IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-04086-CYC

BERNARDO BACHOS ABARCA,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Aurora ICE Processing Center;

ROBERT HAGAN, in his official capacity as Field Office Director of the Aurora Field Office of Enforcement and Removal Operations, U.S. Immigrations and Customs Enforcement;

TODD M. LYONS, in his official capacity as Acting Director, Immigration and Customs Enforcement;

KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security;

PAMELA JO BONDI, in her official capacity as the Attorney General of the United States,

Defendants.

RESPONSE TO ORDER TO SHOW CAUSE [ECF No. 9]

Pursuant to the Court's January 20, 2026, Order, ECF No. 9, Respondents Robert Hagan, Todd M. Lyons, Kristi Noem, and Pamela Jo Bondi ("Respondents")[1] hereby respond to Petitioner Bernardo Bachas Abarca's Petition for Writ of Habeas Corpus, ECF No. 1 (filed

[1] Undersigned counsel does not represent Respondent Juan Baltazar.

December 19, 2025) (the "Petition"). Pursuant to 28 U.S.C. § 2241, Petitioner, through counsel, alleges that Respondents have unlawfully detained him under 8 U.S.C. § 1225(b). *See* ECF No. 1 ¶¶ 64-85. He claims that he may be detained, if at all, only under 8 U.S.C. § 1226(a). *See id.* ¶ 71.

As discussed below, the Petition should be denied because Petitioner is an applicant for admission within the scope of § 1225(b)(2). The Court should therefore deny Petitioner's requests for relief because he is subject to § 1225(b)(2)(A).

INTRODUCTION

This case involves a question of statutory interpretation. The Department of Homeland Security ("DHS") is detaining Petitioner under a statutory provision of the INA, 8 U.S.C. § 1225(b)(2)(A), that applies to noncitizens[2] who, like Petitioner, are treated as "applicants for admission" because they entered the country without inspection and have never been admitted. 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 subject to § 1225(b)(2)(A) but is instead subject to 8 U.S.C. § 1226(a), a provision that also authorizes detention of certain noncitizens while removal proceedings are pending. The practical difference between the two sections is that Congress has provided that noncitizens detained under § 1225(b)(2)(A) are ordinarily not eligible for bond hearings, while those detained under § 1226(a) are. Based on the premise that his detention is governed by § 1226(a), Petitioner asks the Court to issue a writ of habeas corpus declaring that

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

8 U.S.C. § 1226(a) governs his detention and ordering that he be provided with a bond hearing within five days.

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 it in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Respondents recognize that numerous nonprecedential decisions have reasoned otherwise. But as explained below, a close reading of the Supreme Court's explanation in *Jennings* of the scope of § 1225 supports Respondents' view, and the reasoning of many lower court decisions does not square with the Supreme Court's interpretation of the statute. The Court should therefore deny Petitioner's requests for relief because he is subject to § 1225(b)(2)(A).

FACTUAL BACKGROUND

Petitioner's entry into the United States. Petitioner is a native and citizen of Mexico. Ex. A, Declaration of Shane Blea, ¶ 4. On June 28, 2008, U.S. Customs and Border Protection granted Petitioner voluntary return to Mexico after he illegally entered the United States. *Id.* ¶ 5. Thereafter, Petitioner again illegally entered the United States on an unknown date and at an unknown location. *Id.* ¶ 6. Petitioner was never inspected and admitted or paroled into the United States. *Id.* ¶ 7.

Petitioner's arrest. On November 24, 2025, ICE officers encountered Petitioner near Glenwood Springs, Colorado. *Id.* ¶ 8. Upon reviewing relevant immigration databases, DHS officers determined that Petitioner did not possess documentation authorizing his entry into or presence in the United States and concluded that Petitioner is subject to removal. *Id.* DHS officers arrested and detained Petitioner pending resolution of removal proceedings. *Id.* Petitioner is detained pursuant to 8 U.S.C. § 1225(b). *Id.* ¶ 9.

Petitioner's immigration proceedings. On November 24, 2025, DHS issued a Notice to Appear (NTA), initiating removal proceedings under 8 U.S.C. § 1229a, before the Executive Office for Immigration Review (EOIR). *Id.* ¶ 10. The NTA charged Petitioner with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) (alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated). *Id.* Since his arrest, Petitioner has appeared before the Immigration Judge (IJ) for a master calendar hearing in removal proceedings on three occasions. *Id.* ¶ 11. At each hearing, Petitioner asked for additional time to prepare his case. *Id.* The IJ granted his requests. *Id.*

Petitioner's next master hearing is scheduled for January 26, 2026. *Id.* ¶ 12. Petitioner's removal proceedings remain pending before EOIR. *Id.* ¶ 13.

Petitioner's habeas petition. Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 on December 19, 2025. ECF No. 1. In the Petition, Petitioner asserts four claims for relief. *See* ECF No. 1 ¶¶ 64-85. First, he alleges that Respondents have violated an order issued by the district court for the Central District of California in the *Maldonado* Bautista case. Second, he alleged that Respondents have violated the INA by subjecting him to detention under § 1225(b)(2)(A), rather than under § 1226(a). *Id.* ¶¶ 70-73. Third, he alleges that his continued detention without bond eligibility violates the INA's bond regulations. *Id.* ¶¶ 74-76. Finally, he alleges a violation of his Fifth Amendment due process rights. *Id.* ¶¶ 77-85. As relief, Petitioner requests, *inter alia*, that the Court issue a writ of habeas corpus ordering either his release from custody or that he be provided a bond hearing within seven days. *Id.* at 19.

On January 20, 2026, this Court issued an Order Directing Respondents to Show Cause no later than January 27, 2026. ECF No. 9.

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." *See* 8 U.S.C. § 1225(a)(1). The scope of § 1225 was analyzed by the Supreme Court in *Jennings*. At issue in that case was whether certain noncitizens are entitled to periodic bond hearings during prolonged detention. Because in that case, as in this one, "[t]he primary issue [wa]s the proper interpretation of §§ 1225(b), 1226(a), and 1226(c)," 583 U.S. at 289, the Supreme Court's explanation in *Jennings* of § 1225's scope should guide the Court's analysis here. Five key points from *Jennings* are set forth below:

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" through a lawful entry at a port of entry.[3]

The Court in *Jennings* recognized that the statute uses the term "applicant for admission"

[3] 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)).

as a term of art. "Under … 8 U.S.C. § 1225, an alien who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted,' is *treated as* 'an applicant for admission.'" 583 U.S. at 287 (emphasis added). In other words, noncitizens who are present in the country and were never lawfully admitted are "treated as"—in the words of § 1225(a)(1), they are "deemed" to be—"applicants for admission."

B. "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 an immigration application. Rather, there are two criteria to be an applicant for admission: "an alien who [1] 'is present' in this country but [2] 'has not been admitted' is *treated as* 'an applicant for admission.'" *Id.* at 287 (emphasis added, numbering 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 reference to "aliens seeking admission" did not add a new "seeking admission" criterion for § 1225. Rather, this reference reflected the Court's prior explanation that noncitizens who fall within §§ 1225(b)(1) and (b)(2) are, as a matter of law, "treated as" "applicants for admission." *Id.* at 287.

Indeed, § 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) (emphasis added). 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.

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's discussion of § 1225's scope indicates that "applicants for admission" does not somehow *exclude* those who entered without inspection years ago. The Court explained that § 1225(b)(1) applies to two subcategories of applicants for admission. One subcategory applies to those 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)). Another subcategory applies to certain noncitizens who are: (1) designated by the Attorney General in her discretion; (2) unlawfully present without being admitted; and (3) recent arrivals. That is, it 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; § 1225(b)(1)(A)(iii). Noncitizens in those two subcategories are subject to "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 are covered by the *second* subsection of § 1225(b)—*i.e.*, § 1225(b)(2). It described § 1225(b)(2) as a "*catchall* provision that applies to *all* applicants for admission not covered by § 1225(b)(1)." 583 U.S. at 287 (emphases 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).

D. 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 for a bond hearing. It explained that Congress has provided that aliens covered by § 1225(b)(2) generally "shall be detained" during their removal proceedings, with narrow exceptions. *Jennings*, 583 U.S. at 287-88 (quoting 8 U.S.C. § 1225(b)(2)(A)). Under § 1225(b)(2)(A), all other applicants for admission whom 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.

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, 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. 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 detention authorities, the *Jennings* Court did *not* suggest that noncitizens who are properly covered by § 1225 (where Congress has not authorized bond) should instead governed by the detention authority set forth in § 1226(a)—the provision where Congress *has* expressly authorized bond.

ARGUMENT

I. There is no violation of the INA because Petitioner is subject to § 1225(b)(2)(A).

As explained above, § 1225(b)(2) applies to "applicants for admission," which include noncitizens who entered without inspection and have been present in the country for more than two years. Here, Petitioner is present in the country 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); *see* ECF No. 1 ¶¶ 3, 22. 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.

Petitioner makes several arguments about why Section 1225(b)(2)(A) does not apply to him based on the statutory interpretation of § 1225(b)(2)(A). *See* ECF No. 1 ¶¶ 49-56. First, he argues that Respondent's interpretation of § 1225 and § 1226 is "plainly contrary to the statutory framework." *Id.* ¶ 48. Second, he emphasizes that "numerous federal courts have rejected" Respondents' interpretation. *Id.* ¶ 49. Third, he contends that Respondents' interpretation of the INA conflicts with the Laken Riley Act. *Id.* ¶ 52. Fourth, he argues that he is not "seeking

admission," because he is already here. *Id.* ¶ 55. Finally, he argues that Respondents' interpretation conflicts with implementing regulations. *Id.* ¶¶ 55, 74-76.[4]

For the reasons set forth below, the Court should reject these arguments.

A. The language of the statute establishes that § 1225 applies to Petitioner.

"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 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—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 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

[4] Petitioner also briefly argues that Respondents' interpretation violates the Administrative Procedure Act, but his Petition does not include any claim for relief associated with this contention. *See* ECF No. 1 ¶ 48, 64-85.

for admission" who do not fall within § 1225(b)(1). The Court stated that § 1225(b)(2) is a "catchall provision that applies to *all applicants for admission* not covered by § 1225(b)(1)." 583 U.S. at 287 (emphasis added). Accordingly, § 1225(b)(2) applies *both* to applicants for admission just arriving at the border who do not fall within Section 1225(b)(1)(A)(i) *and* to applicants for admission who have been physically present in the United States but are not covered by § 1225(b)(1)(A)(iii)(II).

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

Petitioner argues that courts "have consistently found that § 1226, not § 1225(b)(2), authorizes detention of noncitizens who entered without inspection and were later apprehended in the interior of the country. ECF No. 1 ¶ 49. However, each of the decisions he cites is non-precedential, and the question has not been decided by a federal Court of Appeals in any circuit. *See id.* And in fact, numerous courts have affirmed Respondents' interpretation of § 1225, often articulating their reasoning in careful detail. *See, e.g.*, *Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025), at *3-7; *Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025), at *1-4; *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025), at *1-2; *Altamirano Ramos v. Lyons*, – F. Supp. 3d –, 2025 WL 3199872, at *4-8 (C.D. Cal. Nov. 12, 2025); *Chavez v. Noem*, 801 F. Supp. 3d 1133, 1140 (S.D. Cal. 2025), at 1140-41; *Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025), at *3-6; *Mejia Olalde v. Noem*, No. 1:25-cv-168, 2025 WL 3131942, at *2-3 (E.D. Mo. Nov. 10, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025), at *2-6; *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025), at *6; *Vargas Lopez v. Trump*, 802 F. Supp. 3d 1132, 1137 (D. Neb. 2025), at 1137-43. As

those decisions and the Supreme Court's discussion in *Jennings* show, Respondents' position is well-supported by the statutory text.

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

Petitioner claims that "statutory context and structure … make clear that § 1226 applies to individuals who have not been admitted and entered without inspection" because, in 2025, Congress added new mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted. ECF No. 1 ¶ 52, *citing* The Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (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) 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 certain narrow subset of noncitizens—those who entered without inspection and then committed (or may have committed) certain crimes—Congress mandated their 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 other noncitizens who entered without inspection. Redundancies "are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton v. Barr*, 590 U.S. 222, 239 (2020). "Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.* The Court should not read § 1226(c) to require courts to ignore the express scope of § 1225.

Nor did Congress signal that courts should ignore the existing scope (and detention provisions) of § 1225 when it 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, Congress intended, without ever saying so, to displace the authority in § 1225(b)(2)(A) to detain other applicants for admission.

D. "Seeking admission" is a term of art that accurately describes Petitioner.

Petitioner's argument that § 1225 does not apply to him because he is not "seeking admission" is unavailing. *See* ECF No. 1 ¶ 55. Section 1225(b)(1) contains no "seeking admission" language. Its detention provision applies, in the Attorney General's discretion, even

to some noncitizens who are not "arriving" at the time of their inspection by an immigration officer. *See* 8 U.S.C. § 1225(b)(1)(A)(i) (applying to an "alien … who is arriving in the United States *or* is described in clause (iii)" (emphasis added)); *id. §* 1226(b)(1)(A)(iii) (describing a noncitizen "who has not affirmatively shown" that they have "been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility").

Other parts of § 1225 confirm that *anyone* falling within the category of "applicant for admission" is deemed, as a matter of law, to be seeking admission. *See* 8 U.S.C. § 1225(a)(3) ("All aliens … who are applicants for admission or *otherwise seeking admission* … shall be inspected by immigration officers." (emphasis added)); *id.* § 1225(a)(5) ("An applicant for admission may be required to state … the purposes and intentions of the applicant *in seeking admission* …." (emphasis added)).

In short, the Court in *Jennings* confirmed that all noncitizens who are "applicants for admission" are "seeking admission" by virtue of that status. Thus, based on the language of the statute, § 1225 applies to Petitioner.

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

Petitioner asserts Respondents' interpretation of the § 1225(b)(2) is inconsistent with related implementing regulations. ECF No. 1 ¶¶ 55, 74-76. Specifically, he argues that the implementing regulations at 8 C.F.R. § 1.2 "address noncitizens who are 'coming or attempting to come into the United States.'" *Id.* ¶ 55. But 8 C.F.R. § 1.2 merely sets forth definitions used in the INA's implementing regulations, and the quoted language is part of the definition of "arriving alien." As set forth *supra*, § 1225(b) pertains to "applicants for admission," which is

defined to include not only arriving aliens, but also aliens who are already present in the United States. *See* 8 U.S.C. § 1225(a)(1).[5]

Petitioner's citation to a Federal Register entry from 1997, ECF No. 1 ¶ 75, is similarly unavailing. That entry 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." Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). This entry in fact supports Respondents' interpretation, 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 entry does not change the plain language of the 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

[5] In Count III of his claim for relief, Petitioner also cites 8 C.F.R. §§ 236.1, 1236.1, and 1003.19. However, he never explains how Respondents have allegedly violated these regulations, which generally address apprehension, custody, and detention of noncitizens. *See* ECF No. 1 ¶¶ 74-76.

of making such individuals eligible for bond hearings therefore carries little weight in interpreting the text of § 1225.

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

Petitioner alleges that his detention without a bond hearing violates his due process rights under the Fifth Amendment. ECF No. 1 ¶¶ 77-85. This argument fails because Petitioner is subject to detention under 8 U.S.C. § 1225(b)(2)(A), as set forth above, and he has received the due process that is set forth by statute.

To show that he has been denied 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." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138 (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.

Second, Petitioner has not shown any prejudice. He 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. He thus has not shown a violation of 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, Petitioner's detention has been sufficiently short that it is presumptively constitutional. He has been detained for less than two months as of the date of this submission. *See* ECF No. 1 ¶ 60. In a different immigration context—noncitizens already ordered 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). In other contexts, even this presumptive constitutional limit has been distinguished as unnecessarily restrictive. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court explained that noncitizens who were convicted of certain crimes may be detained during the entire course of their removal proceedings. 538 U.S. at 513. In that case, like this one, Congress mandated detention pending removal proceedings. *See id.*; 8 U.S.C. § 1226(c). The Court reasoned that the "definite termination point" of the detention at the end of removal proceedings assuaged any constitutional concern about the length of detention. *Demore*, 538 U.S. at 512.

The same is true here. Petitioner is detained in immigration while his immigration case is adjudicated by the Executive Office for Immigration Review. *See* Ex. A ¶¶ 10-13. Congress's decision to detain him pending removal is a "constitutionally permissible part of th[is] process." *Demore*, 538 U.S. at 531.

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

Petitioner argues that he is entitled to relief pursuant to the District Court for the Central District of California order in *Bautista v. Noem*, which certified a class of petitioners challenging their detention pursuant to § 1225. ECF No. 1 at ¶¶ 5-16, 64-69; No. 25-cv-01873-SSS-BFM, – F.R.D. –, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). On December 18, 2025, 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. No. 25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025) (ECF No. 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 four reasons.

First, for a prior judgment to have preclusive effect, the judgment must be "entered by a court of competent jurisdiction." *N. Nat. Gas Co. v. Grounds*, 931 F.2d 678, 683 (10th Cir. 1991); *see* Restatement (Second) of Judgments § 1 (1982). Here, the *Bautista* court lacked jurisdiction to determine the legality of Petitioner's detention. That court addressed whether class members were unlawfully detained under 8 U.S.C. § 1225(b)(2), and such a challenge to the legality of detention can only be brought in habeas. *See Trump v. J.G.G.*, 604 U.S. 670, 672 (2025). Under habeas principles, "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). And a habeas petitioner must name his immediate custodian. *Id.* at 435. The *Bautista* court thus lacked jurisdiction to determine the legality of the detention of class members like Petitioner confined outside the Central District of California. That court also lacked jurisdiction to grant a declaratory judgment in a class action to determine a preliminary issue that class members then rely on to seek relief in individual habeas actions. *See Calderon v. Ashmus*, 523 U.S. 740, 747 (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 weighs against "a broad application of collateral estoppel").

Third, the existence of prior inconsistent judgments weighs against applying issue preclusion. *See 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 Federal Practice & Procedure § 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 as to Petitioner. Rather, this Court should simply address the proper scope of § 1225(b)(2) based on the analysis set forth above.

CONCLUSION

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

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system.

s/ Carrie Schiotz
U.S. Attorney's Office