IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00119-GPG

YUNIOR HERMOGENES DELGADO RODRIGUEZ,

Petitioner,

v.

PAMELA BONDI, in her official capacity as Attorney General of the United States,
KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security,
TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement, and
JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility,

Respondents.

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

Pursuant to the Court's January 13, 2026, Order, ECF No. 4, Respondents hereby respond to Petitioner Yunior Hermogenes Delgado Rodriguez's Application for a Writ of Habeas Corpus, ECF No. 1 (filed January 12, 2026) (the "Petition"). Pursuant to 28 U.S.C. § 2241, Petitioner, through counsel, asserts violations of the Immigration and Nationality Act ("INA") and related regulations, Fifth Amendment of the United States Constitution, and Administrative Procedure Act ("APA") alleging that Respondents have unlawfully detained him under 8 U.S.C. § 1225(b)(2). *See* ECF No. 1 ¶¶ 61-98. He claims he is not subject to § 1225(b)(2) but is instead subject to 8 U.S.C. § 1226(a) because he was previously "processed and released" pursuant to § 1226(a) upon his

initial entry into the United States several years ago. *Id.* ¶ 6. As relief, he seeks release, or in the alternative, a bond hearing. *Id.* at 27.

As discussed below, the Petition should be denied because Petitioner is an applicant for admission within the scope of § 1225(b)(2)(A). Petitioner is a noncitizen subject to mandatory detention during the pendency of his removal proceedings because he meets the statutory definition of an "applicant for admission," and by virtue of that status, he is deemed to be seeking admission to the United States. Even if Petitioner was previously detained pursuant to § 1226(a), he has never been admitted or paroled into the country. Thus, he is subject to § 1225(b)(2)(A). Moreover, due process does not require a bond hearing before the removal proceedings are final. However, if this Court were to grant relief to Petitioner, he should receive a bond hearing before an Immigration Judge ("IJ") instead of release.

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[1] 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]

[1] 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).

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 § 1226(a), a provision that also authorizes detention of certain noncitizens while removal proceedings are pending. *See* ECF No. 1 ¶ 6. 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 seeks release or, in the alternative, a bond hearing.

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. Thus, the Court should deny Petitioner's requests for relief, because he is subject to § 1225(b)(2)(A) and thus does not have, as he claims, a right to a bond hearing.[2]

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[2] Petitioner additionally argues that he is a member of a class recently certified in *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, at *3-4 (D. Colo. Nov. 21, 2025). Respondents do not challenge Petitioner's status as a class member. However, to date, the only relief that Petitioner is entitled to as a class member is that Respondents are precluded from removing Petitioner from the United States or transferring him out of the District of Colorado during the pendency of this action. *Id.* at *7. This Court ordered the same on January 13, 2026. *See* ECF No. 4.

FACTUAL BACKGROUND

Petitioner's entry into the United States. Petitioner is a native and citizen of Cuba. *See* Ex. A, Declaration of Eric Darko (January 23, 2026) ¶ 4. On October 26, 2023, he was apprehended near Eagle Pass, Texas, by U.S. Customs and Border Patrol ("CBP") shortly after he unlawfully crossed the United States-Mexico border and entered the United States. *Id.* ¶ 5. CBP determined that Petitioner is inadmissible to the United States. *Id.* ¶ 7. He was never admitted or paroled into the United States. *Id.* ¶¶ 6-7. Thus, he is being treated as an applicant for admission. *Id.* ¶ 15.

History of Petitioner's immigration proceedings. Petitioner claimed a fear of persecution or torture if returned to Cuba. *Id.* ¶ 8. He was detained and processed for removal proceedings. *Id.* ¶ 9. On October 27, 2023, CBP 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) (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). *Id.* The NTA scheduled Petitioner for an initial hearing in removal proceedings on March 2, 2027. *Id.*

Petitioner was then released from custody due to a lack of bed space in a detention facility. *Id.* ¶ 11. He was released on his own recognizance and enrolled in the Alternatives to Detention program. *Id.* ¶ 12.

On March 4, 2024, Petitioner filed a Form I-589 (Application for Asylum and Withholding of Removal) with the EOIR. *Id.* ¶ 13.

Petitioner's detention pursuant to 8 U.S.C. § 1225(b)(2). On November 15, 2025, Petitioner was arrested and detained by ICE officers in Key Largo, Florida, pending resolution of his removal proceedings. *Id.* ¶ 14. Petitioner was and remains detained pursuant to 8 U.S.C. § 1225(b). *Id.* ¶ 15. On December 15, 2025, Petitioner filed a motion for a custody redetermination hearing. *Id.* ¶ 16.

On December 17, 2025, DHS filed a motion to pretermit[3] Petitioner's pending asylum application. *Id.* ¶ 17.

On December 22, 2025, Petitioner withdrew his request for a custody redetermination hearing. *Id.* ¶ 18.

On December 26, 2025, Petitioner filed a Form I-485 (Application to Register Permanent Residence or Adjust Status) with EOIR under the Cuban Adjustment Act ("CAA") of 1966. *Id.* ¶ 19. Under the CAA, Pub. L. 89-732, natives or citizens of Cuba residing in the United States who meet certain eligibility requirements can apply for lawful permanent resident status. *Id.* One eligibility requirement is that the noncitizen was inspected and admitted or paroled into the United States. *Id.* Petitioner was not inspected and admitted or paroled into the United States. *Id.* ¶ 6. Moreover, a pending

[3] Noncitizens in removal proceedings have the burden of establishing eligibility for relief or protection from removal. A motion to pretermit requests that the IJ dismiss the noncitizen's application without an evidentiary hearing because the noncitizen has failed to establish eligibility for relief or protection. Ex. A ¶ 17, fn. 1.

application for adjustment of status under the CAA does not confer lawful status in the United States. *Id.* ¶ 19.

On December 27, 2025, Petitioner filed an Opposition to DHS's motion to pretermit the pending asylum application. *Id.* ¶ 20.

To date, Petitioner remains in ICE custody at the Denver CDF. *Id.* ¶ 3. His removal proceedings remain pending before EOIR. *Id.* ¶ 21. He is scheduled for an individual hearing on February 25, 2026. *Id.*

Petitioner's habeas petition. Petitioner, through counsel, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 on January 12, 2026. *See* ECF No. 1. In the Petition, Petitioner asserts five claims for relief. *See* ECF No. 1 ¶¶ 61-98. First, he alleges that Respondents have violated the INA by subjecting him to detention under § 1225(b)(2) when he was previously released under § 1226. *Id.* ¶¶ 67-70. Petitioner claims that because he was previously released under § 1226, he cannot now be detained under § 1225(b)(2). *Id.* ¶ 62. Second and third, he alleges a violation of his due process rights under the Fifth Amendment of the United States Constitution because of Respondents' alleged failure to provide Petitioner a bond hearing and because he has been allegedly "re-detained without cause." *Id.* ¶¶ 71-80. Fourth, Petitioner claims that his detention under § 1225(b)(2) violates DHS regulations (8 C.F.R. §§ 236.1, 1236.1, 1003.19), which provide that "individuals who were present without having been admitted or paroled were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226." *Id.* ¶¶ 81-84. Fifth, he asserts a violation of the APA,

alleging that his continued detention violates 5 U.S.C. § 706(2) because it is "arbitrary and capricious." *Id.* ¶¶ 85-98. As relief, Petitioner seeks release or a bond hearing within seven days. *Id.* at 27.

On January 13, 2026, the Court ordered Petitioner to serve Respondents by overnight mail and email on or before January 16, 2026. ECF No. 4. The Court further ordered Respondents to respond to the Petition and show cause as to why the Petition should not be granted within seven days of service. *Id.* The U.S. Attorney's Office was served by overnight mail on January 15, 2026, and by email on January 16, 2026. *See* ECF No. 8. Accordingly, Respondents' deadline to respond to the Petition is January 23, 2026.

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:

1) **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.[4]

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

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

The *Jennings* Court's discussion of "applicant for admission" as a term of art made clear that the term "applicant for admission" is not limited to noncitizens who have submitted an immigration application. Rather, there are two criteria to be an applicant

[4] 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).

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, marks added).

The Court commented later in its opinion that "[i]n sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2)." *Id.* at 289. But the 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). Section 1225 thus confirms that a noncitizen can seek admission simply by meeting the definition of an applicant for admission *or* can "otherwise" seek admission by directly applying for admission.

3) Section 1225(b) applies to all applicants for admission, not just arriving aliens or those who unlawfully entered the 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 Jennings*, 583 U.S. 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 (emphasis added).

Thus, a noncitizen who meets the general definition of applicant for admission (such as an individual who is unlawfully present and has not been admitted) but does not fall within the two § 1225(b)(1) subcategories described above is still an "applicant

for admission" who falls under the "catchall" provision of § 1225(b)(2).

4) In § 1225, Congress did not grant applicants for admission a right to a bond hearing.

The Court in *Jennings* recognized that § 1225 does not provide 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 who an immigration officer determines are "not clearly and beyond a doubt entitled to be admitted" shall be detained for removal proceedings under 8 U.S.C. § 1229a.

5) Section 1226, in contrast, provides for detention, and bond hearings, for other categories of noncitizens subject to removal.

The *Jennings* Court recognized that a different statutory provision—§ 1226(a)—governs the detention of other noncitizens, including those who had been "admitted." As the Court explained in *Jennings*,

> Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls 'within one or more . . . classes of deportable aliens.' § 1227(a). That includes aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission. See §§ 1227(a)(1), (2).

583 U.S. at 288 (emphasis added). Thus, § 1226(a) extends to 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. Petitioner is an applicant for admission; thus, he is subject to § 1225(b)(2)(A).

Petitioner alleges that § 1225(b)(2) does not apply to those that were "previously apprehended by ICE, released under § 1226, and have been residing in the United States prior to being re-detained." ECF No. 1 ¶ 62. He further claims that his "legal posture was fixed within §1229a removal proceedings and governed by § 1226(a)'s custody framework." *Id.* In essence, Petitioner claims, without support, that because he was previously detained under § 1226, he cannot now be detained under § 1225(b)(2). The Court should reject this argument for two reasons.

First, even if Petitioner was detained under § 1226, that does not preclude him

from now being detained pursuant to § 1225(b)(2). 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); Ex. A ¶ 6.

Moreover, past practice is not dispositive.[5] Petitioner's prior detention pursuant to § 1226, does not preclude his detention under § 1225(b). Indeed, Petitioner does not assert that he was admitted or paroled into the United States. *See* 8 U.S.C. § 1225(a)(1); *see also* Ex. A ¶¶ 6, 10 (stating that Petitioner was never admitted or paroled into the United States, and he was charged in the NTA with being inadmissible on the grounds of being present in the United States without being admitted or paroled). Thus, Petitioner is subject to § 1225(b)(2)(A) because he is an applicant for admission.

Second, there is no question in this case that Petitioner is "seeking admission" to the United States because he is an applicant for admission who is seeking asylum based on a fear of removal to his native country, Cuba, and adjustment of status under

[5] Petitioner also argues that Respondents should be "estopped from reversing course" and asserting that § 1225(b) governs in cases such as Petitioner's because it is contrary to DHS's prior position. ECF No. 1 ¶ 32. To the extent Petitioner asserts a general challenge to DHS's policies, such a claim is not properly asserted in a habeas action pursuant to 28 U.S.C. § 2241 because it is not limited to a challenge to the fact or duration of Petitioner's confinement. A habeas proceeding is "at its core a remedy for unlawful executive detention" and cannot be used to bring other challenges. *DHS v. Thuraissigiam*, 591 U.S. 103, 119 (2020) (quotation omitted).

the Cuban Adjustment Act. *Id.* ¶¶ 12, 18. Because Petitioner "is not clearly and beyond doubt entitled to be admitted," he therefore "*shall* be detained for a proceeding under section 1229a" of the INA. 8 U.S.C. § 1225(b)(2)(A).

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

Petitioner alleges that his detention without a bond hearing violates both his procedural and substantive due process rights under the Fifth Amendment of the United States Constitution. ECF No. 1 ¶¶ 64-80. Petitioner fails to establish a violation of his due process rights.

A. The Supreme Court has upheld mandatory detention while removal proceedings are pending.

Petitioner claims that his procedural due process rights have been violated because he has been detained without "notice, new facts, or opportunity to be heard." *Id.* ¶ 73.

As a preliminary matter, the Supreme Court has held that mandatory detention during the pendency of removal proceedings does not violate due process. *See Demore*, 538 U.S. at 531 ("Detention during removal proceedings is a constitutionally permissible part of that process."). Central to the Supreme Court's reasoning was the fact that the mandatory detention had "a definite termination point"—the end of the removal proceedings—distinguishing this case from the potentially indefinite detention addressed in *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See Demore*, 538 U.S. at 528-29. The Supreme Court has never held that a noncitizen has a due process right to a bond hearing during removal proceedings that have a definite termination point.

Here, Petitioner's removal proceedings are moving toward a definite endpoint, as his individual hearing is scheduled for February 25, 2026. See Ex. A ¶ 20. Petitioner fails to establish that his detention has impeded his ability to participate in his removal proceedings. Indeed, he filed a motion for a custody redetermination as recently as December 15, 2025. *Id.* ¶ 15. Petitioner later withdrew the motion on December 22, 2025. Ex. A *Id.* ¶ 17. Thus, he has the opportunity to be heard and to challenge to his detention in the immigration court, and by filing this habeas petition in the district court.[6]

B. The *Mathews* factors do not apply.

Petitioner further claims that the Court should evaluate whether his detention violates his procedural due process rights using the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Id.* ¶¶ 67-71. But the Supreme Court has not applied the *Mathews* analysis in this context.

In *Demore*, the Supreme Court expressly addressed the due process implications of detention pending removal proceedings and never suggested that it was proper to use the *Mathews* factors. *See generally* 538 U.S. at 517-31. Rather, to resolve the due process challenge, the Supreme Court noted differences in the immigration context ("Congress may make rules as to aliens that would be unacceptable if applied to citizens," *id.* at 522), and considered that detention was "necessarily a part of this

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[6] Any challenge to the process he received when he was redetained on November 15, 2025, is not a cognizable habeas claim and is not properly asserted in this action. *See Thuraissigiam*, 591 U.S. at 119 (A habeas proceeding is "at its core a remedy for unlawful executive detention" and cannot be used to bring other challenges.) (quotation omitted).

deportation procedure," *id.* at 524 (quoting *Carlson v. Landon*, 342 U.S. 524, 538 (1952)), and not indefinite, *id.* at 527-29. In *Thuraissigiam*, the Supreme Court also addressed due process issues about admission and likewise made no reference to *Mathews*. *See* 519 U.S. at 138-40. Finally, in *Zadvydas*, the Supreme Court considered the due process implications of "indefinite detention" after a final order of removal when deportation was "no longer practically attainable," 533 U.S. at 690, but did not cite *Mathews* or employ its three-factor test. *See id.* at 690-701.

Rather, 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." *Thuraissigiam*, 591 U.S. at 138. 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 would need to establish prejudice. As discussed above, he has not shown that he is being denied procedures in his immigration proceedings, where he can challenge the determination that § 1225(b)(2) 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.

C. Petitioner's detention is constitutionally permissible as part of the removal process.

Petitioner further claims that his "renewed detention" violates his substantive due process rights because he has been detained "without cause" or justification. *Id.* ¶¶ 74-80. As discussed above, Petitioner's argument fails because he is subject to detention under § 1225(b)(2) during the pendency of his removal proceedings. That is the justification for his current detention. Congress's decision to detain him pending removal is a "constitutionally permissible part of th[is] process." *See Demore*, 538 U.S. at 531. Thus, there is no due process violation.

III. Petitioner's claim that his detention violates "[b]ond [r]egulations" is without merit.

Petitioner also alleges that his detention under § 1225(b)(2)(A) violates "[b]ond [r]egulations," 8 C.F.R. §§ 236.1, 1236.1, and 1003.19. ECF No. 1 ¶¶ 81-84. He alleges that the agency intended, through those regulations, that "individuals who were present without having been admitted or paroled were eligible for consideration for bond and

bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations." *Id.* ¶ 82 (citing to a Federal Register entry from 1997 which 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."). *See* 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)).

A review of the regulations cited by Petitioner does not establish that applicants for admission are eligible for bond and bond redetermination. To the contrary, under the regulations, a noncitizen "not lawfully admitted is not eligible to be considered for release from custody." *See* 8 C.F.R. §§ 236.1(c)(2), 1236.1(c)(2).

As it relates to the Federal Register entry, the citation does not support Petitioner's argument for at least two reasons. First, it acknowledges that noncitizens who are present without having been admitted are "applicants for admission." Thus, it implicitly acknowledges that applicants for admission are not eligible for bond hearings. Instead, it apparently regarded them as eligible for bond hearings as a matter of administrative discretion, not of statutory interpretation.

Further, the Federal Register 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 Enter. v. Raimondo, 603 U.S. 369, 388 (2024) (quotations omitted). 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 of making such individuals eligible for bond hearings therefore carries little weight in interpreting § 1225.

IV. Petitioner's APA claim fails.

Petitioner alleges that his detention without bond pursuant to § 1225(b)(2) violates the APA because it is "arbitrary, capricious, an abuse of discretion, contrary to law, and in excess of statutory authority, and must be set aside under 5 U.S.C. § 706(2)." ECF No. 1 ¶¶ 85-98.

The Court lacks jurisdiction to consider an APA claim here. Congress limited judicial review under the APA to situations where "there is no other adequate remedy in a court." 5 U.S.C. § 704. If the Court were to have jurisdiction over Petitioner's claim, it would be a habeas claim because Petitioner is challenging the legality of his detention. *J.G.G. v. Trump*, 604 U.S. 670, 673 (2025) (holding that where a party's argument challenges the validity of detention, the case must proceed in habeas). The availability of a habeas claim bars APA jurisdiction.

As discussed above, because Petitioner is subject to § 1225(b)(2), his detention is in accordance with the statute. Accordingly, even if the Court had jurisdiction over the APA claim, that claim fails.

CONCLUSION

For the reasons discussed above, the Court should deny the Petition. However, if this Court were to grant relief to Petitioner, he should receive a bond hearing before an IJ instead of release.

Dated: January 23, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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