IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01081-DDD

SERALDO VARGAS ARREDONDO,

Petitioner,

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado;
GEORGE VALDEZ, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement;
MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security;
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement;
and
TODD BLANCHE, Acting Attorney General, U.S. Department of Justice;
each in their official capacities,[1]

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 12)

Respondents respond to the Court's Order to Show Cause (ECF No. 12), to show why the Petition for Writ of Habeas Corpus, ECF No. 1 (the "Petition"), and Motion for Temporary Restraining Order, ECF No. 3 (the "Motion"), should not be granted. 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.

[1] Mr. Mullin and Mr. Blanche are substituted as Respondents, in their official capacities, pursuant to Fed. R. Civ. P. 25(d).

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[2] who are deemed to be "applicants for admission" because they entered the country without inspection and have never been admitted. 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).

II. 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. Because in *Jennings*, as in this case, "[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 of § 1225's scope should guide the Court's analysis.

A. Section 1225 applies to "applicants for admission."

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

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

well as (b) an individual who is *present* in the United States but has not been "admitted."[3]

The Court recognized that the statute uses 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). The Court explained that an applicant for admission is a noncitizen who meets two criteria: "an alien who [1] 'is present' in this country but [2] 'has not been admitted' is *treated as* 'an applicant for admission.'" *Id.* (emphasis and numbering added).

The Court later added: "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 recognize a "seeking admission" 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 be "seeking admission." Section 1225 uses language that supports this interpretation, providing: "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). Thus, § 1225 confirms that a noncitizen can seek admission simply by meeting the definition of an applicant

[3] 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).

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): (1) 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)); and (2) noncitizens who are designated by the Attorney General in her discretion, unlawfully present without being admitted, and recent arrivals. That is, § 1225(b)(1) applies to those who have "not been admitted or paroled into the United States, and . . . ha[ve] not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph." *See id.* at 287. 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).

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 is an "applicant for admission" subject to the "catchall" detention provision of § 1225(b)(2).

C. In § 1225(b)(2), Congress mandated the detention of applicants for admission and did not provide a right to a bond hearing, unlike noncitizens whose detention is governed by § 1226(a).

The *Jennings* Court recognized that § 1225(b)(2) mandates the detention of applicants for admission. It explained that Congress has provided 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)). 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. *See id.* at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded"). Such noncitizens are not entitled to a bond hearing.

The *Jennings* Court recognized that a different statutory provision that does permit bond hearings—§ 1226(a)—governs the detention of other noncitizens not covered by § 1225(b), including those who had been "admitted." The Court explained,

> 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).

Jennings, 583 U.S. at 288. Thus, § 1226(a) extends to those who were admitted.

The Court did *not* suggest that § 1226(a) governs the detention of noncitizens who are covered by § 1225(b)(2). Rather, the Court appeared to recognize that these two provisions—§ 1225(b)(2) and § 1226(a)—authorize detention for *different* sets of individuals: the detention of noncitizens covered by § 1225 is authorized by § 1225, and *other* individuals in the country *not* covered by § 1225 may be detained under § 1226:

> U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

Jennings, 583 U.S. at 289. In distinguishing between these 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).

III. 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."[4] 8 U.S.C. § 1101(a)(13)(A); *see* ECF No. 1 ¶ 16, ECF

[4] 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).

No. 1-3 at 1. 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, ICE has charged Petitioner with being inadmissible, *see* ECF No. 1-3 at 1, and therefore he is not "clearly and beyond doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). In short, the statute requires Petitioner's mandatory detention.

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)). For example, § 1225(b)(1)(A)(i) is not limited to noncitizens "arriving in the United States" who are rendered inadmissible for the specified reasons (*i.e.*, misrepresentation or lack of a valid entry document). Instead, § 1225(b)(1)(A)(i) also applies, through its reference to § 1225(b)(1)(A)(iii), to some noncitizens who have *already* been residing in the United States and are inadmissible for the same reasons—that is, applicants for admission who have "not been admitted or paroled" and

have not "affirmatively shown, to the satisfaction of an immigration officer, that [they] ha[ve] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph." 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

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).

Petitioner's argument that § 1225 does not apply to him because he is not "seeking admission" is unavailing. 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, too. *See Jennings*, 583 U.S. at 297 (treating those "seeking entry" as synonymous with "applicants for admission"); *Buenrostro-Mendez*, 166 F.4th at 502-06 ("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); *all* applicants for admission are governed by either § 1225(b)(1) or § 1225(b)(2). *See* 583 U.S. at

287.

2. 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* ECF No. 1 ¶¶ 27-30. 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 502-08. 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.

3. Respondents' interpretation of the INA is not undermined by a statement in a 1997 Federal Register notice.

Respondents' interpretation of the § 1225(b)(2) is not inconsistent with prior practice. A Federal Register notice that states that "aliens who are present without having been admitted or

[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*.

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). 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 conclusion that noncitizens who entered without inspection are not eligible for bond hearings under the statute. *See Buenrostro-Mendez*, 166 F.4th at 506-07. 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* ECF No. 1 at ¶¶ 49-58. 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, 313-14 (1993), where the Court had rejected a due process challenge to the detention of minors during deportation proceedings, 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 538. Later, in *Jennings*, the Court observed that in *Demore,* the Court, in rejecting the due process challenge, 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, 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.* at 140. As explained, Petitioner has not been deprived of any statutory right as he is properly detained under § 1225(b)(2)(A).

Also, Petitioner has not shown that he is being denied procedures *in his immigration proceedings*, where he can challenge the determination that § 1225(b)(2)(A) applies, and therefore 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), ECF No. 11 at 13.

This Court recently 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.). The 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, the 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: Petitioner has not been denied statutory procedures, and his detention has a logical endpoint. Detention pending removal under § 1225(b)(2)(A) 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).

IV. CONCLUSION

Respondents respectfully request that the Court deny the Petition, ECF No. 1, and associated Motion for Temporary Restraining Order, ECF No. 3.

Dated: April 8, 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/Elizabeth E. Puskar
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CERTIFICATE OF SERVICE

I certify that on April 8, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will serve all counsel of record,

s/Elizabeth E. Puskar
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