

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

Civil Action No. 25-cv-3789-STV

JOSE ALEXANDER PEREZ ZEPEDA,

Petitioner,

v.

ROBERT HAGAN, in his official capacity as Field Office Director of Enforcement and Removal Operations, Denver Field Office, Immigration and Customs Enforcement, KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security,

U.S. DEPARTMENT OF HOMELAND SECURITY,

PAMELA BONDI, in her official capacity as U.S. Attorney General,

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

JUAN BALTAZAR, in his official capacity as Warden of Denver Contract Detention Facility,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 4)

The Petition for Writ of Habeas Corpus, ECF No. 1, should be denied.

Petitioner's detention is authorized by statute and does not violate the Constitution.

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

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 8 U.S.C. § 1226(a), another provision that also authorizes detention of certain noncitizens while removal proceedings are pending. See ECF No. 1 ¶¶ 3-5. 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), Petitioner requests a bond hearing in seven days, or immediate release. ECF No. 1 ¶ 8.

The Court should conclude that Petitioner is an applicant for admission within the scope of § 1225(b)(2) based on the text of the statute and the Supreme Court’s interpretation of that statutory provision 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 Respondents recognize that numerous nonprecedential decisions have reasoned otherwise.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 *Jennings* regarding the scope of § 1225 supports Respondents’ view, and the reasoning of many lower court decisions does not square with the Supreme Court’s interpretation of the statute. Thus, the Court

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).

should deny Petitioner's requested relief because he is subject to § 1225(b)(2)(A) and does not have a right to immediate release or a bond hearing, as he claims.

BACKGROUND

A. 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)," *Jennings*, 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, that "[a]n alien present in the United States who has not been admitted . . . shall be *deemed* for purposes of this chapter [to be] 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 includes *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. 583 U.S. at

287.²

The Court in *Jennings* recognized that the statutory term “applicant for admission” is 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.’” *Id.* (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 *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.* (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

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).

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, § 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 directly 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 *Jennings* Court’s discussion of § 1225’s scope indicates that “applicants for admission” does not somehow *exclude* individuals who entered the United States without inspection 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 is 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(b)(1)(A)(i)). Another subcategory is certain noncitizens who are designated by the Attorney General in their discretion and who are unlawfully present without being admitted and also are recent arrivals, *i.e.*, who have “not been admitted or paroled into the United States, and . . . ha[ve] not affirmatively shown, to . . . 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" See *Jennings*, 583 U.S. at 287; § 1225(b)(1)(A)(iii). Noncitizens in those two subcategories are subject to a process known as "expedited removal." *Jennings*, 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)." *Jennings*, 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. *Jennings*, 583 U.S. at 288 (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 *Jennings* Court recognized that a different statutory provision—§ 1226(a)—governs 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). Thus, § 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 *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 the detention of noncitizens who are properly covered by § 1225 (where Congress has not authorized bond) should instead be governed by § 1226(a)—where Congress *has* expressly authorized bond.

B. Factual background

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

Petitioner, a native and citizen of El Salvador, entered the United States without inspection or admission at an unknown location and date. Ex. A, Decl. of D. Rund, ¶¶ 4-5; see also ECF No. 1 ¶ 43 (alleging that Petitioner has “resided in the United States since 2009”). He has never been admitted or paroled into the United States. Ex. A ¶ 6.

On April 18, 2025, Petitioner was arrested in Florida for Driving without a Valid License in violation of Fla. Stat. § 322.03(1). *Id.* ¶ 7. ICE officials encountered Petitioner in state custody on April 19, 2025. *Id.* ¶ 8. ICE officials determined that he did not possess valid immigration documentation authorizing him to be or remain in the United States and was therefore subject to removal. *Id.* That same day, ICE issued a Notice to Appear, initiating removal proceedings under 8 U.S.C. § 1229a and charging Petitioner with being inadmissible to the United States as a noncitizen present without being admitted or paroled. *Id.* ¶ 9; ECF No. 1-1 at 4-6.

On April 20, 2025, Petitioner was released from state criminal custody and detained by ICE under 8 U.S.C. § 1225(b) pending the resolution of his removal proceedings. Ex. A ¶¶ 10-11. On July 3, 2025, Petitioner appeared before the Immigration Judge and admitted the allegations and charge in the Notice to Appear. *Id.* ¶ 14. Petitioner later applied for cancellation of removal proceedings under 8 U.S.C. § 1229b(b)(1), on July 25, 2025. Ex. A ¶ 16. Petitioner's removal proceedings remain pending; his merits hearing is scheduled for January 6, 2026. *Id.* ¶ 24.

Petitioner filed this habeas action on November 22, 2025, arguing that he is not subject to § 1225 (which provides for mandatory detention), but rather is subject to § 1226 (which allows for a bond hearing). *See generally* ECF No. 1. He contends that his detention under § 1225 without bond violates the INA and due process. ECF No. 1 ¶¶ 54-60. He seeks immediate release or a bond hearing under § 1226(a) within seven days of the Court's Order. *Id.* at 20 (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 includes noncitizens like Petitioner, who entered without inspection and have been present in the United States for more than two years. The Supreme Court's explanation in *Jennings* of the scope of § 1225 affirms 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. A ¶¶ 8-9, 14.

The INA permits Petitioner's detention without bond. Section 1225(b)(2)(A) mandates detention for "an applicant for admission" if they are "not clearly and beyond a doubt entitled to be admitted." Petitioner—an "applicant for admission"—does not argue that he is clearly and beyond a doubt entitled to be admitted. His detention without bond is therefore authorized by § 1225(b)(2)(A).

Petitioner resists this reading of § 1225(b)(2)(A). He makes two principal

arguments about why this section should not apply to him: (1) arguments from the text of the INA; and (2) arguments based on the Government's past interpretations of the law. In support of those arguments, he points to numerous nonprecedential opinions that have determined that noncitizens like him are not applicants for admission. None of these arguments are persuasive.³

A. The INA supports detention without bond under § 1225.

The text of § 1225. Petitioner argues that § 1225 should be construed as only applying to persons who arrived at a port of entry or who recently entered the United States, and not to noncitizens who previously entered and have been residing in the country prior to being placed in removal proceedings. See ECF No. 1 ¶¶ 25, 41, 55. 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.

As the *Jennings* Court explained, § 1225 applies to “applicants for admission,” a term of art encompassing *both* those just arriving in the United States *and* those who entered without inspection. 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—

³ Petitioner's counsel has indicated that they may file a notice of supplemental authority concerning the decision from *Bautista v. Noem*, No. 5:25-cv-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92. Respondents request the opportunity to respond to that notice once it is filed.

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). 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).” *Jennings*, 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 highlights the phrase “seeking admission” in § 1225(b)(2)(A) to argue that the “statute’s entire framework is premised on inspections at the border.” ECF No. 1 ¶ 41. But that is incorrect. As explained above, the Court’s reference in *Jennings* to “aliens seeking admission” did not limit the reach of § 1225 to only those noncitizens who have applied for admission at the border. Nor does the statute suggest such a limitation. 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”).

Indeed, § 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 directly applying for admission.

In short, the Court in *Jennings* confirmed that all noncitizens who are “applicants for admission” are “seeking admission” by virtue of that status. Petitioner therefore remains subject to § 1225(b)(2)(A) detention even though he is not a recent arrival or detained at a port of entry.

The text of § 1226. Petitioner also argues that § 1225(b)(2)(A) does not apply to him because § 1226(a) should. ECF No. 1 ¶¶ 5, 55-56.

He urges that § 1226(a) “applies by default to all persons ‘pending a decision on whether the [noncitizen] is to be removed from the United States’” through removal proceedings under § 1229a. *Id.* ¶ 38. In support of this argument, he identifies Section 1226(c)(1)(E), which requires mandatory detention for certain categories of noncitizens

who entered the country without inspection, *i.e.*, those who both entered without inspection and were later arrested for, committed, or have admitted to committing one of a list of enumerated crimes. *See id.* ¶ 39. He argues that § 1226's carve-out requiring mandatory detention for that group implies that other noncitizens who entered the country without inspection are subject to § 1226(a). *See id.*

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).

To be sure, § 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. *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 applicability to other noncitizens who entered without inspection. “[R]edundancies 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.* And “[s]ometimes the better overall reading of the statute contains some redundancy.” *Id.* (internal quotation marks omitted). 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.

Finally, Petitioner points to *Jennings* to attempt to bolster his reading of §§ 1225 and 1226. ECF No. 1 ¶¶ 41. But, as explained above, the *Jennings* opinion confirms that § 1225(b)(2) applies to noncitizens who entered without inspection and have not been admitted.

B. Past practice is not dispositive.

Petitioner argues that detaining aliens like him under § 1225(b)(2)(A) would conflict with past practice. ECF No. 1 ¶¶ 29-33. Specifically, he argues that DHS previously detained people who entered the country without inspection under § 1226, and he identifies an entry in the Federal Register from 1997 as reflective of that past practice. *See id.* ¶¶ 29-30 (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) (stating 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”). Petitioner argues that ICE is now following a new policy, which interprets § 1225(b) as applying to all persons who entered the United States regardless of when the person is apprehended. *See* ECF No. 1 ¶¶ 31-32. He cites to several non-binding district court opinions from across the country rejecting that interpretation of § 1225(b). *See id.* ¶ 36.

Those arguments do not overcome the text of § 1225. The 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. Thus, its prior practice of making such individuals eligible for bond hearings therefore carries little weight in interpreting the text of § 1225.

In contrast, and as explained above, § 1225 applies to "applicants for admission," which includes noncitizens who, like Petitioner, entered the United States without inspection and have now been present in the United States for more than two years. Respondents' position—that Petitioner is properly detained under § 1225(b)(2)(A), is therefore consistent with the INA's plain text. Petitioner cites to no binding judicial decision holding otherwise.

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

II. Petitioner has not shown that due process entitles him 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 ¶¶ 57-60. The Court should reject this argument.

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 in his immigration proceedings, where he can challenge the determination that § 1225(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 another court in this District has 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, there is no due process concern because Petitioner’s detention has a definite termination point—the conclusion of his removal proceedings, the merits hearing for which is scheduled on January 6, 2026. Ex. A ¶ 24. In a different context, the Supreme Court has explained that noncitizens who were convicted of certain crimes may be detained during the entire course of their removal proceedings. *Demore v. Kim*, 538 U.S. 510, 513 (2003). 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 529.

The same is true here. Petitioner’s removal proceedings are moving toward a definite endpoint. *See* Ex. A ¶ 24. 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 530-31 (rejecting due process claim arising from petitioner’s mandatory detention under § 1226(c), even though petitioner was detained for six months, which was “longer than the average” period of detention).

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

CONCLUSION

The Court should dismiss or deny the Petition.

Respectfully submitted December 26, 2025.

PETER MCNEILLY
United States Attorney

s/ Alexandra J. Berger
Alexandra J. Berger
Assistant United States Attorney
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Email: alexandra.berger@usdoj.gov
Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on December 26, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record.

s/ Alexandra J. Berger
U.S. Attorney's Office