

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

Civil Action No. 25-cv-03078-WJM-KAS

JESUS MORALES LOPEZ,

Petitioner,

v.

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

Respondents.

**RESPONDENTS' RESPONSE TO PETITIONER'S AMENDED HABEAS PETITION
(ECF No. 31)**

Respondents submit the following Response to Petitioner Jesus Morales Lopez's First Amended Petition for Writ of Habeas Corpus (ECF No. 31). Petitioner seeks habeas relief in the form of a writ ordering his immediate release. ECF No. 31 at 2, 15. As explained below, the Court should deny the petition because Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2)(A), and under this statute, he is not entitled to be released on bond.

INTRODUCTION

The Department of Homeland Security (DHS) is detaining Petitioner under a statutory provision of the Immigration and Nationality Act (INA), 8 U.S.C.

§ 1225(b)(2)(A), that applies to noncitizens¹ who, like Petitioner, entered the United States without inspection and have never been admitted, and thus are treated as “applicants for admission.” Section 1225(b)(2)(A) requires detention of an “applicant for admission” if an “examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.”

Petitioner claims he is not an applicant for admission subject to § 1225(b)(2)(A) but is instead subject to a different provision, 8 U.S.C. § 1226(a), which authorizes detention of certain noncitizens while removal proceedings are pending. The practical difference between the two sections is that Congress has provided that noncitizens detained under § 1225(b)(2)(A) are ordinarily *not* eligible for bond hearings, while those detained under § 1226(a) are. Based on the premise that his detention is governed by § 1226(a) (and thus entitles him to a bond hearing), he requests a bond hearing in seven days, or immediate release. ECF No. 1 at 16.

The Court should find that Petitioner is an applicant for admission within the scope of § 1225(b)(2) based on the text of the statute and the interpretation of that statutory provision by the Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Respondents recognize that numerous nonprecedential decisions have

¹ The INA uses the term “alien,” which is defined as “any person not a citizen or national of the United States.” 8 U.S.C. § 1101(a)(3).

reasoned otherwise. But as explained below, a close reading of the Supreme Court's explanation in *Jennings* of the scope of § 1225 supports Respondents' view, and the reasoning of many lower court decisions cannot be readily reconciled with the Supreme Court's interpretation of the statute in *Jennings*.

The Court should deny Petitioner's requests for relief because he is subject to 8 U.S.C. § 1225(b)(2)(A) and thus does not have, as he claims, a right to immediate release.

BACKGROUND

I. Legal background.

In the INA, Congress established rules governing when non-citizens may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of "applicants for admission."

The scope of § 1225 was analyzed by the Supreme Court in *Jennings*. At issue in that case was whether certain noncitizens are entitled to periodic bond hearings during prolonged detention. Because in that case (as in this one) "[t]he primary issue [wa]s the proper interpretation of §§ 1225(b), 1226(a), and 1226(c)," 583 U.S. at 289, the Supreme Court's explanation in *Jennings* of § 1225's scope should guide the Court's analysis here. The key points from *Jennings* are set forth below:

1. Section 1225 applies to "applicants for admission," a term of art that includes aliens who are unlawfully present but were never admitted. Section 1225 provides in relevant part, "An alien present in the United States who has not been admitted ... shall be *deemed* for purposes of this chapter an applicant for admission." 8

U.S.C. § 1225(a)(1) (emphasis added). The *Jennings* Court explained that § 1225 applies to “applicants for admission,” and that this term applies to *both* (a) an “arriving alien,” as well as (b) an individual who is *present* in this country but has not been “admitted” through a lawful entry at a port of entry.² *Id.*

The Court in *Jennings* recognized that the statute uses the phrase “applicant for admission” as a term of art. “Under ... 8 U.S.C. § 1225, an alien who ‘arrives in the United States,’ or ‘is present’ in this country but ‘has not been admitted,’ is *treated as* ‘an applicant for admission.’” 583 U.S. at 287 (emphasis added). In other words, noncitizens who are present in the country and were never lawfully admitted are “treated as”—in the words of § 1225(a)(1), they are “deemed” to be—“applicants for admission.”

2. “Applicants for admission” are not limited to noncitizens who have submitted an immigration application. The Court’s discussion of “applicant for admission” as a term of art made clear that the term “applicant for admission” is not limited to noncitizens who have submitted some type of immigration application. Rather, as the Court explained, there are two criteria to be an applicant for admission: “an alien who [1] ‘is present’ in this country but [2] ‘has not been admitted’ is *treated as* ‘an applicant for admission.’” *Id.* at 287 (emphasis added, marks added).

² The INA defines “admission” to mean “lawful entry” after “inspection and authorization by an immigration officer—such as may occur at a port of entry. *Id.* § 1101(a)(13)(A) (defining “admission” and “admitted” as “the lawful entry of the alien into the United States *after inspection and authorization* by an immigration officer.”) (emphasis added).

The Court commented later in its opinion that “[i]n sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2).” *Id.* at 289. But the Court’s reference to “aliens seeking admission” did not add a new “seeking admission” criterion that must exist for a noncitizen to fall within § 1225. Rather, this reference reflected the Court’s prior explanation that noncitizens who fall within §§ 1225(b)(1) and (b)(2) are, as a matter of law, “treated as” “applicants for admission.” *Id.* at 287.

Indeed, section 1225 elsewhere recognizes that the *status* of being an applicant for admission is one way that a noncitizen may be “seeking admission.” It states, “All aliens ... who are applicants for admission *or otherwise seeking admission* ... shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3). Section 1225 thus confirms that a noncitizen can seek admission simply by meeting the definition of an applicant for admission, *or* can “otherwise” seek admission by directing applying for admission.

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

The Court explained that the *first* subsection of § 1225(b)—§ 1225(b)(1)—applies to two subcategories of applicants for admission. One subcategory applies to certain arriving noncitizens: those who have been “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” 583 U.S. at 287 (citing § 1225(b)(1)(A)(i)). Another subcategory applies to certain noncitizens who are recent

arrivals—within the last two years—and are unlawfully present without being admitted, and are designated by the Attorney General in his discretion, if the individual “has not been admitted or paroled into the United States, and ... has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.” See 583 U.S. at 287; § 1225(b)(1)(A)(iii). Noncitizens in those subcategories are subject to a process known as “expedited removal.” 583 U.S. at 287 (“Aliens covered by § 1225(b)(1) are normally ordered removed ‘without further hearing or review’ pursuant to an expedited removal process.” (quoting 8 U.S.C. § 1225(b)(1)(A)(i))).

The Court then explained that *all* applicants for admission who fall outside those narrow two subcategories in § 1225(b)(1) are covered by the *second* subsection of § 1225(b)—*i.e.*, § 1225(b)(2). It described 1225(b)(2) as a “*catchall*” provision that applies to *all* ‘applicants for admission’ not covered by” § 1225(b)(1).” 583 U.S. at 287 (emphasis added).

Thus, a noncitizen who meets the general definition of an “applicant for admission” (such as an individual who is unlawfully present and has not been admitted), but does not fall within the narrow § 1225(b)(1) subcategories described above, is still an “applicant for admission” who falls under the “catchall” provision of § 1225(b)(2).

4. In § 1225, Congress did not grant applicants for admission a right to a bond hearing. The Court in *Jennings* recognized that § 1225 does not provide a bond hearing for noncitizens detained under that provision. It explained that Congress has

provided that noncitizens covered by § 1225(b)(2) generally “shall be detained” during their removal proceedings, with narrow exceptions. *Jennings*, 583 U.S. at 287-88 (quoting 8 U.S.C. § 1225(b)(2)(A)). Under § 1225(b)(2)(A), all other applicants for admission “shall be” detained for removal proceedings under 8 U.S.C. § 1229a, unless an immigration officer determines they are “not clearly and beyond a doubt entitled to be admitted.”

5. Section 1226, in contrast, provides for detention, and bond hearings, for *other* categories of noncitizens subject to removal. The Court in *Jennings* recognized that a different statutory provision—§ 1226(a)—governed the detention of other noncitizens, including those who *had* been “admitted.” As the Court explained in *Jennings*:

Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls ‘within one or more . . . classes of deportable aliens.’ § 1227(a). That includes aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses *since admission*.

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

The Court did *not* suggest that § 1226(a) governs the detention of noncitizens who are specifically covered by § 1225(b)(2). Rather, the Court appears to recognize that these *two* provisions—1225(b)(2) and 1226(a)—authorize detention for *different* sets of individuals: the detention of noncitizens covered by § 1225 is authorized by § 1225(b)(2), while the detention of *other* individuals in the country is authorized under § 1226:

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

See Jennings, 583 U.S. at 289. In distinguishing between these detention authorities, the Court did *not* suggest that noncitizens who are covered by § 1225 (where Congress has not authorized bond) should instead governed by the detention authority set forth in § 1226(a)—the provision where Congress *has* expressly authorized bond.

II. Factual Background and Immigration Proceedings.

Petitioner is a citizen of Mexico. Ex. 1 at ¶ 4 (Declaration of Mark Kinsey). In 2005, U.S. Customs and Border Patrol granted him voluntary return after he illegally entered the United States. *Id.* at ¶ 5. In 2006, he unlawfully entered the United States without inspection. ECF No. 1 at ¶ 22; Ex. 1 at ¶ 6.

In 2012, Petitioner was convicted twice of driving without a license and careless driving. Ex. 1 at ¶ 10. ICE learned of these convictions through its ordinary check of relevant immigration and criminal justice databases. *Id.* at ¶ 12. In July 2025, U.S. Immigration and Customs Enforcement (ICE) detained Petitioner during a vehicle stop. *Id.* at ¶ 13. ICE determined that Petitioner is removable from the United States, arrested him, and charged him pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) as a non-citizen present in the United States who was not lawfully admitted. *Id.* at ¶¶ 14, 16.

While Petitioner was originally detained under Section 1226, ICE cancelled his detention under that Section and detained him pursuant to Section 1225(b). *Id.* at ¶ 15. On July 17, 2025, Petitioner appeared before the immigration judge for an initial

hearing. *Id.* at ¶ 17. He admitted the allegations and the immigration judge sustained the charge against him. *Id.*

On July 29, 2025, Petitioner filed an application for cancellation of removal with the Executive Office for Immigration Review (EOIR). *Id.* at ¶ 18. On July 31, 2025, Petitioner appeared at a calendar hearing in his removal case and stated he was ready to schedule a final hearing on his application. *Id.* at ¶ 19.

On August 14, 2025, Petitioner appeared for a custody redetermination hearing. *Id.* at ¶ 23. He was granted a \$7,500 bond by an immigration judge. *Id.* DHS appealed the immigration judge's custody decision to the Board of Immigration Appeals (BIA). *Id.* at ¶¶ 23-24. On October 23, 2025, the BIA granted DHS's appeal and vacated the immigration judge's bond order. *Id.* at ¶ 31.

Petitioner's final hearing on his application for relief from removal has been rescheduled several times at his request, but is currently set for December 8, 2025. *Id.* at ¶¶ 26-30, 32, 34.

On November 28, 2025, Petitioner filed a motion for a custody redetermination before the immigration judge. *Id.* at ¶ 33. A redetermination hearing (bond hearing) is set for December 10, 2025. *Id.*

Petitioner remains detained at the ICE detention facility in Aurora, Colorado pursuant to § 1225(b)(2)(A). *Id.* at ¶ 35.

III. Procedural Posture

On October 1, 2025, Petitioner filed his initial habeas petition challenging his detention. *See generally* ECF No. 1. That Petition challenged a regulation that

automatically stayed his bond during the pendency of DHS' appeal to the Board of Immigration Appeals. *Id.* at 8-14.

Following the BIA's order reversing the immigration judge's bond order, Petitioner sought leave to file an amended habeas petition. See ECF No. 23. The Court granted Petitioner leave to amend, ECF No. 30, and Petitioner filed the operative Amended Petition on November 17, 2025, challenging his detention under § 1225(b)(2)(A), ECF No. 31. The Amended Petition specifically argues that: Petitioner is properly detained under § 1226(a), not § 1225(b)(2)(A); his detention violates his substantive Fifth Amendment due process rights; and the BIA decision revoking the immigration judge's bond order is arbitrary and capricious and non-binding. See ECF No. 31 at 9-14.

ARGUMENT

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

As explained above, § 1225(b)(2) applies to "applicants for admission," which include noncitizens who, like Petitioner, entered without inspection and have been present in the United States for more than two years. And Section 1225(b)(2)(A) mandates detention for a noncitizen "who is an applicant for admission" if they are "not clearly and beyond a doubt entitled to be admitted." The statute defines "[a]pplicant for admission" to include noncitizens who (1) are "present in the United States who ha[ve] not been admitted" or (2) "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). In other words, a noncitizen who is present in the United States but has not been inspected or admitted is treated as an applicant for admission.

The Supreme Court's explanation in *Jennings* of the scope of § 1225 shows that

a noncitizen in Petitioner's position is treated as an "applicant for admission" and is subject to mandatory detention under § 1225(b)(2). Petitioner is present in the United States but has not been "admitted" (*i.e.*, he has not made a "lawful entry. . . after inspection and authorization by an immigration officer"). 8 U.S.C. § 1101(a)(13)(A); Ex. 1 ¶¶ 5-7. He does not argue that he is clearly and beyond a doubt entitled to be admitted. As a result, his detention without bond is authorized by § 1225(b)(2)(A).

Petitioner resists this reading of § 1225(b)(2)(A). To argue that this section does not apply to him, he relies on: the statutory language and case law interpreting that text; the INA's legislative history and implementing regulations; and the Government's past practice. See ECF No. 31 at 8-10. None of these arguments are persuasive.

TEXTUAL ARGUMENTS. Petitioner argues that § 1225 is limited to just those seeking active admission at the border, not "someone like [Petitioner] who has been residing in the United States for almost twenty (20) years." See ECF No. 31 at 9-10. In support, he identifies non-binding case law agreeing with his interpretation. And he contends that the fact that ICE originally detained him under § 1226(a) supports his interpretation. *Id.* at 10-11.

Petitioner's reading of § 1225(b)(2)(A)—that it extends only to new arrivals seeking active admission—does not comport with its text, or make sense in the context of the whole provision. Rather, as the Court in *Jennings* explained, § 1225 applies to "applicants for admission," who include *both* those just arriving in the United States *and* those who entered without inspection and have been residing here. For example, § 1225(b)(1)(A)(i) is not limited to noncitizens "arriving in the United States" who are

rendered inadmissible for the specified reasons (*i.e.*, misrepresentation or lack of a valid entry document). Instead, Section 1225(b)(1)(A)(i) also applies, through its reference to Section 1225(b)(1)(A)(iii), to some noncitizens who have *already* been residing in the United States and are inadmissible for the same reasons—that is, applicants for admission who have “not been admitted or paroled” and have not “affirmatively shown, to the satisfaction of an immigration officer, that [they] ha[ve] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.” 8 U.S.C.

§ 1225(b)(1)(A)(iii)(II).

Petitioner’s argument also disregards that § 1225(b)(2) is broader than § 1225(b)(1). Section 1225(b)(2) is titled “Inspection of other aliens.” The “other aliens” in the title refers to a category of noncitizens that is not covered by § 1225(b)(1). As explained above, the Supreme Court in *Jennings* recognized that § 1225(b)(2) refers to a “broader” category of noncitizens than those described in § 1225(b)(1), and applies to all “applicants for admission” who do not fall within § 1225(b)(1). The Court stated that § 1225(b)(2) is a “catchall provision that applies to *all applicants for admission* not covered by § 1225(b)(1).” 583 U.S. at 287 (emphasis added). Accordingly, § 1225(b)(2) applies *both* to applicants for admission just arriving at the border who do not fall within Section 1225(b)(1)(A)(i) *and* to applicants for admission who have been physically present in the United States but are not covered by § 1225(b)(1)(A)(iii)(II).

Petitioner’s argument that § 1225(b)(1)(A) applies only to those actively seeking admission is also unavailing. As explained above, the Court in *Jennings* defined who is

treated as an “applicant for admission,” and imposed no additional requirement that the person has filed an application. Nor does the statute suggest otherwise.

Section 1225(b)(1) contains no “seeking admission” language. Its detention provision applies, in the Attorney General’s discretion, even to some noncitizens who are not “arriving” at the time of their inspection by an immigration officer. See 8 U.S.C. § 1225(b)(1)(A)(i) (applying to an “alien . . . who is arriving in the United States or is described in clause (iii)” (emphasis added)); *id.* § 1226(b)(1)(A)(iii) (describing a noncitizen “who has not affirmatively shown” that they have “been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility”).

Other parts of § 1225 confirm that anyone falling within the category of “applicants for admission” is deemed, as a matter of law, to be seeking admission. See 8 U.S.C. § 1225(a)(3) (“All aliens . . . who are applicants for admission or *otherwise seeking admission* . . . shall be inspected by immigration officers.” (emphasis added)); *id.* § 1225(a)(5) (“An applicant for admission may be required to state . . . the purposes and intentions of the applicant *in seeking admission*. . . .” (emphasis added)). As Petitioner admits, his application for cancellation of removal “may make him an ‘applicant for admission,’ see ECF No. 31 at 10; accordingly, he meets the definition of seeking admission.”³

³ Petitioner relies on a non-binding opinion to argue that his application for cancellation of removal proceedings does not deem him to be “seeking admission.” See *Gutierrez v. Noem, et al.*, 25-cv-2720-RMR (D. Colo. Oct. 17, 2025). But this holding is in conflict with *Jennings*, in which the Supreme Court implicitly found that *all* applicants for admission not covered by” § 1225(b)(1).” 583 U.S. at 287.

In short, the text of § 1225 supports the view that all noncitizens who are “applicants for admission” are “seeking admission” by virtue of that status.

The text of § 1226. Petitioner does not explicitly argue that the text of Section 1226(a) supports his argument that he should be detained pursuant to that provision. Petitioner’s argument contradicts normal rules of statutory interpretation. In any event, reading Section 1226(a)’s supports Respondents’ position that Petitioner’s detention is lawful under Section 1225(b)(2)(A).

Section 1226(a)’s general detention authority, which permits the issuance of warrants to detain noncitizens for their removal proceedings, must be read alongside § 1225, which *specifically* addresses the detention of applicants for admission. The relationship between § 1225 and 1226 is controlled by the well-established principle that where “there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one.” *Guidry v. Sheet Metal Workers Nat. Pension Fund*, 493 U.S. 365, 375 (1990) (citation omitted). That principle applies here. Section 1225 is narrower in scope than § 1226. It applies only to “applicants for admission,” which includes noncitizens present in the United States who have not been admitted. See 8 U.S.C. § 1225(a)(1). And nothing in § 1226’s text displaces the more specific provisions in § 1225 governing the detention of applicants for admission.

To be sure, some noncitizens may face detention under multiple provisions. Section 1226(c)(1)(E) mandates detention for a narrow category of noncitizens who entered the country without inspection: those who both entered without inspection and

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

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

the express scope of § 1225.

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

PAST PRACTICE. Petitioner implies that detaining aliens like him under § 1225(b)(2)(A) conflicts with past practice. Specifically, he points to an entry in the Federal Register from 1997 which states that “[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.” ECF No. 31 at 8-9 (citing Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)); *see also* ECF No. 8 at 14-15.

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

Second, the Federal Register does not change the plain language of the statute.

The weight given to agency interpretations must “depend upon their thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade.” *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 388 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). Here, the agency provided little analysis to support the reasoning for its statement about granting bond hearings to applicants for admission. See 62 Fed. Reg. at 10323. A prior practice by the agency of making such individuals eligible for bond hearings therefore carries little weight in interpreting the text of § 1225.

Petitioner also argues that because he was first detained by DHS under § 1226(a), this factor should weigh in favor of a finding that § 1226(a) is the statute properly governing his detention. See ECF No. 31 at 11. But it is of little consequence that ICE first detained Petitioner pursuant to § 1226(a) under the circumstances presented here. Petitioner was first detained in June 2025, prior to DHS’s July 8, 2025 issuance of its “Interim Guidance Regarding Detention Authority for Applicants for Admission,” which set forth DHS’s position about the scope of individuals who may be detained under § 1225(b)(2)(A), but the ultimate question here is not what DHS’s guidance states but whether § 1225(b)(2)(A) applies to Petitioner. Petitioner cites to a decision from the District of New Jersey, *Zumba v. Bondi*, to support his argument that DHS’s prior decision to arrest Petitioner under § 1226(a) should be given weight. ECF No. 31 at 11. See Case No. 25-cv-14626 (KSH), 2025 WL 2753496, at *9 (D.N.J. Sept. 26, 2025). But in the *Zumba* case, the petitioner was detained first under § 1226(a) after the July 8 guidance, whereas here, Petitioner was first detained before July 8. Thus, the

decision to re-arrest Petitioner pursuant to § 1225(b)(2)(A) is simply consistent with the change in policy.

LEGISLATIVE HISTORY. Petitioner does not argue that the legislative history supports his reading of §§ 1225(b)(2)(A) and 1226(a). Here, the legislative history weighs in favor of Respondents' interpretation of §§ 1225 and 1226. Before the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), § 1225 provided for the inspection of noncitizens only when they were arriving at a port of entry. See 8 U.S.C. § 1225(a) (1990) (discussing inspection of all noncitizens "arriving at ports of the United States"). It required that noncitizens arriving at a port of entry be placed in exclusion proceedings. *Id.* § 1225(c). By contrast, noncitizens "in the United States" who "entered without inspection" were deemed deportable under 8 U.S.C. § 1251(a)(1)(B) (1994), and placed in deportation proceedings, where they could request release on bond. *Id.* § 1252(a)(1) (1994).

In short, under the pre-IIRIRA regime, whether a noncitizen was placed in exclusion proceedings or deportation proceedings depended on whether they had "entered" the country. But this focus on "entry" "resulted in an anomaly"—"non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings." *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010).

In the IIRIRA, Congress sought to address this anomaly "by substituting 'admission' for 'entry' and by replacing deportation and exclusion proceedings with a

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

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

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

If the Court interprets § 1225 in the manner advocated by Petitioner, it would undo the fix that Congress enacted through the IIRIRA. On Petitioner's reading, a noncitizen who enters without inspection would often be entitled to a bond hearing while a noncitizen who presents themselves to immigration officers at a port of entry would not. Such a reading would recreate the anomalous pre-IIRIRA incentives for those entering the country without inspection. But as the Supreme Court has recognized, a statutory interpretation that would allow applicants for admission to avoid mandatory

detention simply by evading immigration officers when they enter the country would enshrine in our law “a perverse incentive to enter at an unlawful rather than a lawful location.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020).

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

II. Petitioner has not demonstrated violation of his substantive due process rights.

Petitioner also claims that his detention violates his substantive due process rights because an immigration judge has already determined that he is not a flight risk. ECF No. 31 at 13-14. This argument should be rejected.

As a threshold issue, for Petitioner to show that he has been denied due process, he would need to show that he has been deprived of a statutory right. The Supreme Court has “often reiterated” the “important rule” that for “foreigners who have never been ... admitted into the country pursuant to law,” “the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.” *DHS v. Thuraissigiam*, 591 U.S. 103, 138 (2020). There, the Court explained that a noncitizen who was an “applicant for admission” had “only those rights regarding admission that Congress has provided by statute,” and “the Due Process Clause provides nothing more.” *Id.* at 140. Here, for the reasons enumerated above, Petitioner does not have a right to release under the statutory structure enumerated by Congress, and thus cannot show violation of his substantive due process rights.

Moreover, Petitioner has not demonstrated that his continued detention violates the Due Process Clause. Respondents acknowledge that Petitioner has been deprived of a sufficient private interest: his liberty. However, here, because Petitioner’s detention

has been sufficiently short, it is presumptively constitutional. *Cf. Sampiao v. Hyde*, ___ F.Supp.3d ___, 2025 WL 2607924, *10 (D. Mass. Sept. 9, 2025) (finding that where a petitioner “faced the prospect of a lengthy detention” that could indefinitely extended by the Attorney General, the first factor weighed in favor of a finding that the petitioner’s due process rights were violated). He has been detained for less than six months as of the date of this submission. In a different immigration context—noncitizens already ordered removed and indefinitely awaiting their removal—the Supreme Court has explained that detention of less than six months is presumptively constitutional. See *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In other contexts, even this presumptive constitutional limit has been distinguished as unnecessarily restrictive. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court explained that noncitizens who were convicted of certain crimes may be detained during the entire course of their removal proceedings. 538 U.S. at 513. In that case, like this one, Congress mandated detention pending removal proceedings. See *id.*; 8 U.S.C. § 1226(c). The Court reasoned that the “definite termination point” of the detention at the end of removal proceedings assuaged any constitutional concern. See *Demore*, 538 U.S. at 512. The same is true here. Petitioner’s removal proceedings are moving towards an endpoint. See Ex. 1 at ¶ 34. Congress’s decision to detain him pending removal is a “constitutionally permissible part of [this] process.” See *Demore*, 538 U.S. at 531.

Petitioner has thus failed to demonstrate that his due process rights have been violated.

III. Petitioner’s APA claim fails.

Petitioner's final argument is that the BIA's decision on DHS's bond appeal is arbitrary and capricious. But the Court lacks jurisdiction to consider an APA claim here. Congress limited the APA to situations where "there is no other adequate remedy in a court that [is] subject to judicial review." 5 U.S.C. § 704. If the Court were to have jurisdiction over Petitioner's claim, it would be a habeas claim because Petitioner is challenging the legality of his detention. *J.G.G. v. Trump*, 604 U.S. 670, 673 (2025). Thus, the availability of a habeas claim bars APA jurisdiction.

Yet even if there were APA jurisdiction, Petitioner's APA claim fails for the reasons described above. Petitioner is subject to § 1225(b)(2) and that decision is neither contrary to law or arbitrary and capricious.

CONCLUSION

For the reasons stated herein, the Court should deny the Petition because Petitioner is lawfully held pursuant to Section 1225(b)(2)(A).

Dated: December 3, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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