

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

Civil Action No. 25-cv-03548-KAS

YOUSOUF DIALLO

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.

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**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 1) AND  
ORDER TO SHOW CAUSE**

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

Respondents respectfully address one initial matter. The Court issued a minute order today, January 20, 2026, stating that Respondents had failed to timely file a response. See ECF No. 6. The Court previously ordered Respondents to show cause

why the Petition should not be granted “within sixty days from the date of service.” ECF No. 4. The Petition was served via email and certified mail; Respondents received the certified-mail service on November 20, 2025, and thus calculated their response deadline as today, given the federal holiday yesterday. See Fed. R. Civ. P. 6(a). Undersigned counsel apologizes for any misunderstanding or error in calculating this response deadline.

### 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<sup>1</sup> 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 8 U.S.C. § 1226(a), another provision that also authorizes detention of certain noncitizens while removal proceedings are pending. See ECF No. 1 at 5, 15-16. 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

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<sup>1</sup> 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).

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. See ECF No. 1 at 19.

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 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*. Thus, 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.

## **BACKGROUND**

### **I. Legal background**

In the INA, Congress established rules governing when certain noncitizens may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of noncitizens who are "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, “[a]n 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.<sup>2</sup> *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 “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

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<sup>2</sup> 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).

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).

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.” *Jennings*, 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.” § 1225(b)(A)(iii); see 583 U.S. at 287. Noncitizens in those two 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 two § 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 were admitted.

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: the detention of noncitizens covered by § 1225 is authorized by § 1225, and that *other* individuals in the country not covered by § 1225 may be detained 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 583 U.S. at 289. In distinguishing between these detention authorities, the *Jennings* Court 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. Factual background**

Petitioner has not been inspected and admitted to the United States, and thus he is being treated as an applicant for admission. He is a native and citizen of Guinea who entered the United States at Mexico border. Ex. 1 at ¶ 4 (Declaration of Mark Kinsey). He has never been admitted or paroled into the United States. *Id.* at ¶ 6. It is uncertain when Petitioner first arrived in the United States. See ECF No. 1 ¶ 50.

In January 2024, U.S. Immigration and Customs Enforcement (ICE) encountered Petitioner in Arizona shortly after he crossed the Mexican border into the United States. See Ex. 1 at ¶ 5. CBP determined that he was here unlawfully. See *id.* Petitioner was

detained pending a credible fear interview.<sup>3</sup> *Id.* at ¶ 7; ECF No. 1 at 2. Petitioner was found to have demonstrated a credible fear. ECF No. 1 at 2.

On January 25, 2024, ICE issued 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. Ex. 1 at ¶¶ 8, 10. Petitioner was released in January 2024 on personal recognizance pursuant to 1226(a). *Id.* at ¶ 9. Petitioner was never admitted or paroled into the United States. *Id.* at ¶ 6.

In December 2024, Petitioner filed an Application for Asylum with U.S. Citizenship and Immigration Services (“USCIS”). *Id.* at ¶ 11.

In July 2025, Petitioner failed to report his presence to ICE as required. *Id.* at ¶ 12. On September 27, 2025, Petitioner was directed to appear for a check-in. *Id.* at ¶ 13. At that time, ICE detained Petitioner pursuant to § 1225(b)(2). *Id.*

On October 9, 2025, Petitioner filed a motion for custody redetermination before the IJ. *Id.* at ¶ 17. After a hearing on October 14, 2025, the IJ determined that Petitioner was not eligible for a bond hearing. *Id.* at ¶ 19.

On November 4, 2025, Petitioner appeared before another IJ, and the IJ set the matter for an individual hearing. *Id.* at ¶ 20. Petitioner then filed a second motion for a custody redetermination. *Id.* at ¶ 21. After a hearing, the IJ found that it lacked jurisdiction to redetermine custody and denied bond. *Id.* at ¶ 22.

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<sup>3</sup> A credible fear interview may be afforded to noncitizens pending removal proceedings, and if, at the interview, a noncitizen can demonstrate a credible fear, they may be permitted to seek asylum with U.S. Citizenship and Immigration Services. See <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/questions-and-answers-credible-fear-screening> (last accessed January 15, 2025).

On January 7, 2025, Petitioner appeared before an IJ for his individual merits hearing, at which time he requested an extension. *Id.* at ¶ 25. Petitioner remains detained pending a determination on the merits of his immigration proceedings. *Id.* at ¶ 26.

### **III. Procedural background**

On December 5, 2025, Petitioner filed the Petition, which argues that he is not subject to § 1225 (which provides for mandatory detention) and that he is instead subject to § 1226 (which provides for the possibility of release on bond). *See generally* ECF No. 1. He challenges his detention as violating (1) the provisions regarding detention in § 1226(a); (2) the regulations implementing § 1226; and (3) due process.<sup>4</sup> *See* ECF No. 1. He seeks a bond hearing within seven days or immediate release, and an order enjoining Respondents from transferring him outside of the District of Colorado. *Id.* at 19 (prayer for relief).

## **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)

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<sup>4</sup> The Petition also references the Administrative Procedure Act in one paragraph. *See* ECF No. 1 ¶ 40. The Petition does not include a claim under the APA, however—and such a claim could not succeed, because the availability of a habeas claim bars APA jurisdiction. *See* 5 U.S.C. § 704 (Congress limited judicial review under the APA to situations where “there is no adequate remedy in a court”); *J.G.G. v. Trump*, 604 U.S. 670, 673 (2025) (holding that where a party’s argument challenges the validity of detention, the case must proceed in habeas).

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 § 1225(b)(2). He 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 ¶¶ 6-7. 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). He argues that this section should not apply to him because the plain text of the INA suggests he should be detained under § 1226(a), as does the Government’s past practice. See ECF No. 1 at 7-11.

**TEXTUAL ARGUMENTS.** The language of the INA is consistent with a finding that § 1225 applies to Petitioner.

Petitioner 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) should be read in a limited way to apply to just those noncitizens who are arriving (whether or not at a designated port of arrival). See ECF No. 1 at 9-10.

But that reading of § 1225(b)(2)(A)—that it extends only to *new* arrivals—does not comport with the text of § 1225, or make sense in the context of the whole section. 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 a catchall that 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 expressly recognized that § 1225(b)(2), which refers to a “broader” category of noncitizens than those described in § 1225(b)(1), 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 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. See ECF No. 1 at 11. But as explained above, the Court in *Jennings* defined who is treated as an “applicant for admission,” and it 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)).

In short, the Court in *Jennings* confirmed that all noncitizens who are “applicants for admission” are “seeking admission” by virtue of that status.

Petitioner also suggests that § 1225(b)(2)(A) does not apply to him because the catchall provision, § 1226(a), should. See ECF No. 1 at 7-9. Petitioner’s argument contradicts 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). Here, § 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).

**PAST PRACTICE.** Petitioner next argues that detaining noncitizens 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. 1 at 7-8 (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 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.

**LEGISLATIVE HISTORY.** Though not specifically argued by Petitioner, the legislative history weighs in favor of Respondents' interpretation of §§ 1225 and 1226. Before the 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).

The IIRIRA 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 shown that he has a right to a bond hearing.**

Petitioner claims that he is entitled to a bond hearing as a matter of due process. See ECF No. 1 at 13. 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 a Court in this district 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 four 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). And 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 at ¶¶ 19-21* 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.” *Demore*, 538 U.S. at 531.

Petitioner has failed to demonstrate that the Fifth Amendment requires any additional process be provided to him.

**III. No nationwide declaratory relief entitles Petitioner to a bond hearing or release.**

Petitioner may argue in his Reply that an order from the Central District of California in a class action has already resolved the issues raised here, and that Respondents must adhere to what Petitioner may characterize as a final judgment affording all class members declaratory relief in the form of a bond hearing.

It is true that the *Bautista* Court granted class certification for a nationwide “Bond-Eligible Class.” No. 25-cv-01873-SSS-BFM, 2025 WL 3713987, at \*25 (C.D. Cal. Dec. 18, 2025), *judgment entered sub nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). That class is defined as:

All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

*Id.* Respondents do not dispute that as the class is currently defined, Petitioner is a member. That court issued a declaratory ruling and final judgment in the nationwide class action involving the applicability of § 1225 and § 1226.

But that decision should not have preclusive effect here for multiple reasons. *First*, for a prior judgment to have preclusive effect, the judgment must be “entered by a court of competent jurisdiction.” *N. Nat. Gas Co. v. Grounds*, 931 F.2d 678, 683 (10th Cir. 1991); see Restatement (Second) of Judgments § 1 (1982). Here, the *Bautista* court lacked jurisdiction to determine the legality of Petitioner’s detention. That court

addressed whether class members were unlawfully detained under 8 U.S.C. § 1225(b)(2), and such a challenge to the legality of detention can only be brought in habeas. See *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025). Under habeas principles, “jurisdiction lies in only one district: the district of confinement.” *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). And a habeas petitioner must name his immediate custodian. *Id.* at 435. The *Bautista* court thus lacked jurisdiction to determine the legality of the detention of class members like Petitioner confined outside the Central District of California. That court also lacked jurisdiction to grant a declaratory judgment in a class action to determine a preliminary issue that class members then rely on to seek relief in individual habeas actions. *Calderon v. Ashmus*, 523 U.S. 740 (1998).

*Second*, while courts have “discretion to determine when [offensive collateral estoppel] should be applied,” *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329–31 (1979), offensive collateral estoppel is disfavored when applied against the federal government, see *United States v. Mendoza*, 464 U.S. 154, 159 (1984) (recognizing that the federal government’s unique position weight against “a broad application of collateral estoppel”).

*Third*, the existence of prior inconsistent judgments weighs against applying issue preclusion. *Parklane Hosiery*, 439 U.S. at 330–31. Various district courts have interpreted 8 U.S.C. § 1225(b)(2) differently from the *Bautista* court. See, e.g., *Altamirano Ramos v. Lyons*, – F. Supp. 3d –, 2025 WL 3199872, at \*4 (C.D. Cal. Nov. 12, 2025) (citing cases). These varying rulings support not giving the *Bautista* judgment

preclusive effect. See Order, *Calderon Lopez v. Lyons*, No. 25-cv-00226 (N.D. Tex. Dec. 19, 2025), ECF No. 12, at 11 & 28.

*Fourth*, the pendency of an appeal to the Ninth Circuit of the district court's *Bautista* decision supports not giving that decision preclusive force at this time. While the mere "pendency of an appeal does not prevent application of the collateral estoppel doctrine," *Ruyle v. Cont'l Oil Co.*, 44 F.3d 837, 846 (10th Cir. 1994), applying preclusive force to a judgment that has been appealed can cause difficulty because a judgment that is reversed "is thereby deprived of all conclusive effect," *United States v. Lacey*, 982 F.2d 410, 412 (10th Cir. 1992). Courts thus should strive to avoid this "evil result[]." 9 A.L.R.2d 984. When a prior judgment has been appealed, the second court may hold the "disposition in abeyance until the pending appeal [is] resolved." *Ruyle*, 44 F.3d at 846. Indeed, "strong reasons must be found to justify proceeding with the second action pending appeal from the first judgment." C. Wright, 18A Fed. Prac. & Prod. § 4433. Here, if this Court is inclined to grant collateral estoppel effect to the *Bautista* decision, it should hold its decision in abeyance until the Ninth Circuit rules.

Based on all these factors, this Court should decline to accord the *Bautista* decision preclusive effect here as to Petitioner. Rather, this Court should simply address the proper scope of § 1225(b)(2) based on the analysis set forth above.

#### CONCLUSION

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

Dated: January 20, 2026

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### CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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