IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-04026-SKC

PEDRO TREJO TREJO,

Petitioner,

v.

JUAN BALTASAR, in his official capacity as Warden of Denver Contract Detention Center;
ROBERT HAGAN, in his official capacity as Director of the Denver Field Office for U.S. Immigration and Customs Enforcement;
TODD LYONS, in his official capacity as Director of U.S. Immigration and Customs Enforcement;
KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security;
PAM BONDI, in her official capacity as Attorney General of the United States;
SIRCE OWEN, in her official capacity as Acting Director for the Executive Office for Immigration Review; and
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents.

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

Pursuant to the Court's December 24, 2025, Order (ECF No. 4), Respondents hereby respond to Petitioner Trejo Trejo's Application for Writ of Habeas Corpus (ECF No. 1, the Petition). As discussed below, the Petition should be denied because Petitioner's detention is authorized by statute, and his other challenges to detention are unavailing.

Respondents will first address the specific question in the Court's Minute Order (ECF No. 4) and then explain why the Court should dismiss or deny the Petition.

RESPONSE TO MINUTE ORDER, ECF NO. 4

The Court asked Respondents to first address whether this case differs factually or legally from *Hernandez v. Baltazar*, No. 1:25-cv-3688-SKC-SBP, 2025 WL 3718159 (D. Colo. Dec. 23, 2025). There are factual and legal differences between this case and *Hernandez*, but none that should affect the proper analysis of the statutory question at issue or any relief provided.

There is a factual difference between this case and *Hernandez*. In *Hernandez*, the petitioner had applied for asylum before he was detained. *Id.* at *1, Petitioner in this case has never pursued an application for relief. Ex. 1, Decl. of Horn ¶ 15.

There is also a legal difference in the remedy sought. Petitioner here requests release within one day, or alternatively, a bond hearing within seven days. ECF No. 1 at 14. No order for release was requested in *Hernandez*. 2025 WL 3718159, at *7. This Court thus did not address in *Hernandez* whether the petitioner was entitled to release as opposed to only a bond hearing under § 1226. But as explained below, even if this Court were to grant habeas relief here, it should be limited to ordering a bond hearing under § 1226, rather than ordering release. *See infra* Section III.A.5.

INTRODUCTION

The issue before the Court is whether the Petitioner may be held under the

mandatory detention provisions of 8 U.S.C. § 1225(b)(2), or if he instead must be detained under 8 U.S.C. § 1226(a). Section 1225(a)(1) provides that an "alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission," and Section 1225(b)(2)(A) then 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." The Department of Homeland Security (DHS) is detaining Petitioner under § 1225(b) because he meets the statutory test: he entered the United States without ever being admitted and is thus deemed an "applicant for admission." Petitioner argues that § 1225(b) does not apply to him because "he has remained continuously inside the United States for approximately 25 years and is not 'seeking admission.'" ECF No. 1 ¶ 25. He claims that § 1226(a) applies instead, and requests a bond hearing within seven days under that provision, or release within one day. *Id.* at 14.

The Court should conclude that Petitioner is an "applicant for admission" within the scope of § 1225 based on the text of that provision and Supreme Court's interpretation of it in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Respondents recognize that the Court has reasoned otherwise in *Hernandez*. But no federal court of appeals has yet ruled on this issue and numerous other lower-level courts have affirmed Respondents' interpretation of § 1225, including within this circuit. *See, e.g.*, *Montoya, v. Holt, et al.*, No. CIV-25-01231, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025); *Altamirano Ramos v. Lyons*, – F. Supp. 3d –, 2025 WL 3199872, at *4 (C.D.

Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-168, 2025 WL 3131942, at *2-3 (E.D. Mo. Nov. 10, 2025); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *6 (E.D. Wis. Oct. 30, 2025); *Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025).

Respondents accordingly request that the Court deny Petitioner's requests for relief, because he is subject to 8 U.S.C. § 1225(b)(2)(A).

BACKGROUND

A. Petitioner's immigration history.

Petitioner is a native and citizen of Mexico who entered the United States illegally on an unknown date. Ex. 1, Horn Decl. ¶¶ 4, 5. Petitioner was never admitted or paroled into the United States. *Id.* ¶ 6. Thus, he is being treated as an applicant for admission.

B. Petitioner's detention pursuant to 8 U.S.C. § 1225(b)(2).

On November 10, 2025, Petitioner was stopped by Florida Highway Patrol as part of a vehicle stop and then processed for removal by U.S. Border Patrol agents after they determined that he was not legally authorized to be in the country. Ex. 1 ¶

7. He was turned over to Immigration and Customs Enforcement and detained pursuant to § 1225(b). *Id.* ¶¶ 7–9. ICE has since initiated removal proceedings under 8 U.S.C. § 1229a, which remain pending. *Id.* ¶ 11, 16.

Although Petitioner filed a motion for custody redetermination and his attorney appeared before an Immigration Judge on December 11, 2025, he withdrew the request. *Id.* ¶ 13. Petitioner remains detained at the ICE contract detention facility in Aurora, Colorado, pending resolution of removal proceedings. *Id.* ¶ 17.

C. The Petition.

Petitioner filed his petition on December 16, 2025, arguing that he is not subject to § 1225 but rather § 1226, entitling him to release or a bond hearing. *See generally* ECF No. 1. He challenges his detention as violating (1) a court order from a class action pending in the Central District of California, which he contends afforded nationwide declaratory relief to a certified class of which he is a member; (2) the provisions regarding detention in § 1226(a) and the regulations implementing § 1226; (3) substantive due process; and (4) procedural due process. *Id.* at 10–13. He seeks release within one day or a bond hearing within seven days, and an order enjoining Respondents from transferring him outside of the District of Colorado. *Id.* at 14.

The Court ordered Respondents to respond to the Petition within seven days of service and address whether this case differs materially from *Hernandez*, and to show cause why the Petition should not be granted. ECF No. 4. The Court has ordered Respondents not to transfer Petition without further leave of court. *Id.*

D. Legal Background

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*, resulting in five key points that Respondents recount here.

First, Congress has provided that an "alien present in the United States who has not been admitted . . . shall be *deemed* . . . an applicant for admission." 8 U.S.C. § 1225(a)(1) (emphasis added). Congress did not provide that such an alien had to meet any other criterion or submit any application to be deemed an "applicant for admission." "Applicants for admission" are thus not limited to noncitizens who have submitted an immigration application. Rather, any alien who ""is present' in this country but 'has not been admitted,' is *treated as* 'an applicant for admission'" under § 1225. *Jennings*, 583 U.S. at 287 (emphasis added).[1]

Second, the *status* of being an "applicant for admission" is one way that a noncitizen may be "seeking admission" under § 1225(b)(2)(A). *Id.* at 287–289. Congress recognized this when it provided that "All aliens . . . who are applicants for admission *or otherwise seeking admission* . . . shall be inspected by immigration officers." *See* 8 U.S.C. § 1225(a)(3).

---

[1] The Immigration and Nationality Act ("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).

Third, the detention provisions in § 1225(b) applies to *all* "applicants for admission," with no temporal or geographic limitations on that status. Congress identified certain narrow subcategories of "applicants for admission" in § 1225(b)(1), but then, in § 1225(b)(2), provided a "*catchall* provision that applies to all 'applicants for admission' not covered" by 1225(b)(1). 583 U.S. at 287 (emphasis added).

Fourth, the detention of applicants for admission is governed by § 1225, not § 1226(a). *Other* individuals in the country not covered by § 1225 may be detained under § 1226. *See id.* at 288–89. For example, the detention of individuals who *were* admitted (such as on a visa) and then were placed in removal proceedings would not be covered by § 1225 but could be covered by § 1226.

Finally, with narrow exceptions, § 1225—unlike § 1226(a)—does not provide for a bond hearing. *Id.* at 287–88.

ARGUMENT

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

Petitioner's second claim fails because Section 1225(b)(2) applies to "applicants for admission," which includes noncitizens, like him, who entered without inspection and have been present in the country for more than two years. Even though he was present in the country when detained, he 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, ¶ 6. 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." Moreover, § 1225(b)(2)(A) mandates detention for a noncitizen "who is an applicant for admission" if he is "not clearly and beyond a doubt entitled to be admitted." In short, the text of the statute supports detention without bond under § 1225.

1) Detention under § 1225 is not limited to aliens presenting or apprehended at the border.

Petitioner suggests that § 1225 does not apply to him because he has remained continuously within the United States and was apprehended in the interior of the country, while § 1225, in his view, applies only to those encountered at the border. ECF No. 1 ¶¶ 22–31. This position is not supported by the statutory language of § 1225, or by the Supreme Court's holdings in *Jennings*, and "[w]hen 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, several subsections support the conclusion that 1225 is not limited to aliens presenting or apprehended at the border. Subsection (a)(1) does not impose any geographic or temporal limitations on a "present" unadmitted alien's state of being an "applicant for admission." *Montoya*, 2025 WL 3733302, at *6. Subsection (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).

The *Jennings* Court also explained that "applicants for admission" is a statutorily-defined term of art encompassing *both* those just arriving in the United States *and* those who entered without inspection. *See* 583 U.S. at 287. The 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). *Id.* (explaining that § 1225(b)(2) is a "catchall provision that applies to *all applicants for admission* not covered by § 1225(b)(1)" (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).

2) Detention under § 1225 is not limited to aliens who have submitted immigration applications.

Petitioner also suggests that § 1225 does not apply to him because it refers to an alien who is "seeking admission," and he is not "seeking admission." ECF No. 1 at

¶¶ 25, 41. Petitioner does not explain why, if Congress has defined him as an "applicant for admission," he should not be treated as an alien "seeking admission." Regardless, his position is not supported by the statutory language or *Jennings*.

The language Congress used in § 1225 confirm that it deemed, as a matter of law, *anyone* falling within the category of "applicant for admission" to be "seeking admission" by virtue of that status. *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)). As the Western District of Oklahoma explained:

> Section 1225(a)(1) "deem[s]" "an alien present in the United States who has not been admitted . . . an applicant for admission." The statute doesn't describe what the alien is doing. *It imposes a status by operation of law.* Section 1225(a)(3) then says "[a]ll aliens . . . who are applicants for admission or otherwise seeking admission" shall be inspected. The word "otherwise" establishes that "aliens . . . seeking admission" is the category to which "applicants for admission" belong. If "applicants for admission" are subject to inspection because they fall within the broader class of those "seeking admission," then the statute necessarily treats "seeking admission" as a condition that attaches to anyone deemed an "applicant for admission."
>
> And because § 1225(a)(1) imposes that label on every "alien present in the United States who has not been admitted," the condition of "seeking admission" is likewise imposed. "Seeking" does not describe what the alien is voluntarily doing or the alien's mindset. The alien is "seeking admission" in the same way the alien is "an applicant for admission"—by congressional decree.

Montoya, 2025 WL 3733302, at *9 (emphasis added). In other words, the *status* of being an "applicant for admission" is but one way a noncitizen may be "seeking admission."

The *Jennings* Court recognizes that the definition of "applicant for admission" does not impose any additional requirement that the person has submitted an immigration application. *See* 583 U.S. at 287–89. Rather, the Court found that the necessary criteria are that the alien be (1) "present in this country" and (2) "not admitted." *Id.* at 287. Thus, based on the language of the statute and *Jennings*, § 1225 applies to Petitioner.

3) Agency past practice is not binding authority on judicial, statutory interpretation.

Petitioner states that Respondents' agencies have "historically" applied § 1225(b)(2) only to noncitizens encountered at the border, but does not explain why past practice should determine the law or the outcome of *this* case. ECF No. 1 ¶ 29. Although "the longstanding practice of the government . . . can inform a court's determination of what the law is;" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (cleaned up); that past practice "does not justify a rule that denie[s] statutory text its fairest reading." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015). An agency's past practice therefore carries little weight in interpreting the text of § 1225.

4) Respondent's construction of § 1225 does not contradict the legislative history of §§ 1225 and 1226.

Petitioner avers in summary fashion that Respondents' position contradicts legislative history. ECF No. 1 ¶ 30. But the legislative history of §§ 1225 and 1226 actually favors Respondents' interpretation.

Before Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (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 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)).

Petitioner's reading of the statutes would recreate anomalous pre-IIRIRA incentives for those entering the country without inspection: 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. But as the Supreme Court has recognized, a statutory interpretation that would allow applicants for admission to avoid mandatory detention simply by evading immigration officers when they enter the country would enshrine in our law "a perverse incentive to enter at an unlawful rather than a lawful location." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020).

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

5) Petitioner should not be granted immediate release.

Even if the Court determined that Petitioner should be detained under

§ 1225(b)(2) rather than § 1226(a), the appropriate relief would be to order Petitioner to receive a bond hearing (as he says he would be entitled to under § 1226(a)), not immediate release. Section 1226(a) does not require release—it provides DHS the *discretion* to grant a noncitizen release on bond.

B. Petitioner is not entitled to release or bond under *Bautista v. Noem*.

Petitioner asks that this Court rule in his favor by giving preclusive effect to the declaratory judgment issued as part of a partial final judgment in *Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92. *See* ECF No. 1 ¶¶ 34–38.[2] This Court should not grant preclusive effect to that decision (which is now on appeal), for multiple reasons.

First, for a prior judgment to have preclusive effect, the judgment must be "entered by a court of competent jurisdiction." *N. Nat. Gas Co. v. Grounds*, 931 F.2d 678, 683 (10th Cir. 1991); *see* Restatement (Second) of Judgments § 1 (1982). Here, the *Bautista* court lacked jurisdiction to determine the legality of Petitioner's detention. That court addressed whether class members were unlawfully detained under 8 U.S.C. § 1225(b)(2), and such a challenge to the legality of detention can only be brought in habeas. *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.*

[2] Petitioner cites *Bautista v. Santacruz*, No. 5:25-CV-1873, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), but this case was amended and superseded on reconsideration (with judgment entered *sub nomine*) by *Bautista v. Noem*.

Padilla, 542 U.S. 426, 443 (2004). And a habeas petitioner must name his immediate custodian. *Id.* at 435. The *Bautista* court thus lacked jurisdiction to determine the legality of the detention of class members like Petitioner confined outside the Central District of California. That court also lacked jurisdiction to grant a declaratory judgment in a class action to determine a preliminary issue that class members then rely on to seek relief in individual habeas actions. *Calderon v. Ashmus*, 523 U.S. 740 (1998).

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

Third, the existence of prior inconsistent judgments weighs against applying issue preclusion. *Parklane Hosiery*, 439 U.S. at 330–31. District courts have interpreted 8 U.S.C. § 1225(b)(2) differently from the *Bautista* court. *See, e.g.*, *Altamirano Ramos v. Lyons*, – F. Supp. 3d –, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025) (citing cases). These varying rulings support not giving the *Bautista* judgment preclusive effect. *See* Order, *Calderon Lopez v. Lyons*, No. 25-cv-00226 (N.D. Tex. Dec. 19, 2025), ECF No. 12, at 11 & 28.

Fourth, the pendency of an appeal to the Ninth Circuit of the district court's

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

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

C. Petitioner is not entitled to his requested relief as a matter of due process.

Petitioner also claims that he is entitled to habeas relief as a matter of due process. *See* ECF No. 1 ¶¶ 43–51. The Court should reject this argument because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), as set forth above, and he has received the process that is required by statute.

First, for Petitioner to show that he has been denied due process, he would need to show that he has been deprived of a statutory right. The Supreme Court has "often reiterated" the "important rule" that for "foreigners who have never been . . . admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *DHS v. Thuraissigiam*, 591 U.S. 103, 138 (2020). There, the Court explained that an alien who was an "applicant for admission" had "only those rights regarding admission that Congress has provided by statute," and "the Due Process Clause provides nothing more." *Id.* at 140.

Second, Petitioner has not shown any prejudice. He has not shown that he has been denied due process by being denied procedures in his immigration proceedings, where he can challenge the determination that § 1252(b)(2)(A) applies to him. As he will have that opportunity through his immigration proceedings, he has not shown a violation of his rights to procedural due process. *See Duran-Hernandez v. Ashcroft*, 348 F.3d 1158, 1163 (10th Cir. 2003) (rejecting due process claim where a noncitizen failed to show "that additional procedural safeguards would have changed" the immigration court's decision).

Third, Petitioner's detention has been sufficiently short such that it is presumptively constitutional. He has been detained for not more than 57 days as of the date of this submission. In a different immigration context—noncitizens already or-

dered removed and indefinitely awaiting their removal—the Supreme Court has explained that detention of up to six months is presumptively constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); *see also Demore v. Kim*, 538 U.S. 510, 513 (2003) (ruling that certain criminal noncitizens may be detained during the entire course of their removal proceedings).

The same is true here. Petitioner's removal proceedings are moving toward a definite endpoint. *See* Ex. 1 ¶¶ 11–17. His detention will conclude with a final order of removal or a denial of the charges against him. Congress's decision to detain him pending removal is a "constitutionally permissible part of [this] process." *See Demore*, 538 U.S. at 531.

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

CONCLUSION

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

Dated: January 6, 2026.

Respectfully submitted,

PETER MCNEILLY
United States Attorney

s/ Winnie D. Wu
Winnie D. Wu
Assistant United States Attorney
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Email: Winnie.Wu@usdoj.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I certify that on January 6, 2026, 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/ Winnie D. Wu
U.S. Attorney's Office

CERTIFICATION REGARDING THE USE OF ARTIFICIAL INTELLIGENCE FOR DRAFTING

Pursuant to the Court's Standing Order for Civil Cases, undersigned counsel certifies that no portion of this filing was prepared using generative artificial intelligence.

s/ Winnie D. Wu
Winnie D. Wu