judgment is not proper. ECF No. 58. Plaintiff replied in support of the motion. ECF No. 69.

On February 6, 2026, Plaintiff filed the Second Amended Complaint. ECF No. 89. The Second Amended Complaint added new allegations. Plaintiff alleged that on May 22, 2025, the BIA issued an unpublished decision holding that noncitizens who entered the U.S. without inspection are applicants for admission who are seeking admission and thus are subject to detention under 8 U.S.C. § 1225(b)(2)(A). *Id.* ¶ 41. He also alleged that on July 8, 2025, ICE announced a new policy treating noncitizens present in the United States without inspection as subject to detention under § 1225(b)(2)(A). *Id.* ¶¶ 42-43. He also alleges that since he filed the First Amended Complaint, the Board of Immigration Appeals has issued a published decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which required individuals (like Plaintiff) who entered without inspection, to be detained under § 1225(b)(2)(A). *Id.* ¶ 44.

In the Second Amended Complaint, Plaintiff brought essentially the same four challenges to detention. In Counts I and II, Plaintiff contends that Defendants are violating the INA and its implementing regulations by detaining Plaintiff and class

members under 8 U.S.C. § 1225(b)(2) rather than § 1226(a). *Id.* ¶¶ 76-83.<sup>2</sup> In Count III, Plaintiff contends that Defendants' "detention of Mr. Mendoza Gutierrez and the class members pursuant to § 1225 is arbitrary and capricious, and in violation of the Fifth Amendment of the U.S. Constitution." *Id.* ¶ 86. Specifically, Plaintiff claims that Defendants "do not have statutory authority under § 1225 to detain" him or any members of the class. *Id.* Plaintiff requests that the Court "vacate and set aside" Defendants' policy of denying class members individualized custody determinations and the BIA decision in *Matter of Hurtado* (as well as the earlier unpublished BIA decision that reached the same conclusion). *Id.* ¶ 87. In Count IV, Plaintiff contends that "Defendants' mandatory detention of Plaintiff[] and the proposed class without consideration for release on bond or access to a bond hearing violates their due process rights." *Id.* ¶ 92.

Defendants moved to stay the answer deadline for the Second Amended Complaint. See ECF No. 94. The Court granted in part and denied in part that motion. ECF No. 96. It explained that because the central issue of whether Plaintiff, and those like him, should be detained under § 1225(b)(2) or § 1226(a) is pending before the Tenth Circuit, resolution of that question by the Tenth Circuit "may materially advance the ultimate resolution of the litigation or, at least, provide guidance in this circuit." *Id.* at 5-6. Accordingly, the Court determined that "prudential considerations weigh against" it

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<sup>2</sup> As indicated above, *supra* at pp. 3-4, Plaintiff was released from ICE custody prior to the filing of the Second Amended Complaint pursuant to the Court's order on the Motion for a Temporary Restraining Order.

addressing merits-based issues while the Tenth Circuit considers them. *Id.* at 5. The Court ordered Defendants to file their answer or motion to dismiss by March 23, 2026. *Id.* at 6. It ordered Plaintiff to respond to a motion to dismiss within 21 days after the mandate is issued from the Tenth Circuit. *Id.*

### ARGUMENT

The Court should dismiss the Second Amended Complaint. As explained below, Plaintiff has failed to establish review is available under the APA. In addition, he has failed to state a claim on which relief can be granted.

#### I. Plaintiff's challenge to his detention must be brought in habeas.

As a threshold matter, before ruling on the motion to dismiss, the Court must determine whether Plaintiff's claims are being brought as habeas challenges to detention. Plaintiff has styled the Second Amended Complaint as seeking vacatur, declaratory, and habeas relief. See ECF No. 89. As Defendants explained in prior briefing, because Plaintiff seeks to challenge the legality of detention for the class, he can pursue such relief for the class only through habeas, and not through another avenue. ECF No. 41 at 2-5. As the Supreme Court has recently explained, where a challenge to the legality of detention "fall[s] within the 'core' of the writ of habeas corpus," it "must be brought in habeas," even if the plaintiff has *disavowed* relief in habeas. *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025). Accordingly, Plaintiff's claims must be brought in habeas.

The distinction between whether Plaintiff's claims in the Second Amended Complaint must be brought in habeas matters because the Federal Rules of Civil

Procedure—including those regarding discovery—do not apply to habeas proceedings. If the Court were to determine that Plaintiff's claims must be pursued through habeas, a motion to dismiss may not be procedurally proper. *See Browder v. Director, Dep't of Corrs. of Ill.*, 434 U.S. 257, 269 n.14 (1978) (explaining that the view that a Rule 12(b)(6) is appropriate in a habeas proceeding is "erroneous"). Rather, in a habeas proceeding, the Court should "dispose of the matter as law and justice require." 28 U.S.C. § 2243.

For the reasons set forth above, the Court should determine that Plaintiff is challenging the legality of detention and thus must proceed through habeas. And in a habeas proceeding, the Court should proceed directly to determine whether the challenge to detention has merit.

**II. The Court should dismiss Plaintiff's claims to the extent they are brought under the APA because he has an adequate alternative habeas remedy.**

Even if this Court were to decide that the Supreme Court's decision in *J.G.G.* does not compel requiring Plaintiff's challenges to detention to proceed in habeas, longstanding APA principles would require dismissal of the APA claims.

The APA provides for judicial review when a person has "suffer[ed] a legal wrong because of agency action." 5 U.S.C. § 702. "But the availability of the APA's cause of action is circumscribed in several ways, including by 5 U.S.C. § 704." *Citizens for Constitutional Integrity v. United States*, 70 F.4th 1289, 1311 (10th Cir. 2023); *see also Darby v. Cisneros*, 509 U.S. 137, 146 (1993) ("Although [§ 702] provides the general right to judicial review of agency actions under the APA, [§ 704] establishes when such

review is available.”). Specifically, § 704 limits review under the APA to “final agency action for which there is *no other adequate remedy in a court.*” (Emphasis added.)

Plaintiff brings statutory and regulatory claims challenging detention under 8 U.S.C. § 1225(b)(2)(A) as well as a separate APA claim. ECF No. 89 ¶¶ 76-87. In the Second Amended Complaint, Plaintiff alleges that the case arises under 28 U.S.C. § 2241, the APA, and the U.S. Constitution. *Id.* ¶ 16. Plaintiff’s APA claim does not appear to function independently of the statutory and regulatory claims. Rather, Count III (the APA claim) appears to be based on the same argument advanced in Counts I & II (the statutory and regulatory claims), namely that Defendants “do not have statutory authority under § 1225 to detain Mr. Mendoza Gutierrez or any members of the class.” *Id.* ¶ 86. Accordingly, it appears Plaintiff seeks to bring his statutory and regulatory claims—to the extent they are not habeas challenges—under the APA. But these claims are not reviewable under the APA.<sup>3</sup>

Here, Plaintiff has not established that his statutory and regulatory claims are reviewable under the APA. Specifically, there is another adequate remedy in a court that Plaintiff can pursue: judicial review of Plaintiff’s claim of unlawful detention is available through the writ of habeas corpus. *See* 28 U.S.C. § 2241. Because habeas provides an adequate remedy for Plaintiff, APA review is unavailable. *See Raspoutny v. Decker*, 708 F. Supp. 3d 371, 381 (S.D.N.Y. 2023) (determining that the court lacked

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<sup>3</sup> To the extent that Plaintiff seeks vacatur of the policy and the BIA decisions on behalf of the class, Congress has precluded district courts from granting such relief in 8 U.S.C. § 1252(f)(1). *See* ECF No. 40 at 6-8.

jurisdiction over an immigration detainee's APA claim "because the issuance of a writ of habeas corpus under 28 U.S.C. § 2241 would provide an adequate remedy were the Court to find [his] custody to be improper"); *cf. Citizens for Constitutional Integrity*, 70 F.4th at 1312-1314 (concluding that where the plaintiff could participate in a formal agency adjudication which would be followed by federal court review, there was an adequate alternative and suit could not be brought under the APA). Accordingly, "habeas corpus, not the APA, is the proper vehicle." *J.G.G.*, 604 U.S. at 674 (Kavanaugh, J., concurring); *see also Morales v. Bondi*, No. 1:25-CV-1472, 2025 WL 3525488, at \*8 n.4 (W.D. Mich. Dec. 9, 2025) (declining to consider an APA challenge to *Matter of Yajure Hurtado* because habeas provides an adequate remedy). Plaintiff's statutory and regulatory claims—to the extent that Plaintiff requests that the Court review them under the APA—must be dismissed.

**III. The Court should dismiss Counts I, II, and IV for failure to plausibly state a claim on which relief can be granted.**

To survive a motion to dismiss for failure to state a claim, a plaintiff must state a plausible claim on which relief can be granted. *Brooks v. Mentor Worldwide LLC*, 985 F.3d 1272, 1281 (10th Cir. 2021).

**a. The Court should dismiss Plaintiff's statutory and regulatory claims (Counts I and II) for the reasons identified in Defendants' response to Plaintiff's partial motion for summary judgment.**

The parties have already briefed Plaintiff's claims challenging his detention and the detention of class members based on the INA and the implementing regulations. Defendants incorporate their arguments from their Response to the Motion for Partial Summary Judgment regarding why detention is appropriate under § 1225(b)(2). *See*

ECF No. 58 at 7-15; *see also Buenrostro-Mendez v. Bondi*, No. 25-40701, 166 F.4th 494 (5th Cir. 2026) (holding that noncitizens who entered without inspection were subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)).<sup>4</sup>

**b. The Court should dismiss Plaintiff's due process claim (Count IV) because the Supreme Court has made clear that detention during removal proceedings is constitutionally permissible.**

Apart from Plaintiff's statutory and regulatory claims, he claims that "Defendants' mandatory detention of Plaintiff[] and the proposed class without consideration for release on bond or access to a bond hearing violates their due process rights." ECF No. 89 ¶ 92. But if detention of Plaintiff and the class members is authorized by 8 U.S.C. § 1225(b)(2)(A), as Defendants' have argued in response to Plaintiff's motion for partial summary judgment, such detention does not violate due process.

Here, Plaintiff's generalized challenge to detention without a bond hearing while removal proceedings are pending does not demonstrate a violation of due process. The Supreme Court has held that detention during removal proceedings, even without access to a bond hearing, is constitutional. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court upheld the constitutionality of 8 U.S.C. § 1226(c), which mandates detention during removal proceedings without access to bond hearings for certain criminal noncitizens. 538 U.S. at 531. The Court "recognized detention during

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<sup>4</sup> Whether Plaintiff's statutory and regulatory claims should be dismissed for failure to state a claim is likely to depend on how the Tenth Circuit resolves that issue as presented on appeal. *See* ECF No. 96 at 5 (explaining that the Tenth Circuit's resolution of this issue "may materially advance the ultimate resolution of the litigation or, at least, provide guidance in this circuit").

deportation proceedings as a constitutionally valid aspect of the deportation process.” *Id.* at 523. The Court reaffirmed its “longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.” *Id.* at 526. The Court explained that “when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal.” *Id.* at 528. The Court recognized, as to due process concerns, that it “has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.” *Id.* at 522.

The Court in *Demore* made clear that this general principle—that the government does not violate due process when it detains deportable aliens during the limited period necessary for their removal proceedings—was a longstanding one. The Court in *Demore* relied on *Reno v. Flores*, 507 U.S. 292, 314 (1993), where the Court had rejected a due process challenge to the detention of minors during deportation proceedings and on *Carlson v. Landon*, 342 U.S. 524 (1952), where the Court had rejected a due process challenge to detention by noncitizens on the ground that they did not pose a flight risk. *Id.* at 524-26, 538.

As for procedural due process, the Supreme Court has explained that a noncitizen “in [Plaintiff’s] position has only those rights regarding admission that Congress has provided by statute.” *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020). As a reminder, 8 U.S.C. § 1225(b)(2)(A) provides that “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien

seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.” Congress has not created any procedural rights to a bond hearing for applicants for admission (like Plaintiff) in § 1225(b)(2). See *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). “Read most naturally,” § 1225 “mandate[s] detention of applicants for admission until certain proceedings have concluded.” *Id.* The statute says nothing “about bond hearings.” *Id.*

Under *Demore*, Congress may reasonably decide—as it did here—to subject noncitizens who were never inspected or admitted to this Country to detention without bond while the government determines their removability. Accord *Diaz Patino v. Villegas*, 1:25-CV-276-H, 2026 WL 673166, at \*3-5 (N.D. Tex. Mar. 9, 2026) (denying a habeas petitioner’s due process claim brought based on detention under 8 U.S.C. § 1225(b)(2)). Detention of such noncitizens pending removal bears a reasonable relationship to the legitimate purposes of immigration detention identified in *Demore*.

Plaintiff does not plausibly allege otherwise. He alleges generally that “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” ECF No. 89 ¶ 90 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). But Plaintiff does not acknowledge the fact that *Zadvydas* addressed a different circumstance: where a noncitizen had been detained for more than six months following issuance of a final removal order and faced detention that lacked a definite end point and thus was potentially indefinite. And Plaintiff does not point to any factually similar cases to establish that due process would entitle him (or the class members) to a bond hearing if they are properly held under

8 U.S.C. § 1225(b)(2)(A). Indeed, aside from his five paragraphs of allegations composing Count IV (his due-process claim), Plaintiff does not otherwise mention due process anywhere in the Amended Complaint.

Further, even if, as Justice Kennedy suggests in his concurrence in *Demore*, there were circumstances when an “unreasonable or unjustified” detention could implicate due-process concerns, 538 U.S. at 532 (Kennedy, J. concurring), Plaintiff has alleged no such circumstances here. He acknowledges that he is no longer detained. See, e.g., ECF No. 89 ¶ 1 (alleging that, “[a]t the time this lawsuit was filed,” he was detained); see also ECF No. 49 at 10. And the Second Amended Complaint does not contain any allegations about other class members that establish that their detention is unreasonable or unjustified. See generally ECF No. 80 ¶¶ 70-75 (class allegations). In sum, if the Court were to determine that detention is appropriate under 8 U.S.C. § 1225(b)(2)(A), Plaintiff has not plausibly alleged an independent due-process claim.<sup>5</sup>

### CONCLUSION

The Court should dismiss the Second Amended Complaint. Plaintiff’s statutory and regulatory claims are properly viewed as habeas challenges and are not reviewable under the APA. In any event, Plaintiff’s statutory and regulatory claims are subject to dismissal for all the reasons that Defendants have previously explained in response to Plaintiff’s Partial Motion for Summary Judgment. And his due process claim must be

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<sup>5</sup> In *Jennings*, the Supreme Court also questioned “whether a Rule 23(b)(2) class action litigated on common facts is an appropriate way to resolve . . . Due Process Clause claims,” given the importance of the “particular situation” in the due process analysis. 583 U.S. at 314 (quotation omitted).

dismissed because he has not adequately pleaded facts showing that his detention (or that of any class member for that matter) violated substantive due process under the standards set forth in *Demore*, or deprived them of the process Congress has prescribed for them by statute.

Dated: March 23, 2026

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 23, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Benjamin Gibson  
Benjamin Gibson  
U.S. Attorney's Office