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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

RICARDO de JESUS CISNEROS,

Petitioner,

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security, et al.,

Respondents.

**RESPONSE TO PETITION FOR
HABEAS CORPUS**

Case No. 2:25-cv-1170-HCN

Judge Howard C. Nielson, Jr.
Magistrate Judge Jared C. Bennett

Respondents respond to the Verified Petition for Habeas Corpus. The Court should deny Petitioner's habeas petition (Petition) seeking immediate release or for a bond hearing.

INTRODUCTION

Petitioner Ricardo De Jesus Cisneros (Petitioner) filed a Verified Petition for Writ of Habeas Corpus alleging unlawful detention by Immigration and Customs Enforcement ("ICE").¹

¹ ECF No. 1.

Respondents, Kristi Noem, U.S. Secretary of Homeland Security, Todd Lyons, Acting Director of U.S. Immigration and Customs Enforcement, Michael V. Bernacke, Immigration and Customs Enforcement Field Office Director, Pamela Bondi, Attorney General of the United States, The Executive Office for Immigration Review, and United States Immigration and Customs Enforcement (collectively “Respondents”) submit the following response to Petitioner’s Petition filed on December 30, 2025, and the Court’s Order issued on January 7, 2026.

INTRODUCTION

Petitioner is a native and citizen of Mexico.² On March 28, 2004, U.S. Customs and Border Protection (CBP) granted voluntary return to Petitioner after he illegally entered the United States.³ Petitioner again illegally entered the United States on an unknown date and at an unknown location.⁴ Petitioner has never been admitted or paroled into the United States.⁵

On December 30, 2025, DHS officers encountered Petitioner in Park City, Utah.⁶ Upon questioning Petitioner and reviewing relevant immigration databases, DHS officers determined that Petitioner did not possess documentation authorizing his entry into or presence in the United

² *Petition* at ¶ 1 (ECF No. 1); Decl. of Matthew Randall at ¶ 4 (Exhibit “A”).

³ Randall Decl. at ¶ 5.

⁴ *Id.* ¶ 7.

⁵ *Id.* ¶ 8.

⁶ *Id.* ¶ 9.

States and concluded that Petitioner is subject to removal.⁷ DHS officers arrested and detained Petitioner pending resolution of removal proceedings.⁸

Petitioner was transported to the Enforcement and Removal Operations Salt Lake City office for processing.⁹ After processing, ICE transported Petitioner to the Uinta County Jail in Evanston, Wyoming where SLC ERO has short-term space allocated for detainees subject to removal.¹⁰ ICE detained Petitioner under 8 U.S.C. § 1225(b).¹¹

On December 30, 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).¹² The NTA charged Petitioner with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) (an 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 by the Attorney General, is inadmissible).¹³ The NTA scheduled Petitioner for his initial hearing in removal proceedings before the Las Vegas Immigration Court on February 9, 2026.¹⁴

⁷ *Id.* ¶ 9.

⁸ *Id.*

⁹ *Id.* ¶ 10.

¹⁰ *Id.*

¹¹ *Id.* ¶ 11.

¹² *Id.* ¶ 12.

¹³ *Id.*

¹⁴ *Id.*

On January 6, 2026, ICE transferred Petitioner to the Henderson Detention Center in Henderson, Nevada.¹⁵ EOIR rescheduled the Petitioner's initial hearing to January 26, 2026.¹⁶

On January 12, 2026, DHS filed a Form I-261, Additional Charges of Inadmissibility/Removability with EOIR. The Form I-261 alleged an additional charge of inadmissibility pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) (immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document).¹⁷ Petitioner remains detained while his removal proceedings are pending before the immigration court.¹⁸

Petitioner alleges that, contrary to DHS's classification, he is not an arriving alien and thus entitled to an immediate bond hearing.¹⁹ Petitioner challenges his detention as violating the provisions regarding detention in 8 U.S.C. § 1226(a) and his due process rights. He argues that he has a right to a bond hearing because his detention under 8 U.S.C. § 1225 (which provides for mandatory detention) is improper and that he should instead be detained under 8 U.S.C. § 1226 (which provides for the possibility of release on bond).

¹⁵ *Id.* ¶ 13.

¹⁶ *Id.* ¶ 14.

¹⁷ *Id.* ¶ 15.

¹⁸ *Id.* ¶ 16.

¹⁹ Petition, ¶¶ 1, 15. Respondents have briefed this exact issue in another case pending in this District. *See Sanchez v. Noem*, Case No. 2:25-cv-1150 (D. Utah Dec. 22, 2025) (ECF No. 5). And another case asserting the same claims has recently been filed. *See Paz v. Noem*, Case No. 2:26-cv-25 (D. Utah Jan. 9-2026).

SUMMARY OF THE ARGUMENT

DHS has classified Petitioner as an “arriving alien” seeking admission to the United States. As an “arriving alien,” Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Petitioner claims he should instead be detained under 8 U.S.C. § 1226(a). The practical difference between the two sections is that aliens detained under § 1225(b)(2)(A) are not eligible for bond hearings while those detained under § 1226(a) are. Because Petitioner believes his detention should be governed by § 1226(a), he requests immediate release or a bond hearing.

The Court should dismiss the Petition. Under the Immigration and Nationality Act (INA) this Court lacks jurisdiction to review DHS’s decision to detain Petitioner under § 1225 rather than § 1226. And even if the Court has jurisdiction, it should deny Petitioner’s requests for relief. 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.” An applicant for admission includes any alien “present in the United States who has not been admitted.”²⁰ Petitioner is properly detained under § 1225(b)(2)(A) because he is an alien present in the United States who has not been admitted.

LEGAL BACKGROUND

The INA provides rules governing when certain aliens may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of “applicants

²⁰ 8 U.S.C. § 1225(a)(1).

for admission.” Section 1225 defines an “applicant for admission” as any “alien present in the United States who has not been admitted *or* who arrives in the United States.”²¹ The INA defines “admission” and “admitted” as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.”²² Thus, an applicant for admission is an alien who is (1) present in the United States who has not lawfully entered the country or (2) who is arriving in the United States. Under § 1225(a)(3), all applicants for admission are subject to inspection by immigration officers to determine if they are admissible.

Section 1225(b)(1) describes two categories of applicants for admission, which together describe some—but not all—of those applicants. The first category includes those aliens who are arriving and are inadmissible under §§ 1182(a)(6)(C) or (a)(7) (Section 1182(a)(6)(c) and (a)(7) address inadmissibility based on misrepresentation or the lack of valid entry documents.)²³ The second category includes those aliens who, in addition to being inadmissible under § 1182(a)(6)(C) or (a)(7), have “not been admitted or paroled into the United States,” and have not “affirmatively shown, to the satisfaction of an immigration officer, that [they] have been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.”²⁴ Aliens within the two categories described in

²¹ *Id.* § 1225(a)(1) (emphasis added).

²² *Id.* § 1101(a)(13)(A).

²³ *Id.* § 1225(b)(1)(A)(i).

²⁴ *Id.* § 1225(b)(1)(A)(i), (iii)(II).

§ 1225(b)(1) are subject to expedited removal and “shall be detained” until removed (or until the end of asylum or credible fear proceedings).²⁵

But those two categories do not encompass all applicants for admission subject to § 1225. Section 1225(b)(2) serves as a catchall for all remaining applicants for admission. 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. Section 1225(b)(2)(A) thus generally provides for detention during removal proceedings for aliens who are applicants for admission but who do not fall within one of the two categories described in § 1225(b)(1) (*i.e.*, arriving aliens, or other aliens subject to expedited removal). Section 1225 does not provide a bond hearing for aliens detained under that provision.

For aliens who fall outside the categories identified in § 1225, another provision— 8 U.S.C. § 1226—provides different procedures for detention and removal. Unlike § 1225, § 1226 is not limited to applicants for admission but broadly applies to all aliens facing removal.

Section 1226(a) provides that if the Attorney General issues a warrant, an alien may be arrested and detained “pending a decision on whether the alien is to be removed from the United States.” Following arrest, the alien may remain detained or may be released on bond or conditional parole.²⁶ By regulation, immigration officers can release such an alien if they demonstrate that they “would not pose a danger to property or persons” and are “likely to appear

²⁵ See 8 C.F.R. § 235.3(b); 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV).

²⁶ *Id.*

for any future proceeding.”²⁷ If not released by an immigration officer, the alien can request a custody redetermination by an immigration judge (IJ) at any time before a final order of removal is issued.²⁸

By contrast, § 1226(c) requires the Attorney General to take into custody certain defined categories of “criminal aliens” when they are released from other forms of custody (or upon DHS’s own initiative) and to detain them during their removal proceedings.²⁹ These individuals are generally not entitled to bond hearings.

ARGUMENT

I. The Court lacks jurisdiction to hear Petitioner’s challenge to the statutory basis for his detention.

Congress has provided noncitizens with a vehicle to challenge the statutory provision that ICE relies on for detention and removal. Specifically, Congress provided, in the INA, that claims related to removal orders are to be presented to the appropriate court of appeals through a petition for review.³⁰ Review of a final order includes review of “all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States.”³¹ The decision to detain Petitioner under § 1225(b)(2)(A) is a question of law arising from his removal

²⁷ 8 C.F.R. § 236.1(c)(8).

²⁸ *See id.* §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

²⁹ 8 U.S.C. § 1226(c).

³⁰ *Id.* § 1252(a)(5).

³¹ *Id.* § 1252(b)(9).

proceedings. Petitioner may raise this question with the IJ in a custody redetermination hearing.³² This issue should thus be reviewed by the appropriate court of appeals as part of an appeal of a final order of removal.

In addition to providing aliens like Petitioner with a vehicle to challenge the basis on which ICE seeks to detain and remove them before the IJ and in the appropriate court of appeals, Congress also in § 1252(b)(9) stripped district courts of jurisdiction to hear such a challenge. “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue, whether legal or factual, arising from any removal-related activity can be reviewed only through the [petition-for-review] process.”³³

Notwithstanding the limitation on such claims set forth in § 1252(b)(9), some courts, including the Tenth Circuit, have held that district courts have jurisdiction to hear a habeas challenge to § 1225(b)(2) detention.³⁴ The district court in *Jose J.O.E.* determined that § 1252(b)(9) did not preclude the petitioner’s habeas challenge because the petitioner there “d[id] not seek review of a removal order.”³⁵ But § 1252(b)(9) provides that “*all* questions or law and fact. . . arising from *any action taken* or proceeding brought to remove an alien from the United

³² See generally 8 C.F.R. § 1003.19.

³³ *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031, 1035 (9th Cir. 2016) (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they ‘arise from’ removal proceedings”); accord *Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or proceeding” is it within the district court’s jurisdiction).

³⁴ *Jose J.O.E. v. Bondi*, No. 25-cv-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Mukantagara v. U.S. Dep’t of Homeland Sec.*, 67 F.4th 1113 (10th Cir. 2023).

³⁵ *Jose J.O.E.*, 2025 WL 266670 at *7.

States” must be brought to the court of appeals.³⁶ Respondents respectfully disagree with the conclusion in *Jose J.O.E.* that § 1252(b)(9) does not apply.

The Tenth Circuit’s ruling in *Mukantagara* is similarly unavailing. That case concerned the decision of U.S. Citizenship & Immigration Services to terminate an alien’s refugee status, which, the court held, did not arise from an “action taken. . . to remove an alien from the United States.”³⁷ Here, however, Petitioner’s case *does* arise from such an action because he challenges the statutory authority pursuant to which he is being detained pending his removal. Section 1252(b)(9) therefore bars Petitioner’s claims.

³⁶ 8 U.S.C. § 1252(b)(9) (emphasis added); *see also, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018) (plurality opinion) (stating that § 1252(b)(9) did not apply because, unlike here, the respondents in the case did not, among other things, “challeng[e] the decision to detain them in the first place”); *Id.* at 319-20 (Thomas, J., concurring in part) (“Section 1252(b)(9) is not restricted to challenges of removal orders.”).

³⁷ *Mukan:agara*, 67 F.4th at 1115-16 (citation omitted).

II. Even if the Court has jurisdiction, Petitioner's statutory challenge fails.³⁸

The text of § 1225(b)(2)(A) makes clear that Petitioner falls within its scope. Section 1225(b)(2)(A) mandates detention for an alien “who is an applicant for admission” if they are “not clearly and beyond a doubt entitled to be admitted.” The statute defines “applicant[s] for admission” to include aliens who (1) are “present in the United States who ha[ve] not been admitted” or (2) “who arrive[] in the United States.”³⁹ In other words, an alien who is present in the United States but has not been inspected or admitted is treated under the statute as an applicant for admission.

Petitioner is an “applicant for admission.” Petitioner is present in the United States. He has not been “admitted” (*i.e.*, he has not made a “lawful entry. . . after inspection and authorization by an immigration officer”).⁴⁰ And he does not argue that he is clearly and beyond a doubt entitled to be admitted. In short, he falls within the scope of § 1225(b)(2)(A).

³⁸ Recent decisions have led to inconsistent rulings. *Compare Altamirano Ramos v. Lyons*, No. 2:25-cv-09785, 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); *with Maldonado Baustista v. Noem*, No. 5:25-CV-1873, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025); *Molina Ochoa v. Noem*, No. 1:25-cv-00881-JB-LF, 2025 WL 3125846 (D.N.M. Nov. 7, 2025); *Garcia Cortez v. Noem*, 1:25-cv-02677-CNS, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Delfino Roque Valdez v. Holt*, No. CIV-25-1250-R, 2025 WL 3709021 (D. Okl. Dec. 22, 2025).

³⁹ 8 U.S.C. § 1225(a)(1).

⁴⁰ *Id.* § 1101(a)(13)(A).

A. The plain text of Section 1225 applies to noncitizens like Petitioner who have been present in the United States.

Petitioner resists the plain reading of § 1225(b)(2)(A). He alleges that § 1225 does not apply to him—that § 1226 does—because § 1225 is limited to those just arriving in the United States and he has been present for several years.

Petitioner’s reading of the statute infers that § 1225(b)(2)(A) should be read in a limited way to apply *only* to aliens who are apprehended at the border or port of entry. But that reading of § 1225(b)(2)(A) does not comport with its text or make sense in the context of the whole section. Rather, § 1225 makes clear that “applicants for admission” includes both those just arriving in the United States *and* those who entered without inspection and have been residing here.

For example, § 1225(b)(1)(A)(i)—which concerns inadmissibility for specified reasons (*i.e.*, misrepresentation or lack of a valid entry document)—is not limited to aliens “arriving in the United States.” Section 1225(b)(1)(A)(i) also applies, through its reference to § 1225(b)(1)(A)(iii), to some aliens 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.”⁴¹

⁴¹ *Id.* § 1225(b)(1)(A)(iii)(II).

Petitioner's allegations also disregard that § 1225(b)(2) is broader than § 1225(b)(1). Section 1225(b)(2) is titled "Inspection of other aliens." The "other aliens" in the title refers to a category of aliens that is not covered by § 1225(b)(1). The Supreme Court has recognized that § 1225(b)(2) refers to a "broader" class of aliens than those described in § 1225(b)(1). In *Jennings v. Rodriguez*,⁴² the Court referred to § 1225(b)(2) as 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 § 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).

The phrase "seeking admission" in § 1225(b)(2)(A) is not limited to those aliens who are actively taking some step to gain admission to the United States. Any contrary reading ignores the parts of § 1225 indicating that anyone falling within the category of "applicants for admission" is deemed, as a matter of law, to be seeking admission.⁴³

This interpretation is consistent with the Supreme Court's view that § 1225(b)(2)(A) applies to "*all applicants for admission* not covered by § 1225(b)(1)."⁴⁴ Indeed, the *Jennings* Court confirmed that all "applicants for admission" are also "seeking admission" by virtue of that status. The Court explained that the "law authorizes the Government to detain certain aliens

⁴² 583 U.S. 281, 287 (2018) (emphasis added).

⁴³ 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)).

⁴⁴ *Jennings*, 583 U.S. at 287 (emphasis added).

seeking admission into the country under §§ 1225(b)(1) and (b)(2).”⁴⁵ But § 1225(b)(1) contains no such “seeking admission” language, and its detention provision applies, in the Attorney General’s discretion, even to some aliens who are not “arriving” at the time of their inspection by an immigration officer.⁴⁶

A reading of the statute that would allow applicants for admission to circumvent mandatory detention 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.”⁴⁷

B. The general requirements in § 1226 do not displace the more specific provisions in general requirements in § 1225.

Further, any argument that § 1226(a) should apply to Petitioner instead of 1225(b)(2)(A) fails. Petitioner appears to allege that the specific requirement of mandatory detention for a particular category of aliens who entered without inspection must mean that § 1226(a) applies to all other aliens who entered without inspection.

Section 1226(a)’s general detention authority, which permits the issuance of warrants to detain aliens for their removal proceedings, must be read alongside § 1225, which specifically addresses the detention of applicants for admission. Section 1226 does not displace the more specific provisions in § 1225 governing the detention of applicants for admission. It is well

⁴⁵ *Id.* at 289 (emphasis added).

⁴⁶ *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.* § 1225(b)(1)(A)(iii) (describing an alien “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”).

⁴⁷ *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020).

established that if “there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one.”⁴⁸ Here, § 1225 is narrower in scope than § 1226. It applies only to “applicants for admission,” which includes aliens present in the United States who have not been admitted.⁴⁹

To be sure, § 1226(c)(1)(E) mandates detention for a narrow category of aliens who entered the country without inspection: those who both entered without inspection and were later arrested for, committed, or have admitted to committing one of a list of enumerated crimes. It requires DHS to take such aliens into custody after their release from criminal custody and detain them.⁵⁰ The fact that § 1226(c)(1)(E) provides further rules for detention of one category of aliens who entered without inspection does not mean that § 1225(b)(2)(A) no longer applies to all other such aliens.

Put differently, it is true that for a certain subset of aliens—those who entered without inspection and then committed (or may have committed) certain crimes—Congress has now mandated their detention in two separate provisions, both § 1225(b)(2)(A) and § 1226(c)(1)(E). But any potential redundancy in requiring mandatory detention for that subset of aliens does not affect § 1225(b)(2)(A)’s requirement to detain other aliens who entered without inspection. Redundancies “are common in statutory drafting—sometimes in a congressional effort to be

⁴⁸ *Guidry v. Sheet Metal Workers Nat. Pension Fund*, 493 U.S. 365, 375 (1990) (citations omitted).

⁴⁹ *See* 8 U.S.C. § 1225(a)(1).

⁵⁰ *See Nielsen v. Preap*, 586 U.S. 392, 414-15 (2019) (explaining that § 1226(c)(1)’s “when released” clause clarifies that DHS custody begins “upon release from criminal custody,” not before, and that it “exhort[s] [DHS] to act quickly”).

doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication.”⁵¹

“Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text.”⁵² The Court should not read § 1226 to require courts to ignore the express detention and removal provisions in § 1225.

C. There is no indication that Congress intended courts to ignore the detention provisions in § 1225.

In enacting the Laken Riley Act (which added § 1226(c)(1)(E)), Congress did not alter § 1225(b)(2)(A).⁵³ It is implausible that in the Laken Riley Act, Congress intended—without ever saying so—to displace the authority in § 1225(b)(2)(A) to detain applicants for admission who are present in the United States and have not been admitted.

III. The Legislative history supports Respondent’s interpretation of the statute.

Before the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), § 1225 provided for the inspection of aliens only when they were arriving at a port of entry.⁵⁴ It required that aliens arriving at a port of entry be placed in exclusion proceedings.⁵⁵ By contrast, aliens “in the United States” who “entered without inspection” were deemed deportable under § 1251(a)(1)(B), and placed in deportation proceedings, where they could request release on bond.

⁵¹ *Barton v. Barr*, 590 U.S. 222, 239 (2020).

⁵² *Id.*

⁵³ See PL No. 119-1, 139 Stat. 3 (2025).

⁵⁴ See 8 U.S.C. § 1225(a) (1990) (discussing inspection of all aliens “arriving at ports of the United States”).

⁵⁵ *Id.* § 1225(c).

Under the pre-IIRIRA regime, whether an alien 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.”⁵⁶ The IIRIRA sought to address this anomaly “by substituting ‘admission’ for ‘entry’ and by replacing deportation and exclusion proceedings with a general ‘removal’ proceeding.”⁵⁷ Congress thus expanded § 1225 to address not only those who presented themselves at a port of entry. As recodified, it includes *all* applicants for admission—*i.e.*, aliens present in the United States who have not been admitted, as well as those just arriving.

The House Judiciary Committee Report confirms Congress intended such a fix when enacting the IIRIRA. According to the Report, the IIRIRA was intended to replace certain aspects of the current “entry doctrine,” under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry.⁵⁸ Hence, the pivotal factor in determining an alien’s status will be whether or not the alien has been lawfully admitted.

⁵⁶ *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010).

⁵⁷ *Id.*

⁵⁸ H.R. Rep. No. 104-469, pt. 1, at 225 (1996).

The Report also explains that before the IIRIRA, “aliens who ha[d] entered without inspection [were] deportable under section [1251(a)(1)(B)],” but that after the IIRIRA “such aliens will not be considered to have been admitted.”⁵⁹ 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.⁶⁰

If the Court interprets § 1225 in the manner advocated by Petitioner, it will undo the fix that Congress enacted through the IIRIRA. On Petitioner’s reading, an alien who enters without inspection would often be entitled to a bond hearing while an alien who presents themselves to immigration officers at a port of entry would not. Such a reading would recreate the anomalous pre-IIRIRA incentives for those entering the country without inspection, an outcome that the Supreme Court has cautioned against.⁶¹

IV. Petitioner does not have a constitutional right to a bond hearing.

Petitioner erroneously claims that he is entitled to a bond hearing as a matter of due process. In *Demore v. Kim*,⁶² the Supreme Court explained that aliens who were convicted of certain crimes may be detained during the entire course of their removal proceedings.⁶³ Under the statutory provision at issue there, like the one at issue here, Congress mandated detention

⁵⁹ *Id.* at 226.

⁶⁰ *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc) (citing 8 U.S.C. § 1225(a)(1)).

⁶¹ See *Thuraissigiam*, 591 U.S. at 140 (“The rule advocated by respondent . . . would . . . create a perverse incentive to enter at an unlawful rather than a lawful location.”).

⁶² 538 U.S. 510 (2003).

⁶³ *Id.* at 513.

ending removal proceedings.⁶⁴ The *Demore* Court reasoned that the “definite termination point” of the detention at the end of removal proceedings assuaged any constitutional concern.⁶⁵

Demore’s reasoning applies here. Petitioner’s detention is not indefinite and he is receiving due process. Petitioner has been detained for a short time. His removal proceedings are pending and moving toward a definite endpoint. His detention will conclude with a determination that he is or is not removable, and Congress’s decision to require his detention pending that determination is a “constitutionally permissible part of that process.”⁶⁶ As the District of Colorado has recognized in the context of § 1225 detention, these proceedings are sufficient to satisfy due process.⁶⁷ Petitioner was correctly classified under § 1225(b) and that all of the rights provided by that statute were met.

CONCLUSION

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

⁶⁴ See *id.*; 8 U.S.C. § 1226(c).

⁶⁵ See *Demore*, 538 U.S. at 529-31.

⁶⁶ *Id.* (citing *Wong Wing v. United States*, 163 U.S. 235, 235 (1896)).

⁶⁷ See Order, *Bonilla Espinoza v. Ceja, et al.*, No. 25-cv-01120-GPG (D. Colo. May 21, 2025) (ECF No. 11) at 19-25; *id.* at 22 (“[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.”) (Exhibit B).

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