IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03439-NYW

RICARDO FLORENTINO BRIALES-ZUNIGA,

Petitioner,

v.

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

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNTIVE RELIEF

Respondents submit this response to Petitioner's Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief. ECF No. 1. As explained below, the Court should deny the Petition because Petitioner's detention is authorized by statute, and his other challenges to his detention are unavailing.

INTRODUCTION

This case involves a question of statutory interpretation. 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 noncitizens[1] 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 is a catchall provision that also 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

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[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 a bond hearing.

FACTUAL BACKGROUND

Petitioner has not been inspected and admitted to the United States, and thus is being treated as an applicant for admission.

Petitioner is a native and citizen of Mexico who has never been admitted or paroled into the United States, and who Immigration and Customs Enforcement (ICE) officials encountered on August 29, 2025. Ex. 1, Decl. of Michael Ketels ¶¶ 4-6, 9.

On August 29, 2025, ICE issued Petitioner a Notice to Appear initiating removal proceedings under 8 U.S.C. § 1229a, charging Petitioner with being inadmissible to the United States as a noncitizen present without being admitted or paroled. *Id.* ¶ 11. Petitioner appeared before an immigration judge on September 10, 2025, and was granted additional time to obtain an attorney. *Id.* ¶ 12. Petitioner's removal proceedings remain pending, and his a hearing on the merits of his removability is scheduled for December 16, 2025. *Id.* ¶ 19.

ARGUMENT

I. The Supreme Court's *Jennings* decision supports concluding that 8 U.S.C. § 1225(b)(2)(A) applies to noncitizens who entered without inspection and are unlawfully present.

This case presents the question of whether Petitioner is within the set of noncitizens to which 8 U.S.C. § 1225(b)(2) applies. The Supreme Court's *Jennings* decision supports concluding that 8 U.S.C. § 1225(b)(2)(A) applies to noncitizens who entered without inspection and remain unlawfully present. 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 *Jennings* decision established the following:

1. 8 U.S.C. § 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 term "applicant for admission" as a term of art. "Under ... 8 U.S.C. § 1225, an alien who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission.'" 583 U.S. at 287 (emphasis added). In other words, noncitizens who are present in the country and were never lawfully admitted are "deemed to be"—"applicants for admission."

Petitioner, on the other hand, argues that § 1225 should be construed as limited to just those newly arriving in the United States. Specifically, he argues that § 1225(b)(2)(A) does not apply to noncitizens who are "apprehended in the interior years after they entered . . . ." ECF No. 1 ¶ 44. But that reading of § 1225(b)(2)(A)—that it extends only to new arrivals—does not comport with its text, or make sense in the context of the whole section. 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, § 1225(b)(1)(A)(i) also applies, through its reference to § 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

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[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. 8 U.S.C. § 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).

"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).

2. "Applicants for admission" are not limited to noncitizens who have submitted an immigration application. The *Jennings* 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).

Elsewhere in § 1225, the status of being an applicant for admission is recognized as only one way that a noncitizen may be "seeking admission." The statute states, "[a]ll 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 directly applying for admission.

Petitioner points to the phrase "seeking admission" in § 1225(b)(2)(A) to argue that this section should be interpreted to be limited to noncitizens who are actively taking some step to gain admission to the United States. ECF No. 1 ¶ 44. But 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. § 1225(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").

3. Section 1225(b) applies to all applicants for admission, not just arriving aliens or those who unlawfully entered the United States recently. The *Jennings* Court's discussion of § 1225's scope supports the view that "applicants for admission" does not 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(1)(2)(a)(i). Another subcategory applies to certain noncitizens who are unlawfully present without being admitted admission, and also are recent arrivals—those who 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)(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 applicant for admission (such as an individual who is unlawfully present and has not been admitted), but does not fall within the § 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 aliens covered by § 1225(b)(2) generally "shall be detained" during their

removal proceedings, with narrow exceptions. 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 who an immigration officer determines are "not clearly and beyond a doubt entitled to be admitted" shall be detained for removal proceedings under 8 U.S.C. § 1229a.

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. See §§ 1227(a)(1), (2).

583 U.S. at 288 (emphasis added).

In other words, § 1226(a) extends to noncitizens who have been admitted (such as noncitizens who were admitted on a visa, and then overstayed). The Court did not suggest that § 1226(a) governs the detention of noncitizens who are covered by § 1225(b)(2). Rather, the Court appeared to recognize that these two provisions—§ 1225(b)(2) and § 1226(a)—authorize detention for different sets of individuals, and the *Jennings* Court distinguished between these detention authorities: "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 583 U.S. at 289. The *Jennings* Court thus did not suggest that noncitizens who are properly 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. The legislative history further supports this view of § 1225's scope.

Congress enacted the Illegal Immigration Reform and Immigration Responsibility Act of 1996 ("IIRIRA") to stop conferring greater privileges and benefits on those who entered the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("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"). The Act had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). Thus, in enacting what is now 8 U.S.C. § 1225, which requires the detention of any alien "who is an applicant for admission," and defines that term to encompass any "alien present in the United States who has not been admitted" following inspection by immigration authorities, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." H. Rep at 226 (emphasis added).

III. Section 1226 does not apply to Petitioner.

As explained above, under the framework described in *Jennings*, Petitioner is an applicant for admission properly detained under § 1225(b)(2)(A). He does not show otherwise.

1. Specific provisions control over general ones. Petitioner argues that § 1225(b)(2)(A) does not apply to him because § 1226(a) should. He contends that the reference to inadmissibility in § 1226 suggests that this section should apply rather than § 1225(b)(2)(A). ECF No. 1 ¶ 42. He also refers to § 1226(c), which expressly requires mandatory detention for certain categories of noncitizens, including at least one group of noncitizens who entered without inspection. *See id.* ¶ 41 (citing 8 U.S.C. § 1226(c)(1)(E)). He argues that the specific requirement of mandatory detention for a category of noncitizens who entered without inspection must mean that § 1226(a) applies to *all* noncitizens who entered without inspection. *Id.* ¶ 42.

Petitioner's arguments contradict normal rules of statutory interpretation. 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. And § 1226 does not displace the more specific provisions in § 1225 governing the detention of applicants for admission. 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).

To be sure, § 1226(c)(1)(E) mandates detention for a narrow category of

noncitizens who both (a) entered the country without inspection and (b) 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). But the fact that § 1226(c)(1)(E) provides rules for detention of a category of noncitizens 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. 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 a partial overlap in a subset of individuals subject to both § 1226(c) and § 1225(b)(2)(A) to require courts to ignore the express scope of § 1225.

2. Past practice does not show that Petitioner is subject to § 1226, rather than § 1225(b)(2)(A). Petitioner also argues that granting him bond would accord with past practice. But his argument is flawed. Petitioner 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. 1 ¶ 30 (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)).

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 no analysis to explain its statement about granting bond hearings to applicants for admission. *See* 62 Fed. Reg. at 10323. Its prior practice therefore carries little weight in interpreting the text of § 1225.

IV. Petitioner has not shown that he has a due process right to a bond hearing.

Petitioner also claims that he is entitled to a bond hearing as a matter of due process. *See* ECF No. 1 ¶¶ 59-66. This argument should be rejected.

First, 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 an alien who was an "applicant for admission" had "only those rights regarding admission that Congress has provided by statute," and "the Due Process Clause provides nothing more." *Id.* at 140.

Second, Petitioner has not shown any prejudice. He has not shown that he has been denied due process by being denied procedures in his immigration proceedings, where he can challenge the determination that § 1252(b)(2)(A) applies to him. As he will have that opportunity through his immigration proceedings, he has not shown a violation of his rights to procedural due process. See *Duran-Hernandez v. Ashcroft*, 348 F.3d 1158, 1163 (10th Cir. 2003) (where a noncitizen failed to show "that additional procedural safeguards would have changed" the immigration court's decision, this "failure to prove prejudice leads us to reject [his] due process claim"). As this Court has elsewhere explained in analyzing a due process challenge to immigration detention, "so long as the government reasonably affords noncitizen detainees in ongoing immigration proceedings administrative process to challenge the *merits* determinations that are keeping them in custody, continued custody is permissible." *Bonilla Espinoza v. Ceja*, Civil Action No. 25-cv-01120-GPG (D. Colo. May 21, 2025), ECF No. 11 at 13.

Third, Petitioner's detention has been sufficiently short that it is presumptively constitutional. He has been detained for less than three 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 toward a definite endpoint. *See* Ex. 1 ¶¶ 17-19. His detention will conclude with a final order of removal or a denial of the charges against him. 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 failed to demonstrate that the Fifth Amendment requires any additional process be provided to him.

CONCLUSION

For the reasons discussed above, the Court should dismiss the Petition.

Dated: November 20, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 20, 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 recipients by e-mail:

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Brian Scott Green, briangreen@greenusimmigration.com

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

None.

s/Zeyen J. Wu
Zeyen J. Wu
Assistant U.S. Attorney