IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-04002-DDD-KAS

ROLANDO PEPE GARCIA GUZMAN,

Petitioner,

v.

ROBERT GUADIAN, Field Office Director of Enforcement and Removal Operations, Denver Field Office, Immigration and Customs Enforcement;
KRISTI NOEM, Secretary, U.S. Department of Homeland Security;
PAMELA BONDI, U.S. Attorney General;
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;
JUAN BALTASAR, Warden of Denver Contract Detention Facility,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (Doc. 11)

Respondents respond to the Order to Show Cause, Doc. 11, to show why neither the Petition for Writ of Habeas Corpus, Doc. 1 (the "Petition"), nor the Motion for a Temporary Restraining Order and/or a Preliminary Injunction, Docs. 9, 10 (the "Motion"), should be granted. Petitioner, a noncitizen in immigration detention, brings this action under 28 U.S.C. § 2241, alleging that Respondents are unlawfully detaining him under 8 U.S.C. § 1225(b). *See* Doc. 1 ¶ 6; Doc. 10 at 1-2. He claims that he may be detained, if at all, under 8 U.S.C. § 1226(a) and should be released. *See* Doc. 1 ¶ 6 & p. 13 ¶ d; Doc. 10 at 9.

The Court should deny the Petition and Motion because Petitioner is an "applicant for admission" subject to mandatory detention under § 1225(b)(2)(A), and his pre-removal detention does not violate procedural or substantive due process.

I. INTRODUCTION

This case poses a question of statutory interpretation. The Department of Homeland Security ("DHS") is detaining Petitioner under a provision of the INA, § 1225(b)(2)(A), that applies to noncitizens[1] who are deemed to be "applicants for admission" because they entered the country without inspection and have never been admitted. Section 1225(b)(2)(A) requires detention of any "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 subject to § 1225(b)(2)(A) but rather 8 U.S.C. § 1226(a), a provision that, unlike the former, permits detained noncitizens to seek release through a bond hearing. Based on the premise that he is eligible for a bond hearing under § 1226(a), Petitioner asks the Court to release him or, alternatively, declare that § 1226(a) governs his detention. *See* Doc. 1 at 13 ¶ 6; Doc. 10 at 9 ("If this Court determines that release is not the proper remedy, it should hold that § 1226(a) is the proper statute of detention.").[2]

The Court should conclude that Petitioner is an applicant for admission within the meaning of § 1225(b)(2) based on the statutory text and the Supreme Court's interpretation of it in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Respondents recognize that numerous nonprecedential decisions have reasoned otherwise. But a close reading of the Supreme Court's explanation of § 1225 in *Jennings* supports Respondents' view, and the reasoning of many lower court decisions does not square with the Supreme Court's interpretation. The Court should deny

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

[2] Were the Court to determine that Petitioner was entitled to more process under § 1226(a), the remedy should be more process—a bond hearing by an immigration judge—rather than release.

the Petitioner and Motion because Petitioner is subject to detention under § 1225(b)(2)(A), which does not violate due process.

II. BACKGROUND

Petitioner is a citizen of Bolivia who entered the United States without admission or inspection and claims to have been living in the United States since 2004. *See* Doc. 1 ¶¶ 2-3, 16, 43; **Exhibit 1**, Decl. of Kurt Nissen ¶¶ 4-6. The government took Petitioner into immigration custody on December 1, 2025, charging him with having entered the United States without admission or inspection under 8 U.S.C. § 1182(a)(6)(A)(i). Ex. 1 ¶ 7-9. Petitioner's removal proceedings are ongoing. *See id.* ¶ 13.

On January 27, 2026, this Court directed Respondents to respond to the Petition and Motion by February 5, 2026. Doc. 11.

III. LEGAL BACKGROUND

In the INA, Congress determined when certain noncitizens may be detained or removed. As relevant here, § 1225 governs the detention and removal of noncitizens who are "applicants for admission." *See* 8 U.S.C. § 1225(a)(1). The Supreme Court analyzed the scope of § 1225 in *Jennings*, which concerned whether certain noncitizens are entitled to periodic bond hearings during prolonged detention. Because in *Jennings*, as in this case, "[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 of § 1225's scope should guide the Court's analysis. Five key points from *Jennings* warrant attention:

A. Section 1225 applies to "applicants for admission," a term that includes noncitizens who are unlawfully present and 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 confirmed 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 the United States but has not been "admitted."[3]

The Supreme Court recognized that the statute uses the term "applicant for admission" as a term of art. "Under … § 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.'" *Jennings*, 583 U.S. at 287 (emphasis added).

B. "Applicants for admission" are not limited to noncitizens who have submitted an immigration application.

Under *Jennings*, there are only 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 and numbering added). The Court added: "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 reference to "aliens seeking admission" did not add a "seeking admission" criterion for § 1225. Rather, this reference reflected the Court's prior explanation that noncitizens who fall within §1225(b) are, as a matter of law, "treated as" "applicants for admission." *See id.* at 287. The Court later expressly equated "seeking" admission with "applicants for admission": "As noted, § 1225(b) applies primarily to aliens

[3] The INA defines "admission" and "admitted" to mean "lawful entry of the alien into the United Stats after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). An "immigration officer" is "any employee … of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title." *Id.* § 1101(a)(19).

seeking entry into the United States ('applicants for admission' in the language of the statute)." *Id.* at 297.

The *status* of being an applicant for admission is one way that a noncitizen may be "seeking admission." Section 1225 provides: "All aliens … who are applicants for admission *or otherwise seeking admission* … shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3) (emphasis added). Thus, § 1225 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. Because Petitioner is *deemed* by the INA to an applicant for admission, he is also "seeking" admission under the statute. *See also Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025) (the "seeking admission" language "is best read as simply another way of referring to aliens who are applicants for admission").

C. Section 1225(b) applies to all applicants for admission, not just arriving aliens or those who unlawfully entered the country recently.

The *Jennings* Court did not suggest that the term "applicants for admission" somehow *excludes* those who entered without inspection years ago. Rather, the Court explained that § 1225(b)(1) applies to two subcategories of applicants for admission (not at issue here): (1) arriving noncitizens 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)); and (2) noncitizens who are designated by the Attorney General in her discretion, unlawfully present without being admitted, and recent arrivals. That is, § 1225(b)(1) applies to those who have "not been admitted or paroled into the United States, and … ha[ve] 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 id.* at 287. Noncitizens in those subcategories "are normally ordered removed 'without further hearing or review' pursuant to an expedited removal process." *Id.* (quoting § 1225(b)(1)(A)(i)).

The Court then explained that *all other* applicants for admission who fall outside those subcategories are covered by § 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 (emphases added). In sum, *all* "applicants for admission" are subject to detention—either under § 1225(b)(1) if they fit within one of two subcategories, or, if not, under § 1225(b)(2).

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 is an "applicant for admission" subject to the "catchall" provision of § 1225(b)(2).

D. In § 1225, Congress did not provide applicants for admission a right to a bond hearing.

The *Jennings* Court recognized that § 1225 does not provide for a bond hearing. It explained that Congress has provided that noncitizens covered by § 1225(b)(2) generally "shall be detained" during their removal proceedings, with narrow exceptions. *Jennings*, 583 U.S. at 287-88 (quoting § 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. *See id.* at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded").

E. 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 not covered by § 1225(b), including those who had been "admitted." The Court explained,

> 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).

Jennings, 583 U.S. at 288. Thus, § 1226(a) extends to those 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).

Jennings, 583 U.S. at 289. In distinguishing between these authorities, the *Jennings* Court did *not* suggest that noncitizens described in § 1225 (for whom Congress has not authorized bond) should be governed by § 1226(a) (the provision where Congress *has* expressly authorized bond).

IV. ARGUMENT

A. Petitioner is subject to detention under § 1225(b)(2)(A).

As explained above, § 1225(a)(1) deems a noncitizen "present in the United States" without "admission" to be an "applicant for admission" as a matter of law, without limitation as to how long the noncitizen has been "present." Here, Petitioner is present in the United States but has never 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); *see* Ex. 1 ¶¶ 4-6. The text of the § 1225, and the *Jennings* Court's interpretation of it, compels the conclusion that Petitioner is an "applicant for admission" as a matter of law.

Because Petitioner does not qualify for detention under § 1225(b)(1), he is subject to § 1225(b)(2)(A), the "catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)," *see Jennings*, 583 U.S. at 287 (emphasis added), so long as an examining immigration officer determines that he is "not clearly and beyond doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Here, Petitioner has been charged by immigration officers with having entered the United States without admission or inspection under § 1182(a)(6)(A)(i), *see* Ex. 1 ¶ 9, and therefore is not "clearly and beyond doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). In short, the statute requires Petitioner's mandatory detention. *Cf.* Order Denying Mot. for Prelim. Inj. at 7, *Orande Ahinsha Richards v. Choate*, No. 25-cv-03134-DDD-STV (D. Colo. Dec. 5, 2025), Doc. 19 (Domenico, J.) (concluding that a lawful permanent resident was an "applicant for admission" not subject to § 1225(b)(1) and therefore was "an alien 'seeking admission' under Section 1225(b)(2)(A).").

Petitioner makes several arguments why Section 1225(b)(2)(A) should not apply to him. *See* Doc. 1 ¶¶ 23-42; Doc. 10 at 3-10. First, he argues that he is subject to § 1226(a), because he "is not an applicant for admission who is seeking admission to the United States." Doc. 10 at 6. Second, he contends that Respondents' interpretation of the INA conflicts with the Laken Riley Act. *Id.* at 8. Third, he contends that this Court should join the "hundreds of courts" that have sided with his interpretation of § 1225. *Id.* at 9. Fourth, he argues that Respondents' interpretation conflicts with implementing regulations. Doc. 1 ¶ 29. For the reasons set forth below, the Court should reject these arguments.

1. Petitioner is not subject to detention under § 1226(a).

"When interpreting the language of a statute, the starting point is always the language of the statute itself." *McGraw v. Barnhart*, 450 F.3d 493, 498 (10th Cir. 2006) (*quoting United States v. Quarrell*, 310 F.3d 664, 669 (10th Cir. 2002)). Looking to the text of § 1225, as the *Jennings* Court explained, § 1225 applies to "applicants for admission," a term of art that describes Petitioner, as explained above.

The statute nowhere limits its reach only to newly arriving noncitizens. For example, § 1225(b)(1)(A)(i) is not limited to noncitizens "arriving in the United States" who are rendered inadmissible for the specified reasons (*i.e.*, misrepresentation or lack of a valid entry document). Instead, § 1225(b)(1)(A)(i) also applies, through its reference to § 1225(b)(1)(A)(iii), to some noncitizens who have *already* been residing in the United States and are inadmissible for the same reasons—that is, applicants for admission who have "not been admitted or paroled" and have not "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).

In *Jennings*, the Supreme Court 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). 583 U.S. at 287 (§ 1225(b)(2) is a "catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)"). 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 does not apply to him because he is not "seeking admission" is unavailing. *See* Doc. 10 at 6-8. As explained above, § 1225 provides that *being* an applicant for admission is one way to "seek" 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). The Supreme Court has equated the two phrases, too. *See Jennings*, 583 U.S. at 297 (treating those "seeking entry" as synonymous with "applicants for admission"); *see also Rojas*, 2025 WL 3033967, at *8 (the "seeking admission" language "is best read as simply another way of referring to aliens who are applicants for admission"). Moreover, as explained, the *Jennings* Court did not suggest that just *some* applicants for admission are subject to detention under § 1225(b); rather, the Court clarified that *all* applicants for admission are governed by either § 1225(b)(1) or § 1225(b)(2).

In short, the statute and the *Jennings* Court confirmed that all noncitizens who are "applicants for admission" are "seeking admission" by virtue of that status. Section 1225 applies to Petitioner.

2. Respondents' interpretation of § 1225(b)(2)(A) does not render § 1226(c) superfluous.

Petitioner claims that Respondents' interpretation would "nullify the recent amendments to the INA in the Laken Riley Act, now codified in § 1226(c). Doc. 10 at 8 (referring to the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025), *codified at* 8 U.S.C. § 1226(c)(1)(E)). But this 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) also mandates detention for a narrow category of noncitizens who 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 detain such noncitizens 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). But the fact that § 1226(c)(1)(E) provides rules for detention for noncitizens who entered without inspection and then had criminal-related conduct does not negate § 1225(b)(2)(A)'s application to other noncitizens who entered without inspection.

Put differently, it is true that for a narrow subset of noncitizens—those who entered without inspection and then committed (or may have committed) certain crimes—Congress mandated detention in two separate provisions: § 1225(b)(2)(A) (based on entry without inspection) and § 1226(c)(1)(E) (based on criminal-related conduct). But any potential redundancy in requiring mandatory detention for those noncitizens does not affect § 1225(b)(2)(A)'s general applicability to 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 it enacted the Laken Riley Act. That Act added § 1226(c)(1)(E), but did not alter § 1225(b)(2)(A). *See generally* Pub. L. No. 119-1, 139 Stat. 3 (2025). There is no indication that in modifying § 1226, Congress intended, without saying so, to displace the authority in § 1225(b)(2)(A) to detain other applicants for admission.

Other courts have rejected this argument. *See Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855, at *6-7 (S.D.N.Y. Dec. 4, 2025) (rejecting the argument that § 1225(b)(2) renders the Lake Riley Act superfluous and explaining how the act "fills a gap in the mandatory detention regime"); *Chavez v. Noem*, 801 F. Supp. 3d 1133, 1141 (S.D. Cal. 2025) ("Section 1226(c) simply removed the Attorney General's detention discretion for aliens charged with specific—but not all—crimes."); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331, at *6 (S.D. Tex. Nov. 13, 2025) (explaining that the Laken Riley Act had the effect of requiring "mandatory detention for criminal, inadmissible aliens who had not been subject to it … by longstanding practice of prior Administrations"); *see also Mejia Olalde v. Noem*, No. 1:25-cv-168, 2025 WL 3131942, at *4-5 (E.D. Mo. Nov. 10, 2025) (explaining the effect of the Laken Riley Act and rejecting the petitioner's argument of surplusage). This Court should, too.

3. Many courts have issued well-reasoned decisions affirming Respondents' interpretation of § 1225.

Petitioner argues that this Court should join others who have embraced Petitioner's statutory interpretation. *See* Doc. 1 ¶ 36; Doc. 10 at 9. But he cites only non-precedential opinions. The Tenth Circuit has not interpreted § 1225(b)(2)(A) in this context, and numerous other courts have affirmed Respondents' interpretation of § 1225. *See, e.g.*, *Xiaoquan Chen*, 2025 WL 3484855, at *3-7; *Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932, at *1-4 (W.D.N.Y. Dec. 4, 2025); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894, at *1-2 (W.D. La. Dec. 3, 2025); *Altamirano Ramos v. Lyons*, --- F. Supp. 3d ----, 2025 WL 3199872, at *4-8 (C.D. Cal. Nov. 12, 2025); *Chavez*, 801 F. Supp. 3d at 1140-41; *Cabanas*, 2025 WL 3171331, at *3-6; *Mejia Olalde*, 2025 WL 3131942, at *2-5; *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926, at *2-6 (W.D. La. Oct. 31, 2025); *Rojas*, 2025 WL 3033967, at *6; *Vargas Lopez*

v. Trump, 802 F. Supp. 3d 1132, 1137-43 (D. Neb. 2025). As those decisions and the Supreme Court's discussion in *Jennings* show, Respondents' position is well-supported by the statutory text.

4. Respondents' interpretation of the INA comports with implementing regulations.

Petitioner suggests that Respondents' interpretation of the § 1225(b)(2) is inconsistent with related implementing regulations. Doc. 1 ¶¶ 29-30. Specifically, he argues that "people who entered the country without inspection were not considered detained under § 1225," but rather § 1226(a). *Id.* ¶ 29 (citing 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)).

The Federal Register entry cited by Petitioner 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." 62 Fed. Reg. at 10323. This entry supports Respondents' interpretation. 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.

Regardless, the Federal Register cannot contravene the plain language of a statute. The weight given to agency interpretations must "depend upon the 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, which requires detention of an "applicant for admission."

B. Petitioner has been afforded due process as required under § 1225(b)(2)(A).

Petitioner argues that his detention violates his due process rights under the Fifth Amendment. *See* Doc. 1 ¶¶ 77-85; Doc. 10 at 10-13. To the extent he brings a substantive due process challenge, Petitioner has not shown that his detention violates due process, as his detention is during removal proceedings that will have a definite end point, and the Supreme Court has approved such detention. To the extent he brings a procedural due process challenge, this argument fails because Petitioner is subject to detention under § 1225(b)(2)(A), and he has received the due process that is set forth by statute.

First, Petitioner has not shown that his detention violates substantive due process. The Supreme Court "has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). The Supreme Court acknowledged the "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings . . . ." *Id.* at 526. Specifically, the Court relied on *Reno v. Flores,* 507 U.S. 292 (1993), where the Court had rejected a due process challenge to the detention of minors during deportation proceedings, *id.* at 313-14, and on *Carlson v. Landon*, 342 U.S. 524 (1952), where the Court had rejected a due process challenge to detention by noncitizens on the ground that they did not pose a flight risk. *Demore*, 538 U.S. at 538. Later, in *Jennings*, the Court observed that in *Demore,* the Court, in rejecting the due process challenge, had relied on the principle that the detention

during removal proceedings "has "a definite termination point: the conclusion of removal proceedings." 583 U.S. at 304 (internal marks omitted). Here, under *Demore*, Petitioner has not shown that his detention is unconstitutional. He is detained during his removal proceedings, *see* Ex. 1 ¶ 13, which have a definite end point.

Second, to show that he has been denied procedural due process, Petitioner 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, 140 (2020). In *Thuraissigiam*, 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. As explained, Petitioner has not been deprived of any statutory right as he is properly detained under § 1225(b)(2)(A).

Also, Petitioner has not shown that he is being denied procedures *in his immigration proceedings*, where he can challenge the determination that § 1225(b)(2)(A) applies, and therefore he has not shown a procedural due process violation. *See Duran-Hernandez v. Ashcroft*, 348 F.3d 1158, 1163 (10th Cir. 2003) (where an alien 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"). "[S]o 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*, No. 25-cv-01120-GPG (D. Colo. May 21,

2025), Doc. 11 at 13.

This Court has already conducted a thorough analysis of procedural and substantive due process requirements in the context of § 1225(b)(2)(A). *See* Order Denying Mot. for Prelim. Inj. at 7-18, *Orande Ahinsha Richards*, *supra*. The Court concluded that detention during removal proceedings did not offend substantive due process, because the "detention has an endpoint—when his removal proceedings conclude." *Id.* at 15. And "simply to 'facilitate deportation' is a rational, nonpunitive purpose for detention." *Id.* at 16 (citing Justice Kennedy's concurrence in *Demore*, 538 U.S. at 532-33). After surveying Supreme Court precedent and lower-court decisions, this Court concluded that procedural due process does not afford inadmissible noncitizens subject to detention the right to release or a bond hearing prior to the conclusion of removal proceedings. *See id.* at 7-12. As an "applicant for admission," a noncitizen "is entitled only to the process Congress has conferred on him by statute," and, "under *Jennings*, the procedures authorized by Section 1225(b) do not provide for bond hearings or place a time limit on detention while removal proceedings are pending." *Id.* at 13.

The same analysis applies here: Petitioner does not show a denial of statutory procedures, and his detention has a logical endpoint. Detention pending removal under § 1225(b)(2)(A) is a "constitutionally permissible part of that [removal] process." *Demore*, 538 U.S. at 531; *see also* Order Denying Mot. for Prelim. Inj. at 12-18, *Orande Ahinsha Richards*, *supra*. (rejecting due process challenges to § 1225(b)(2)(A) detention).

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

In passing, Petitioner argues that he is entitled to relief pursuant to the order in *Bautista v. Noem*, No. 25-cv-01873-SSS-BFM, --- F.R.D. ----, 2025 WL 3288403 (C.D. Cal. Nov. 25,

2025), which certified a class of petitioners challenging their detention pursuant to § 1225. Doc. 10 at 10. That court issued declaratory judgment as part of a grant of partial final judgment, holding that the class members were entitled to a bond hearing. *See Bautista*, *supra*, Doc. 92. That decision is now on appeal. Even assuming *arguendo* that Petitioner is included in the *Bautista* class, this Court should not grant preclusive effect to the District Court's decision, for three reasons.

First, the *Bautista* court lacked jurisdiction to determine the legality of Petitioner's detention for two reasons. Initially, 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). The *Bautista* court addressed whether class members were unlawfully detained under § 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 court's district. Additionally, that court 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. *See Calderon v. Ashmus*, 523 U.S. 740, 747-49 (1998) (identifying "the need … to prevent federal-court litigants from seeking by declaratory judgment to litigate a single issue in a dispute that must await another lawsuit for complete resolution," concluding that the action for declaratory judgment was "not a justiciable case" because it "would simply carve

out one issue in the dispute for separate adjudication"). Other federal courts have determined they are not bound by the *Bautista* decision. *See Alberto Rodriguez v. Jeffreys*, No. 25-cv-714, 2025 WL 3754411, at *8 (D. Neb. Dec. 29, 2025).

Second, the pendency of an appeal to the Ninth Circuit of the *Bautista* decision supports not giving that decision preclusive force now. 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 on appeal can cause difficulty because a judgment that is reversed is "deprived of all conclusive effect." *United States v. Lacey*, 982 F.2d 410, 412 (10th Cir. 1992). Courts should strive to avoid this result. *See* 9 A.L.R.2d 984.

Third, the existence of prior inconsistent judgments weighs against applying issue preclusion. *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 330 (1979). Other district courts have interpreted § 1225(b)(2) differently, as explained above. These varying rulings support not giving the *Bautista* judgment preclusive effect. *See* Order at 11, 28, *Calderon Lopez v. Lyons*, No. 25-cv-00226 (N.D. Tex. Dec. 19, 2025), Doc. 12.

The Court should not apply *Bautista* to Petitioner. Rather, this Court should simply address the proper scope of § 1225(b)(2) based on the analysis above.

V. CONCLUSION

Respondents respectfully request that the Court deny the Petition and Motion.

Dated: February 5, 2026

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I hereby certify that the foregoing paper complies with the length limitation set forth in DDD Civ. P.S. III(A)(2).

s/Thomas A Isler
Thomas A. Isler

CERTIFICATE OF SERVICE

I certify that on February 5, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will serve all counsel of record, including:

Jessica A. Dawgert, Esq.
Cassandra M. Rosa, Esq.
Counsel for Petitioner

s/Thomas A. Isler
Thomas A. Isler