

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

Civil Action No. 25-cv-03952-CYC

HECTOR JIMINEZ FACIO,

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 HABEAS PETITION (ECF No. 1) AND ORDER TO
SHOW CAUSE (ECF No. 10)**

Respondents submit this response to Petitioner's Petition for Writ of Habeas Corpus (ECF No. 1, the Petition) and the Court's Order to Show Cause (ECF No. 10). Petitioner challenges his detention pursuant to 8 U.S.C. § 1225(b)(2)(A). As explained below, the Court should deny the Petition because Petitioner's detention is authorized by statute.

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), another provision that 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 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

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).

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.

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, "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 “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).

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

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).

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 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 aliens 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*. 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 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 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 is a native and citizen of Mexico who entered the United States in April 1997. Ex. 1, Decl. of Michael Ketels, ¶ 4; ECF No. 1 at 17. He has never been admitted or paroled into the United States. Ex. 1 at ¶ 5; ECF No. 1 at 17. He has two convictions for driving offenses, from 2005 and 2014, respectively. Ex. 1 at ¶ 6.

In June 2025, a routine check by U.S. Immigration and Customs Enforcement (“ICE”) officials revealed Petitioner’s convictions, and ICE further determined that he had illegally entered the United States. *Id.* at ¶ 8. On June 28, 2025, ICE arrested Petitioner. *Id.* at ¶ 9. That day, DHS initiated removal proceedings against him and issued a Notice to Appear, charging Petitioner with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* at ¶ 11.

On July 18, 2025, Petitioner appeared before an immigration judge and admitted the charge in the NTA. The immigration judge sustained the removal charge and scheduled Petitioner’s case for a later hearing to allow Petitioner time to file all applications for relief from removal. *Id.* at ¶ 14. Also that day, Petitioner appeared before the immigration judge for a custody hearing. *Id.* at ¶ 15. The immigration judge found that he lacked jurisdiction to redetermine Petitioner’s custody status because Petitioner was detained pursuant to 8 U.S.C. § 1225(b)(2)(A). *Id.*

On August 21, 2025, Petitioner appeared before the immigration judge, and had not filed any applications for relief from removal. *Id.* at ¶ 17. The immigration judge

deemed applications for relief abandoned and ordered Petitioner's removal. *Id.* at ¶ 17.

On August 27, 2025, Petitioner appealed the order of removal to the Board of Immigration Appeals (BIA). *Id.* at ¶ 18. On November 5, 2025, Petitioner and DHS filed a Joint Motion to Remand with the BIA, requesting that the BIA remand the removal proceedings to the immigration judge because Petitioner did not have effective assistance of counsel when the immigration judge ordered his removal. *Id.* at ¶ 20. The BIA has not yet ruled on that Motion and Petitioner's removal proceedings remain pending before the BIA. *Id.* at ¶ 21.

III. Procedural background

On November 10, 2025, Petitioner filed the Petition, which challenges his detention as violating (1) the provisions regarding detention in § 1226(a); (2) due process. ECF No. 1 at 13. He 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 id.* 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 16 (prayer for relief). The Court ordered Respondents to respond to the Petition. ECF No. 10.

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 § 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). He makes three arguments about why this section should not apply to him based on: the statutory text, the INA’s legislative history and implementing regulations, and the Government’s past practice. See ECF No. 1 at 7-13. He also relies on numerous nonprecedential opinions that have determined that noncitizens like him are not applicants for admission. None of these arguments are persuasive.

TEXTUAL ARGUMENTS. First, Petitioner makes textual arguments about why § 1225 does not apply to him.

The text of § 1225. He argues that § 1225 should be construed as limited to just

those seeking active admission at the border. See ECF No. 1 at 9-11. In support, he contends that the regulations implementing § 1225(b)(2)(A) suggest that only “arriving aliens” fall under the purview of § 1225(b)(2)(A). See *id.* at 10-11 (citing 8 C.F.R. § 235.3(c)(1)).

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 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 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) 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 to be 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 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. In any event, 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 thus 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 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.

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.

LEGISLATIVE HISTORY. Petitioner suggests that the legislative history behind §§ 1225 and 1226 supports his position. ECF No. 1 at 8. He points to 8 U.S.C. § 1252(a) (1994), which authorized release on bond for noncitizens present in the United States when they were detained for deportation proceedings. *Id.* at 8.

But 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, and would restore the anomaly that disadvantaged aliens who presented themselves for inspection at a port of entry. 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).

PAST PRACTICE. Petitioner implies that detaining aliens like him under § 1225(b)(2)(A) conflicts with past practice. Specifically, he points to a statement 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 6-7 (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 statement 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.

THE REGULATION. Petitioner's reliance on the implementing regulation is also unpersuasive. As an initial matter, the regulation cannot change the statute's meaning. But even the regulation itself does not support Petitioner's reading.

Specifically, Petitioner points to language in 8 C.F.R. § 235.3: "any arriving alien who appears to the inspecting officer to be inadmissible, and who is placed in removal proceedings... shall be detained in accordance with [§ 1225(b)]..." ECF No. 1 at 10

(citing 8 C.F.R. § 235.3(a)). Petitioner suggests that this defines “arriving alien” as an individual coming or attempting to come to the U.S. *Id.* But the regulation does *not* state that the category of “arriving alien” discussed in that section constitutes the entirety of persons detainable under § 1225(b). Indeed, the remainder of the regulation Petitioner relies on supports this understanding. Subpart (b) of 8 C.F.R. § 235.3 identifies a narrow category of persons subject to expedited removal, and includes “arriving aliens,” as defined in 8 C.F.R. § 1.2. See 8 C.F.R. § 235.3(b)(1)(i). This carve-out for arriving aliens, who are subject to expedited removal under § 1225(b)(1), suggests that the group that can otherwise be detained under § 1225(b) is broader.

Moreover, the case Petitioner relies on, *Cordero Pelico v. Kaiser*, affirms this understanding. No. 25-cv-07286-EMC, 2025 WL 2822876, at *3 (N.D. Cal. Oct. 3, 2025). The court in *Cordero Pelico* summarized two groups eligible for detention under § 1225(b): those subject to expedited removal under subsection (1), and other noncitizens subject to detention while their removal proceedings are pending under subsection (2). See *id.*³ But here, as a noncitizen who was never admitted, Petitioner falls into the latter category.

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

II. 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 at 11-12. This argument should be rejected.

³ *Cordero Pelico* ultimately found that detention of noncitizens under § 1225(b)(2) was not lawful, and found that the Section applies only to noncitizens seeking admission, not noncitizens living in the interior of the country. 2025 WL 2822876, at *8-10.

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. 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 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 ¶¶ 19-21. Though an immigration judge already ordered his removal, his appeal of that decision remains pending, and thus no final order of removal exists. *Id.* If the BIA grants the Joint Motion to Remand, Petitioner will be afforded a new removal hearing. If, after that hearing, he is again ordered to be removed, he may appeal that decision to the BIA, or it may then become a final order of removal, at which time his detention will conclude. 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.⁴

CONCLUSION

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

Dated: December 3, 2025

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⁴ One district court has issued a declaratory ruling in a nationwide class action involving the applicability of § 1225 and § 1226, but that court has not yet issued a final judgment, so its declaratory ruling does not have the force of collateral estoppel in this case. Specifically, in *Bautista, et al. v. Noem, et al.*, the court granted class certification for a nationwide "Bond-Eligible Class." 2025 WL 3288403, Case No. 25-cv-01873-SSS-BFM (C.D. Cal. November 25, 2025). That class is defined as all noncitizens in the US who have entered without inspection, were not or will not be apprehended upon arrival, and are not or will not be subject to detention under §§ 1226(c), 1225(b)(1), or 1231. See *id.* at *1. While the court in *Bautista* granted summary judgment for the plaintiffs in that case, it did not enter final judgment or explicitly issue a class-wide injunction (which Respondents maintain would not be permitted by law). Rather, the court set a January 9, 2026 joint status report deadline and January 16, 2026 status conference. At this point, the *Bautista* court's opinion and partial grant of summary judgment does not constitute a final judgment with preclusive effect. See, e.g., Fed. R. Civ. P. 54(b) (second sentence). As a non-final order, that court's ruling does not have preclusive effect in this case. See *Dodge v. Cotter Corp.*, 203 F.3d 1190, 1198 (10th Cir. 2000) (explaining that one element that must be met before collateral estoppel applies is that "the prior action has been finally adjudicated on the merits").

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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