IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00385-DDD

JOSE LARA MEJIA,

Petitioner,

v.

JUAN BALTAZAR, Warden of the Aurora Contract Detention Facility, in his official capacity;
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT;
ROBERT HAGAN, Director of the Denver Field Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, in his official capacity;
KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity;
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;
PAMELA BONDI, Attorney General of the United States, in her official capacity;
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;
SIRCE OWEN, Acting Director for Executive Office of Immigration Review, in her official capacity; and
U.S. DEPARTMENT OF HOMELAND SECURITY,

Respondents.

RESPONDENTS' COMBINED RESPONSE TO ORDER TO SHOW CAUSE AND MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION (Docs. 4 & 5)

Respondents hereby respond to: (1) the Court's order to show cause (Doc. 4) to show why the Petition for Writ of Habeas Corpus, Doc. 1 (the "Petition") should not be granted; and (2) Petitioner's Motion for a Temporary Restraining Order and Preliminary Injunction, Doc. 5 (the "Motion"). Because the Petition and Motion raise the same legal issues, Respondents address them together. Petitioner is a noncitizen in immigration detention who challenges his

detention under 8 U.S.C. § 1225(b)(2)(A). *See* Doc. 1 ¶¶ 13-14; Doc. 5 at 10. He asks the Court to rule that he is subject to detention under 8 U.S.C. § 1226(a) and to order his release or that a bond hearing be held. *See* Doc. 1 ¶¶ 2, 5-6, 13, 61 and p. 18; Doc. 5 at 18, 27.

The Court should deny the Petition and Motion because Petitioner is an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and his detention during removal proceedings does not violate due process.

I. INTRODUCTION

This case poses a question of statutory interpretation. The Department of Homeland Security is detaining Petitioner under a provision of the INA, § 1225(b)(2)(A), that applies to noncitizens who are deemed to be "applicants for admission" because they entered the country without inspection and have never been admitted. Section 1225(b)(2)(A) requires detention of any "applicant for admission" if an "examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted."

Petitioner claims he is not subject to § 1225(b)(2)(A) but rather § 1226(a), a provision that, unlike the former, permits detained noncitizens to seek release through a bond hearing. Based on the premise that he is eligible for a bond hearing under § 1226(a), Petitioner asks the Court to release him or, alternatively, order a bond hearing under § 1226(a). *See* Doc. 1 ¶¶ 5-6, 13, 61; Doc. 5 at 18.

The Court should conclude that Petitioner is an applicant for admission within the meaning of § 1225(b)(2) based on the statutory text and the Supreme Court's interpretation of it in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). The Fifth Circuit recently held that "the government's position is correct." *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 498 (5th Cir.

2026). While numerous nonprecedential decisions have held otherwise, a close reading of the Supreme Court's explanation of § 1225 in *Jennings* supports Respondents' view, and the reasoning of many lower court decisions does not square with the statute or the Supreme Court's interpretation. The Court should deny the Petitioner and Motion because Petitioner is subject to detention under § 1225(b)(2)(A), which does not violate due process.

II. BACKGROUND

Petitioner has been living in the United States "without lawful immigration status since March 22, 1999."[1] *See* Doc. 1 ¶ 1. He has not been admitted to the United States. *Id.* ¶ 59. The government took Petitioner into immigration custody on January 26, 2026, charging him with having entered the United States without admission or inspection under 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* ¶ 1; Doc. 5-2 at 2. Petitioner's removal proceedings are ongoing. *See* Doc. 1 ¶ 1. He is now seeking to be admitted as a permanent resident. *Id.* ¶ 34.

III. LEGAL BACKGROUND

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

[1] For purposes of this response, Respondents do not dispute Petitioner's facts cited herein.

A. Section 1225 applies to "applicants for admission," a term of art defined to include 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* an "arriving alien" and an individual who is *present* in the United States but has not been "admitted."[2]

The Court recognized the term "applicant for admission" as a term of art. "Under … § 1225, an alien who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted,' is *treated as* 'an applicant for admission.'" *Jennings*, 583 U.S. at 287 (emphasis added). Thus, a noncitizen who is (1) "present" in the country but (2) has not been "admitted" is an "applicant for admission" by operation of law.

The Court later stated that the government may "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 recognize "seeking admission" as a third criterion for § 1225. Rather, this reference reflected the Court's prior explanation that noncitizens who fall within § 1225(b) are, as a matter of law, "treated as" "applicants for admission." *See id.* at 287. The Court later expressly equated "seeking" admission with "applicants for admission": "As noted, § 1225(b) applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Id.* at 297.

In short, the *status* of being an applicant for admission is one way that a noncitizen may

[2] The INA defines "admission" and "admitted" to mean "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).

be "seeking admission." Section 1225 also provides: "All aliens … who are applicants for admission *or otherwise seeking admission* … shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3) (emphasis added). This phrasing confirms that a noncitizen can seek admission simply by meeting the definition of an applicant for admission *or* can "otherwise" seek admission by directly applying for admission. Because Petitioner is *deemed* by the INA to an applicant for admission, he is also "seeking" admission under the statute.

B. Section 1225(b) governs the detention of all applicants for admission, not just arriving aliens or those who unlawfully entered the country recently.

The *Jennings* Court then explained that § 1225(b)(1) and (2) together govern the detention of all applicants for admission.

The Court explained that § 1225(b)(1) applies to two subcategories of applicants for admission (not at issue here), including 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. Noncitizens in those subcategories "are normally ordered removed 'without further hearing or review' pursuant to an expedited removal process." *Id.* (quoting § 1225(b)(1)(A)(i)).

The Court then explained that the detention of *all other* applicants for admission who fall outside those two subcategories is governed by § 1225(b)(2). It described § 1225(b)(2) as a "*catchall* provision that applies to *all* applicants for admission not covered by § 1225(b)(1)." 583 U.S. at 287 (emphases added). In sum, all "applicants for admission" are subject to detention—either under § 1225(b)(1) if they fit within one of two subcategories, or, if not, under

§ 1225(b)(2).

C. Congress mandated the detention of applicants for admission.

The *Jennings* Court recognized that § 1225(b)(2) mandates the detention of applicants for admission. It explained that noncitizens covered by § 1225(b)(2) generally "shall be detained" during their removal proceedings, with narrow exceptions. *Jennings*, 583 U.S. at 287-88 (quoting § 1225(b)(2)(A)). "Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded." *Id.* at 297.

The Court did *not* suggest that applicants for admission are eligible for bond hearings under § 1226(a). Rather, the Court appeared to recognize that these two provisions—§ 1225(b)(2) and § 1226(a)—authorize detention for different sets of individuals: detention of noncitizens covered by § 1225 is authorized by § 1225, and detention of individuals *not* covered by § 1225 is authorized by § 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. Distinguishing these authorities, the *Jennings* Court did *not* suggest that noncitizens described in § 1225 (for whom Congress has not authorized bond) should be governed by § 1226(a) (the provision where Congress *has* expressly authorized bond).

IV. ARGUMENT

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

As explained above, § 1225(a)(1) deems a noncitizen "present in the United States" without "admission" to be an "applicant for admission" as a matter of law, without limitation as to how long the noncitizen has been "present." Here, Petitioner is present in the United States

but has never been "admitted"—*i.e.*, he has not made a "lawful entry … after inspection and authorization by an immigration officer."[3] 8 U.S.C. § 1101(a)(13)(A); *see* Doc. 1 ¶ 1 (stating that Petitioner has been "without lawful immigration status since" entering the United States in 1999); *id.* ¶ 59 (stating that Petitioner is a noncitizen "present without admission or parole"). The text of § 1225, and the *Jennings* Court's interpretation of it, compels the conclusion that Petitioner is an "applicant for admission" as a matter of law.

Because Petitioner does not qualify for detention under § 1225(b)(1), he is subject to § 1225(b)(2)(A), the "catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)," *see Jennings*, 583 U.S. at 287, so long as an examining immigration officer determines that he is "not clearly and beyond doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Here, Petitioner concedes he is present without ever having been admitted. *See* Doc. ¶¶ 1, 59. Immigration officers have charged him with being inadmissible under § 1182(a)(6)(A)(i). *See* Doc. 5-2 at 2. He is not "clearly and beyond doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see* 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."). As a result, the INA mandates Petitioner's detention.

Petitioner makes several arguments why Section 1225(b)(2)(A) should not apply to him. First, he argues that he is subject to § 1226(a) because he is already present in the United States and not "seeking admission" at the border. Doc. 1 ¶¶ 57-61; Doc. 5 at 22. Second, he contends

[3] An "immigration officer" is "any employee … of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title." 8 U.S.C. § 1101(a)(19).

that Respondents' interpretation of the INA conflicts with the Laken Riley Act. Doc. 1 ¶¶ 46-48; Doc. 5 at 19. Third, he contends that this Court should join the courts that have sided with his interpretation of § 1225. Doc. 1 ¶¶ 54-55; Doc. 5 at 14-16. Fourth, he argues that Respondents' interpretation conflicts with its prior interpretation.[4] Doc. 1 ¶¶ 48-50; Doc. 5 at 22. For the reasons set forth below, the Court should reject these arguments.

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

When interpreting a statute, courts start with the statutory language itself. *See Advocate Health Care Network v. Stapleton*, 581 U.S. 468, 475 (2017). The text of § 1225, as the *Jennings* Court explained, applies to "applicants for admission," a term of art that describes Petitioner, as analyzed above.

Section 1225 nowhere limits its reach only to newly arriving noncitizens. *See Buenrostro-Mendez*, 166 F.4th at 504 (noting that Congress did not use the term "arriving alien," in § 1225(b)(2)(A), as it had in subsections (a)(2), (c)(1), and (d)(2)). The *Jennings* Court recognized that § 1225(b)(2) refers to a "broader" category of noncitizens than those described in § 1225(b)(1) and applies to *all* "applicants for admission" who do not fall within § 1225(b)(1). 583 U.S. at 287. 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). *See also Buenrostro-Mendez*, 166 F.4th at 502-06.

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[4] Petitioner discusses the Board of Immigration Appeals's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). That opinion has since been vacated. *See Bautista v. Santacruz*, No. 25-cv-01873, 2026 WL 468284, at *10 (C.D. Cal. Feb. 18, 2026), *appeal docketed*, No. 26-1044 (9th Cir. Feb. 23, 2026).

Petitioner's argument that § 1225 does not apply to him because he is not "seeking admission" is unavailing. *See* Doc. 1 ¶ 60; Doc. 5 at 13, 22. As explained above, § 1225 provides that *being* an applicant for admission is one way to "seek" admission. *See* 8 U.S.C. § 1225(a)(3) ("All aliens … who are applicants for admission *or otherwise seeking admission* … shall be inspected by immigration officers") (emphasis added); *id.* § 1225(a)(5) ("An applicant for admission may be required to state … the purposes and intentions of the applicant *in seeking admission* ….") (emphasis added). Both the Supreme Court and Fifth Circuit have equated the two phrases. *See Jennings*, 583 U.S. at 297 (treating those "seeking entry" as synonymous with "applicants for admission"); *Buenrostro-Mendez*, 166 F.4th at 502 ("being an 'applicant for admission' is not a condition independent from 'seeking admission'"). Moreover, the *Jennings* Court did not suggest that just *some* applicants for admission are subject to detention under § 1225(b); it said *all* applicants for admission are governed by either § 1225(b)(1) or § 1225(b)(2). 583 U.S. at 287. And, regardless, Petitioner states that he is seeking admission to permanent residence. *See* Doc. 1 at 34.

In short, all noncitizens who are "applicants for admission" (like Petitioner) are "seeking admission" by virtue of that status; here, in addition, Petitioner is otherwise seeking admission. *See* Doc. 1 ¶ 34. Section 1225 applies to Petitioner.

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

Petitioner claims that Respondents' interpretation would render superfluous certain amendments to the INA from the Laken Riley Act, now codified within § 1226(c)(1)(E). Doc. 5 at 20. 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. Section 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 US.C. § 1225(a)(1).

It is true that a narrow subset of noncitizens—those who were not admitted *and* then committed (or may have committed) certain crimes—are subject to mandatory detention under two separate provisions: § 1225(b)(2)(A) (based on their entry without inspection) and § 1226(c)(1)(E) (based on their criminal-related conduct). But any potential redundancy in that specific case does not affect § 1225(b)(2)(A)'s applicability to noncitizens who entered without inspection and did *not* commit enumerated crimes. And even so, 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. When Congress enacted the Laken Riley Act, adding § 1226(c)(1)(E), it did not alter § 1225(b)(2)(A). *See generally* Pub. L. No. 119-1, 139 Stat. 3 (2025). There is thus no indication that in modifying § 1226, Congress intended, without saying so, to make certain applicants for admission eligible for bond hearings.

Other courts, including the Fifth Circuit, have rejected Petitioner's argument, explaining how the Act was not without effect or superfluous. As the Fifth Circuit explained, "the Act did have a substantial effect when passed insofar as it required the detention without bond or parole of certain aliens the administration was then treating as bond-eligible." *Buenrostro-Mendez*, 166 F.4th at 505. Applicants for admission may seek release on parole under 8 U.S.C. § 1182(d)(5)(A), but the expanded § 1226(c) "eliminate[d] the option of parole for those to whom it applies." *Id.* Therefore, the amendment was not superfluous. Other district courts have reached the same conclusion that § 1225(b)(2)(A) is not superfluous. *See Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855, at *6-7 (S.D.N.Y. Dec. 4, 2025) (rejecting a surplusage argument and explaining how the act "fills a gap in the mandatory detention regime"); *Chavez v. Noem*, 801 F. Supp. 3d 1133, 1141 (S.D. Cal. 2025) ("Section 1226(c) simply removed the Attorney General's detention discretion for aliens charged with specific—but not all—crimes."); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331, at *6 (S.D. Tex. Nov. 13, 2025) (explaining that the Act had the effect of requiring "mandatory detention for criminal, inadmissible aliens who had not been subject to it … by longstanding practice of prior Administrations"); *Mejia Olalde v. Noem*, No. 1:25-cv-168, 2025 WL 3131942, at *4-5 (E.D. Mo. Nov. 10, 2025) (explaining the effect of the Act and rejecting the petitioner's argument of surplusage). This Court should reject the argument, too.

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

Petitioner argues that this Court should follow other non-precedential opinions that have embraced Petitioner's statutory interpretation. *See* Doc. 1 ¶ 54; Doc. 5 at 14-16. But courts have divided on this issue. The Tenth Circuit has not yet interpreted § 1225(b)(2)(A) in this context,

and the Fifth Circuit has affirmed Respondents' position.[5] *See Buenrostro-Mendez*, 166 F.4th at 501-08. Other lower courts have, as well. *See, e.g.*, *Zhuang v. Bondi*, No. 25-cv-201, 2026 WL 352872, at *3-5 (E.D. Mo. Feb. 9, 2026); *Xiaoquan Chen*, 2025 WL 3484855, at *3-7; *Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932, at *1-4 (W.D.N.Y. Dec. 4, 2025); *Altamirano Ramos v. Lyons*, --- F. Supp. 3d ----, 2025 WL 3199872, at *4-8 (C.D. Cal. Nov. 12, 2025); *Chavez*, 801 F. Supp. 3d at 1140-41; *Cabanas*, 2025 WL 3171331, at *3-6; *Sandoval v. Acuna*, No. 25-cv-01467, 2025 WL 3048926, at *2-6 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *6 (E.D. Wis. Oct. 30, 2025); *Vargas Lopez v. Trump*, 802 F. Supp. 3d 1132, 1137-43 (D. Neb. 2025). These decisions, and the Supreme Court's discussion in *Jennings*, support Respondents' position.

4. Respondents' interpretation of the INA is not undermined by the notice accompanying the implementing regulations.

Petitioner suggests that Respondents' interpretation of the § 1225(b)(2) is inconsistent with prior practice, pointing to a Federal Register notice that states that "aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997); *see* Doc. 1 ¶ 47. But this Federal Register entry supports Respondents' interpretation. The entry implicitly acknowledges that noncitizens who are present without having been admitted are "applicants for admission." Thus, the cited language supports the

[5] The Seventh Circuit, while staying a district court's order requiring the release of individuals who claimed they were arrested unlawfully, has suggested that § 1225(b)(2)(A) likely does not cover all noncitizens who are "unlawfully already in the United States," *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1060 (7th Cir. 2025), but failed to closely analyze *Jennings*.

conclusion that noncitizens who entered without inspection are not eligible for bond hearings under the statute. *See Buenrostro-Mendez*, 166 F.4th at 506-08. Instead, the government apparently regarded such applicants as eligible for bond hearings as a matter of administrative discretion, not statutory interpretation.

Regardless, a notice in the Federal Register cannot change the language of a statute. The weight given to agency interpretations must "depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade." *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 388 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). Here, the agency provided little analysis to support its reasoning. *See* 62 Fed. Reg. at 10323. An agency's prior practice carries little weight in interpreting the text of § 1225.

Finally, although "Congress's purpose matters far less than what it wrote," Respondents' position "better honors" Congress's "predominant goal in the enactment of IIRIRA" by putting "aliens seeking admission lawfully on equal footing with those who entered without inspection." *Buenrostro-Mendez*, 166 F.4th at 508. "It seems strange to suggest that Congress would have preserved bond hearings exclusively for unlawful entrants," *id.*, and withheld them from those who sought admission through legal channels—the logical result of Petitioner's interpretation.

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

Petitioner argues that his detention violates his due process rights under the Fifth Amendment. *See* Doc. 1 ¶¶ 66-68; Doc. 5 at 17-18, 24-25. Regarding substantive due process, Petitioner does not show a violation, as his removal proceedings will have a definite end point, and the Supreme Court has approved mandatory detention during such proceedings. Regarding

procedural due process, Petitioner fails to show a violation because he is subject to detention under § 1225(b)(2)(A), and he has received the due process that is set forth by statute.

First, Petitioner has not shown that his detention violates substantive due process. The Supreme Court "has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). The Supreme Court acknowledged the "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings … ." *Id.* at 526. Specifically, the Court relied on *Reno v. Flores,* 507 U.S. 292 (1993), where the Court had rejected a due process challenge to the detention of minors during deportation proceedings, *id.* at 313-14, and on *Carlson v. Landon*, 342 U.S. 524 (1952), where the Court had rejected a due process challenge to detention by noncitizens on the ground that they did not pose a flight risk. *See Demore*, 538 U.S. at 531. Later, in *Jennings*, the Court observed that the *Demore* Court had relied on the principle that the detention during removal proceedings "has "a definite termination point: the conclusion of removal proceedings." 583 U.S. at 304 (internal marks omitted). Here, under *Demore*, Petitioner has not shown that his detention is unconstitutional. He is detained during his removal proceedings, *see* Doc. 1 ¶ 1, which have a definite end point.

Second, to show that he has been denied procedural due process, Petitioner would need to show that he has been deprived of a statutory right. The Supreme Court has "often reiterated" the "important rule" that, for "foreigners who have never been … admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *DHS v. Thuraissigiam*, 591 U.S. 103,

140 (2020). In *Thuraissigiam*, the Court explained that an alien who was an "applicant for admission" had "only those rights regarding admission that Congress has provided by statute," and "the Due Process Clause provides nothing more." *Id.* As explained, Petitioner has not been deprived of any statutory right as he is properly detained under § 1225(b)(2)(A).

Also, given that Petitioner has not shown that he is being denied an opportunity to be heard *in his immigration proceedings*, where he can challenge the determination that § 1225(b)(2)(A) applies, he has not shown a procedural due process violation. *See Duran-Hernandez v. Ashcroft*, 348 F.3d 1158, 1163 (10th Cir. 2003) (where an alien failed to show "that additional procedural safeguards would have changed" the immigration court's decision, this "failure to prove prejudice leads us to reject [his] due process claim"). "[S]o long as the government reasonably affords noncitizen detainees in ongoing immigration proceedings administrative process to challenge the *merits* determinations that are keeping them in custody, continued custody is permissible." *Bonilla Espinoza v. Ceja*, No. 25-cv-01120-GPG (D. Colo. May 21, 2025), Doc. 11 at 13.

This Court has already conducted a thorough analysis of substantive and procedural due process requirements in the context of § 1225(b)(2)(A). *See* Order Denying Mot. for Prelim. Inj. at 7-18, *Orande Ahinsha Richards v. Choate*, No. 25-cv-03134-DDD-STV (D. Colo. Dec. 5, 2025), Doc. 19 (Domenico, J.). This Court concluded that detention during removal proceedings did not offend substantive due process, because the "detention has an endpoint—when his removal proceedings conclude." *Id.* at 15. And "simply to 'facilitate deportation' is a rational, nonpunitive purpose for detention." *Id.* at 16 (citing Justice Kennedy's concurrence in *Demore*, 538 U.S. at 532-33). After surveying case law, this Court concluded that procedural due process

does not afford inadmissible noncitizens subject to detention the right to release or a bond hearing before removal proceedings conclude. *See id.* at 7-12. As an "applicant for admission," a noncitizen "is entitled only to the process Congress has conferred on him by statute," and, "under *Jennings*, the procedures authorized by Section 1225(b) do not provide for bond hearings or place a time limit on detention while removal proceedings are pending." *Id.* at 13.

The same analysis applies here. Detention under § 1225(b)(2)(A) pending removal is a "constitutionally permissible part of that [removal] process." *Demore*, 538 U.S. at 531; *see also* Order Denying Mot. for Prelim. Inj. at 12-18, *Orande Ahinsha Richards*, *supra* (rejecting due process challenges to § 1225(b)(2)(A) detention).

C. No class-wide declaratory relief has been issued Petitioner.

In passing, Petitioner argues that he is entitled to relief as a class member defined in *Gutierrez v. Baltasar*, No. 25-cv-2720-RMR.[6] *See* Doc. 1 ¶ 7; Doc. 5 at 14 n.2. But no class-wide declaratory relief on the statutory interpretation question has been issued in *Gutierrez*. *See* Order at 2, *Gutierrez*, Doc. 92 (acknowledging that partial summary judgment briefing is pending). Nothing in *Gutierrez* entitles Petitioner to release or a bond hearing as an asserted class member.

V. CONCLUSION

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

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[6] There is a pending appeal in *Gutierrez* of the district court's orders on Petitioner-Plaintiff's Motion for Emergency TRO and Motion for Class Certification. *See Gutierrez v. Baltasar*, No. 25-1460 (10th Cir. Dec. 16, 2025).

Dated: March 10, 2026

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

s/Thomas A Isler
Thomas A. Isler

CERTIFICATE OF SERVICE

I certify that on March 10, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will serve all counsel of record, including:

Samantha Wolfe, Esq.
Christopher Thomas, Esq.
Joshua Hurwit, Esq.
Counsel for Petitioner

s/Thomas A. Isler
Thomas A. Isler