UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Francisco T.,

Petitioner,

v.

Pamela Bondi, *Attorney General*, et al.,

Respondents.

Case No. 25-cv-3219 (JMB/DTS)

REPORT AND RECOMMENDATION

INTRODUCTION

Petitioner Francisco T. petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Francisco T. alleges he is unlawfully detained pursuant to a policy treating all noncitizens who are present in the United States without admission or parole as subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Because § 1226(a)'s discretionary detention framework, not § 1225's mandatory detention framework, applies to Francisco T., the Court recommends the petition be granted insofar as Francisco T. requests a bond hearing.

FACTS

Petitioner Francisco T. is a native and citizen of Mexico who entered the United States without inspection more than a decade ago. Pet. ¶¶ 32, 37, Dkt. No. 1. On July 25, 2025, the Government arrested Francisco T. at a gas station for being illegally present in the country. *Id.* ¶ 45. The Government served Francisco T. with a Notice to Appear that same day, initiating removal proceedings under the Immigration and Nationality Act. Fleitas-Langford Decl., Ex. B, Dkt. No. 7-2.

In July 2025, before Francisco T.'s arrest, Immigration and Customs Enforcement issued Interim Guidance Regarding Detention Authority for Applicants for Admission (Interim Guidance). Pet. ¶ 41. According to this Interim Guidance, the Department of Homeland Security "has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission." Fleitas-Langford Decl., Ex. G, Dkt. No. 7-7. The Interim Guidance continues as follows:

> An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole. These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).

Jose J.O.E. v. Bondi, No. 25-cv-3051, 2025 WL 2466670, at *3 (D. Minn. Aug. 27, 2025) (quoting the Interim Guidance 1–2).

On August 3, 2025, Francisco T. requested a bond redetermination hearing before an immigration judge. Fleitas-Langford Decl., Ex. D, Dkt. No. 7-4. On August 5, 2025, an immigration judge denied the request, concluding Francisco T. was "properly categorized as an applicant for admission, and the Court does not have jurisdiction to release [Francisco T.] under INA Section 235(b)(2)." *Id.*, Ex. E, Dkt. No. 7-5. Shortly thereafter,

Francisco T. appealed the immigration judge's decision to the Board of Immigration Appeals. *Id.*, Ex. F. The appeal remains pending. Pet. ¶ 52.

On August 12, 2025, Francisco T. filed the operative Petition for Writ of Habeas Corpus. *See* Pet. Francisco T.'s Petition includes six counts. *Id.* ¶¶ 98–127. In Count One, Francisco T. requests a declaration that he is not subject to detention under 8 U.S.C. § 1225(b)(2). *Id.* ¶¶ 98–101. In Count Two, Francisco T. contends the denial of a bond hearing violates 8 U.S.C. § 1226(a). *Id.* ¶¶ 102–07. In Count Three, he claims that the mandatory detention under § 1225(b)(2) and denial of a bond hearing constitute a violation of the Fifth Amendment's guarantee of due process. *Id.* ¶¶ 108–10. In Count Four, Francisco T. alleges the application of § 1225(b)(2) violates federal regulations. *Id.* ¶¶ 111–15. In Count Five, Francisco T. claims the Government's policy of routinely applying § 1225(b)(2) to noncitizens in his position violates the Administrative Procedure Act. *Id.* ¶¶ 116–21. In Count Six, he alleges the Government's Interim Guidance violates the Administrative Procedure Act's rulemaking procedures. *Id.* ¶¶ 122–27. For relief, Francisco T. requests: (1) an order restraining the Government from moving Francisco T. during the pendency of the Petition; (2) an order requiring the Government to provide 72-hour notice of any intended movement of Francisco T.; (3) expedited consideration; (4) immediate release, or, alternatively, a bond hearing; (5) a declaration that the Government's action is arbitrary and capricious; (6) a declaration that the Government failed to adhere to its regulation; (7) a declaration that the Government adopted a new policy in violation of the Administrative Procedure Act; (8) the Court to set aside the Government's "policy of treating all aliens heard before the Immigration Court at Fort Snelling, Minnesota, who are present in the United States without admission or parole as

subject to mandatory custody under § 1225(b)(2)"; (9) a declaration that Francisco T.'s detention absent a bond hear violates the Due Process Clause of the Fifth Amendment; and (10) reasonable attorneys' fees and costs under the Equal Access for Justice Act. Pet. 31–32 (prayer for relief).

On August 13, 2025, Francisco T. filed an emergency motion for a temporary restraining order. Pet'r's Emergency Mot. for TRO and Prelim. Inj., Dkt. No. 3. The Court promptly granted the motion in part, prohibiting the Government from removing Francisco T. from the District of Minnesota. Order, Dkt. No. 10. After an expedited briefing schedule, the Court entered a subsequent order on August 29, 2025. Order, Dkt. No. 17 (Prelim. Inj. Order). There, District Judge Jeffrey Bryan concluded Francisco T. had demonstrated a high probability of success on the merits, reasoning that § 1226(a)'s discretionary-detention framework, not § 1225's mandatory detention framework, applied. *Id.* at 5–9. Construing the motion as a motion for a preliminary injunction, Judge Bryan enjoined the Government from denying Francisco T. a bond hearing based on § 1225(b)(2) and ordered the Government to provide him with a bond hearing under § 1226(a) within seven days. *Id.* at 11. The Government reports that the immigration court held a custody redetermination hearing on September 3, 2025, where "an immigration judge granted [Francisco T.'s] motion for a change in custody status and ordered that he be released from custody under bond of $9,000." Dkt. No. 19 at 1.

ANALYSIS

I. Legal Standard

"A district court may grant a writ of habeas corpus to any person who demonstrates he is in custody in violation of the Constitution or laws of the United States." *Aditya W. H.*

v. Trump, 782 F. Supp. 3d 691, 702 (D. Minn. 2025) (citing 28 U.S.C. § 2241(c)(3)). The right to file a writ of habeas corpus "extends to those persons challenging the lawfulness of immigration-related detention." *Deng Chol A. v. Barr*, 455 F. Supp. 3d 896, 900–01 (D. Minn. 2020). "The burden is on the petitioner to prove illegal detention by a preponderance of the evidence." *Jose J.O.E. v. Bondi*, No. 25-cv-3051, 2025 WL 2466670, at *5 (D. Minn. Aug. 27, 2025) (citing *Aditya W. H.*, 782 F. Supp. 3d at 703).

The issue presented here is narrow but complex. Francisco T. is not challenging his arrest or removability. *See* Pet. ¶ 58. Rather, he challenges the Government and immigration judge's determination that he is subject to mandatory detention under § 1225(b)(2), instead of discretionary detention under § 1226(a). If Francisco T. is detained under § 1226(a), then under applicable regulations he is entitled to a bond hearing. *See Jennings v. Rodriguez*, 583 U.S. 281, 305 (2018) ("Federal regulations provide that [noncitizens] detained under § 1226(a) receive bond hearings at the outset of detention." (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1))); *Jose J.O.E.*, 2025 WL 2466670, at *8 ("Jose is entitled to a bond hearing under § 1226's discretionary detention framework."); *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411, at *9 (D. Minn. Aug. 15, 2025) ("[T]hose detained under Section 1226(a) are entitled to a bond hearing before an IJ[.]") (quoting *Rodriguez v. Bostock*, 779 F.Supp.3d 1239, 1247 (W.D. Wash. 2025))). The Government does not expressly dispute this premise. *See generally* Gov.'s Mem. in Opp'n, Dkt. No. 11.[1] Nor does the Government argue that the Court lacks jurisdiction to decide Francisco T.'s habeas petition or that he failed to exhaust his

[1] The Government elected to "combin[e] the two ordered briefs in response to the emergency motion and in response to the petition." Gov.'s Mem. in Opp'n 1 n.2.

administrative remedies. *See generally id.* Instead, the Government's sole response to the Petition is that Francisco T. is subject to mandatory detention under § 1225(b)(2) as a matter of statutory interpretation. The Court proceeds accordingly.[2]

II. Statutory Interpretation of § 1225(b)(2)(A)

A. The Statutory Provisions

Courts interpret a statute according to its plain language, examining "the statute as a whole." *United States v. Ashcraft*, 732 F.3d 860, 862 (8th Cir. 2013). Therefore, it makes sense to start with the relevant statutory provisions. To minimize the risk of injecting the Court's gloss onto the statutory text, the Court begins by laying out the most relevant parts of §§ 1225 and 1226 in full before providing a high-level summary.

The most relevant parts of 8 U.S.C. § 1225 read as follows:

> **(a) Inspection**
>
> **(1) Aliens treated as applicants for admission**
>
> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.
>
> . . .
>
> **(3) Inspection**
>
> All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission

[2] At least one other court has resolved a similar petition on the narrow grounds that the petitioner had been detained, as a factual matter, under § 1226. *See Jose J.O.E.*, 2025 WL 2466670, at *8. Unlike the petitioner in *Jose J.O.E.*, Francisco T. has not submitted documents—such as a Form I-200 Warrant for Arrest or Form I-286 Notice of Custody Determination—demonstrating that he was detained under § 1226.

to or transit through the United States shall be inspected by immigration officers.

. . .

(b) Inspection of applicants for admission

(1) Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled

(A) Screening

(i) In general

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.

(ii) Claims for asylum

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

(iii) Application to certain other aliens

(I) In general

The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the

> Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.
>
> **(II) Aliens described**
>
> An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has 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.

. . .

(2) Inspection of other aliens

(A) In general

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

(B) Exception

Subparagraph (A) shall not apply to an alien--

. . .

(ii) to whom paragraph (1) applies, or

. . .

(C) Treatment of aliens arriving from contiguous territory

In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated

> port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 1229a of this title.

8 U.S.C. § 1225. In turn, the most relevant parts of 8 U.S.C. § 1226 read as follows:

> **(a) Arrest, detention, and release**
>
> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General--
>
> **(1)** may continue to detain the arrested alien; and
>
> **(2)** may release the alien on--
>
> **(A)** bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
>
> **(B)** conditional parole; but
>
> **(3)** may not provide the alien with work authorization. . . .
>
> **(b) Revocation of bond or parole**
>
> The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.
>
> **(c) Detention of criminal aliens**
>
> **(1) Custody**
>
> The Attorney General shall take into custody any alien who--
>
> **(A)** is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,[3]

[3] Covered offenses include crimes of moral turpitude, 8 U.S.C. § 1182(a)(2)(A), and prostitution, *id.* § 1182(a)(2)(D).

> **(B)** is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,[4]
>
> **(C)** is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence to a term of imprisonment of at least 1 year,[5]
>
> **(D)** is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,[6] or
>
> **(E)(i)** is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title;[7] and
>
> **(ii)** is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person,
>
> when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

8 U.S.C. § 1226.

To summarize, § 1225 treats (1) all noncitizens who are present in the United States without being admitted; and (2) all arriving noncitizens as "applicants for admission." 8 U.S.C. § 1225(a)(1). Section 1225 directs the Government to inspect all

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[4] Covered offense include aggravated felonies, 8 U.S.C. § 1227(a)(2)(A)(iii), and certain firearm offenses, *id.* § 1227(a)(2)(C).

[5] Section 1227(a)(2)(A)(i) applies to noncitizens who are "convicted of a crime involving moral turpitude committed within five years . . . after the date of admission."

[6] These subparagraphs cover terrorist activities.

[7] This covers: (1) noncitizens present without admission or parole, 8 U.S.C. § 1182(a)(6)(A); (2) noncitizens who procured admission by misrepresentation, *id.* § 1182(a)(6)(C); and (3) noncitizens failing to satisfy certain documentation requirements, *id.* § 1182(a)(7).

noncitizens "who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States[.]" 8 U.S.C. § 1225(a)(3). Sections 1225(b)(1) and 1225(b)(2) require the detention of applicants for admission pending removal proceedings. "Section 1225(b)(1) applies to [noncitizens] initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. . . Section 1225(b)(1) also applies to certain other [noncitizens] designated by the Attorney General in his discretion." *Jennings,* 583 U.S. at 287. Covered noncitizens are ordinarily removed pursuant to an expedited removal process, 8 U.S.C. § 1225(b)(1)(A)(i) ("[T]he officer shall order the [noncitizen] removed from the United States without further hearing or review[.]"), but noncitizens who indicate "either an intention to apply for asylum . . . or a fear of persecution" are referred for an asylum interview, *id.* Under § 1225(b)(2), applicants for admission shall be detained pending removal proceedings "if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Section 1225(b)(2) does not apply to noncitizens subject to § 1225(b)(1). *Jennings*, 583 U.S. at 287.

In contrast to § 1225's mandatory detention framework, § 1226 creates a discretionary detention framework. Section 1226(a) establishes the default rule: "On a warrant issued by the Attorney General, [a noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). Pending a decision on removal, the Attorney General "may release" the noncitizen on bond or conditional parole. *Id.* § 1226(a)(2). "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1))). Section 1226(c)

then "carves out a statutory category of [noncitizens] who may *not* be released under § 1226(a)." *Id.* at 289.

B. Plain Language

The Court begins its analysis with the plain language of § 1225(b)(2)(A), which provides: "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title[.]" Because Francisco T. is deemed an applicant for admission for purposes of the statute, *see* 8 U.S.C. § 1225(a)(1), the critical question becomes whether Francisco T. was "seeking admission." *See Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025) (concluding that for § 1225(b)(2)(A) to apply, an examining immigration officer must determine that the noncitizen is "seeking admission"); *Lopez Benitez v. Francis*, No. 25 CIV. 5937, 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025) (same); *Lopez-Campos*, *v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *6–7 (E.D. Mich. Aug. 29, 2025) (same).

Seeking lacks a statutory definition and therefore should be given "its ordinary dictionary meaning." *Union Pac. R.R. Co. v. Surface Transportation Bd.*, 863 F.3d 816, 825 (8th Cir. 2017). Seeking is the present participle of seek, which is defined as "to endeavor to obtain or reach: *seek a college education*," or "to inquire for; request: *seek directions from a police officer*." The American Heritage Dictionary 1576 (4th Ed. 2006); *see also* Shorter Oxford English Dictionary 2736 (6th Ed. 2007) (defining seek as to "[t]ry or want to obtain or gain (a thing, esp. something advantageous); try to bring about or effect."). In general, "[a] present participle is used to signal present and continuing action."

Westchester Gen. Hosp., Inc. v. Evanston Ins. Co., 48 F.4th 1298, 1307 (11th Cir. 2022); *Martinez*, 2025 WL 2084238, at *6 (reasoning that the phrase "seeking admission . . . necessarily implies some sort of present-tense action"). Admission is defined by statute "with respect to [a noncitizen]," as "the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(13)(A). Based on the plain language of the statute, § 1225(b)(2)(A) applies to noncitizens attempting or intending to gain lawful entry into the United States. *See Lopez-Campos*, 2025 WL 2496379, at *7 ("[T]he Court finds that 1225(b)(2)(A) applies when people are being inspected, which usually occurs at the border, when they are seeking lawful entry into this country."). Nothing suggests Francisco T. was attempting or requesting to gain lawful entry into the United States when he was detained. To the contrary, he had unlawfully entered the United States more than a decade ago and has remained in the country since his unlawful entry.

Notwithstanding § 1101(a)(13)(A)'s statutory definition, there are fair reasons to question whether § 1225(b)(2)(A) only applies when a noncitizen is seeking lawful entry as opposed to entry more generally. Cases support this conclusion, *see, e.g.*, *Biden v. Texas*, 597 U.S. 785, 790–92 (2022) (discussing the Government's obligations under § 1225(b)(2) as to the detention and return of noncitizens "attempting to enter the United States illegally from Mexico"); *Maldonado v. Macias*, 150 F. Supp. 3d 788, 806 (W.D. Tex. 2015) ("[U]nder § 1225(b)(2)(A), the Government detains all arriving aliens pending removal proceedings, without regard . . . to the manner in which aliens were seeking to enter the United States—whether legal or illegal."), and courts have applied alternative constructions of the term admitted when context requires, *Shivaraman v. Ashcroft*, 360

F.3d 1142, 1147–48 (9th Cir. 2004). Moreover, limiting § 1225(b)(2)(A)'s application to those seeking lawful entry would be inconsistent with § 1225(b)(3)(C), which provides for the return of noncitizens to contiguous territories pending removal proceedings "[i]n the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival)[.]" Regardless, Francisco T. was plainly not seeking to enter the United States, lawfully or otherwise, when he was detained.

Reading the phrase "seeking admission" as involving an attempt or request to enter the United States is consistent with how courts have historically treated the phrase in immigration law cases. *Jennings*, 583 U.S. at 353 (Breyer, J., dissenting) ("The statutory provision that governs the third category of noncitizens seeking admission at the border is § 1225(b)(2)(A)."); *Landon v. Plasencia*, 459 U.S. 21, 25 (1982) ("The deportation hearing is the usual means of proceeding against an alien already physically in the United States, and the exclusion hearing is the usual means of proceeding against an alien outside the United States seeking admission."); *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) ("It is important to note at the outset that our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission, such as petitioner, and those who are within the United States after an entry, irrespective of its legality."); *Poveda v. U.S. Atty. Gen.*, 692 F.3d 1168, 1175 (11th Cir. 2012) ("Contrary to the dissent's assertion, a lawful permanent resident who commits a crime, travels abroad, and returns is treated like any other alien seeking admission at our border."); *Cabral v. Holder*, 632 F.3d 886, 892 (5th Cir. 2011) (rejecting as "utterly without merit" an argument "that once [a noncitizen] commits one of the delineated crimes, § 1101(a)(13)(C)(v) mandates that he be considered seeking admission [regardless of

whether the noncitizen leaves the country and seeks reentry]"); *Klementanovsky v. Gonzales*, 501 F.3d 788, 793 (7th Cir. 2007) ("Congress might have rationalized that granting a waiver to those who self-deport and seek readmission at the borders provides an incentive for such aliens to voluntarily depart at their own expense."); *Kasneci v. Dir., Bureau of Immigr. & Customs Enf't*, No. 12-12349, 2012 WL 3639112, at *4 (E.D. Mich. Aug. 23, 2012) ("Mandatory detention is prescribed for certain noncitizens seeking admission into the United States, *see* 8 U.S.C. § 1225(b)(2), and noncitizens apprehended in the United States, *see* 8 U.S.C. § 1226(c)."); *Bautista v. Sabol*, No. 3:11CV1611, 2011 WL 5040894, at *4 (M.D. Pa. Oct. 24, 2011) ("[W]hen, as in this case, a lawful permanent resident leaves the country and then seeks to re-enter, the law generally does not treat him as [a noncitizen] 'seeking admission.'").[8] The Government fails to cite, and the Court's research has not unearthed, a single case which treats a noncitizen who has been in the country for more than a decade as seeking admission.[9]

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[8] Another illustrative example is a recent executive order which directed the Secretary of State to "identify all resources that may be used to ensure that all [noncitizens] seeking admission to the United States, or who are already in the United States, are vetted and screened to the maximum degree possible." Exec. Order No. 14161 § 2(a)(i), 90 Fed. Reg. 8451 (Jan. 20, 2025).

[9] The Government cites one case, *Pena v. Hyde*, where a court found a noncitizen who had been present in the country for approximately 20 years was an applicant for admission subject to detention under § 1225(b)(2)(A). No. CV 25-11983-NMG, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025). As Judge Bryan has already explained, that case "includes no analysis or assessment of the Respondents' arguments or of their current interpretation of sections 1225(b)(2)(A) and 1226(a)." Prelim. Inj. Order 9. Moreover, in *Pena*, the court did not conclude the petitioner had been seeking admission. *See Pena*, 2025 WL 2108913, at *1. Rather the court read the phrase out of subparagraph (b)(2)(A). Every other court to examine the issue has reached the contrary conclusion. *Lopez-Campos*, 2025 WL 2496379, at *5 (collecting cases as of August 29, 2025). *Pena* is not persuasive here.

The Government vigorously disagrees, arguing that "seeking admission" and "appl[ying] for admission" are synonymous when placed in statutory context. Gov. Resp. 10, Dkt. No. 11. For support, the Government points to 8 U.S.C. § 1225(a)(3), which requires "[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States [to] be inspected by immigration officers." *Id.* According to the Government, the statute's use of "or" introduces a phrase that is synonymous with what precedes it. *Id.* The Government also argues that "[i]f Congress meant to limit § 1225(b)(2)'s scope to "arriving" noncitizens, it could have simply used that phrase, like it did in § 1225(b)(1)." Gov.'s Mem. in Opp'nf 11. This argument is not persuasive.

First, the Government's interpretation violates the rule against surplusage. In essence, the Government reads § 1225(b)(2)(A) as follows: "[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that [the] alien ~~seeking admission~~ is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." § 1225(b)(2)(A); *Lopez Benitez*, 2025 WL 2371588, at *6. Such an interpretation violates the "cardinal principle of statutory construction that [courts] must give effect, if possible, to every clause and word of a statute." *Williams v. Taylor*, 529 U.S. 362, 404 (2000) (citation modified); *United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) ("[E]very clause and word of a statute should have meaning.") (citation modified). Other courts have rejected the Government's interpretation of § 1225(b)(2)(A) for similar reasons. *Martinez*, 2025 WL 2084238, at *7; *Lopez Benitez*, 2025 WL 2371588, at *6;

Romero v. Hyde, No. CV 25-11631, 2025 WL 2403827, at *9–10 (D. Mass. Aug. 19, 2025).

Second, another court has already persuasively explained why the phrases are not synonymous as follows:

> To be an "applicant for admission," one must be "present in the United States" or otherwise "arriv[ing] in the United States." 8 U.S.C. § 1225(a)(1). In other words, to be an "applicant for admission," one must actually be here, either in the United States or at its door. By contrast, one can "seek admission" from anywhere in the world, "for example, by applying for a visa at a consulate abroad." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 741 (BIA 2012). Thus, giving separate meaning to the phrase "seeking admission" does not "read[ ] 'applicant for admission' out of [section] 1225(b)(2)(A)." Dkt. 30 at 16. Rather, it sensibly understands the statute to contain separate requirements for presence ("applicant for admission") and present-tense action ("seeking admission").

Romero, 2025 WL 2403827, at *9. Moreover, the Government's interpretation of the phrases as synonymous ignores courts' contrary use of the phrase "seeking admission", *see, e.g.*, *Jennings*, 583 U.S. at 289, 353, and the use of the phrase elsewhere in the Immigration and Nationality Act. *See* 8 U.S.C. § 1101(13)(C) ("An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien. . . ."); *see also* 8 U.S.C. § 1182(a)(5)(D), (a)(6)(E)(ii), (a)(9)(A), (a)(9)(C)(ii).

Third, *Romero* also offers a well-reasoned response to the Government's reliance on § 1225(a)(3). *Romero*, 2025 WL 2403827, at *10. The court finds *Romero*'s detailed, textual illustration persuasive and incorporates it by reference.

Fourth, the Government's interpretation violates the meaningful-variation canon. In general, when a statute uses different terms, the presumption is that Congress

intended to denote different ideas. *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 457-58 (2022) (citing A. Scalia & B. Garner, Reading Law 170 (2012)). Because Congress used both "applicant for admission" and "seeking admission" in § 1225(b)(2)(A), the expectation is that these phrases are not synonymous. Moreover, Congress explicitly defined applicants for admission but declined to do the same for seeking admission. Section 1225(a) constructively deems Francisco T. an applicant for admission, even though he illegally entered the country and never applied to be admitted. If Congress similarly intended to constructively treat all noncitizens having illegally entered the country as continuously seeking admission it could have done so explicitly, especially given the readily apparent plain language definition to the contrary. *See Lopez Benitez*, 2025 WL 2371588, at *6 (concluding the Government's treatment of the phrases "applicant for admission" and "alien seeking admission" as synonymous violated the meaningful-variation canon).

To be clear, the Government's plain-language arguments are not frivolous. Section 1225(a)(3) can be read to suggest all applicants for admission are constructively treated as seeking admission. Moreover, if Francisco T.'s interpretation is correct, it is not readily apparent why Congress declined to expressly limit § 1225(b)(2) to arriving noncitizens. *See Crane v. Napolitano*, No. 3:12-CV-03247, 2013 WL 1744422, at *7 (N.D. Tex. Apr. 23, 2013) ("If Congress intended to limit the application of Section 1225(b)(2)(A) to aliens coming or attempting to come into the United States at a port of entry, it would have used the term 'arriving alien' or 'alien arriving in the United States' instead of the term 'seeking admission.'"). *But see Romero*, 2025 WL 2403827, at *9. The plain-language definition of seeking in conjunction with § 1101(13)(A)'s statutory definition of admission is also not a perfect fit. *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) ("In ordinary

parlance, the phrase 'seeks admission' connotes a request for *permission* to enter. . . . The problem, however, is that Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission[.]"). But it is not surprising that the Immigration and Nationality Act, far from a model of clarity, provides fertile ground for competing statutory interpretation arguments. *Torres v. Barr*, 976 F.3d 918, 923 (9th Cir. 2020) ("Divining [the Immigration and Nationality Act's] meaning is ordinarily not for the faint of heart."). Notwithstanding the Government's arguments to the contrary, the Court concludes that the plain language of the statute supports the conclusion that only noncitizens seeking admission are subject to mandatory detention. In turn, seeking admission requires some present-tense attempt or request to enter the United States. Francisco T. was not seeking admission under the plain language of the statute when he was detained.

C. Statutory Structure

The statutory structure of § 1225 and § 1226 also supports Francisco T.'s interpretation. It is a "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Util. Air Regul. Grp. v. E.P.A.*, 573 U.S. 302, 320 (2014) (quoting *FDA v. Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 133 (2000)). For that reason, courts examine "the clause at issue and the statute as a whole," *Ashcraft,* 732 F.3d at 862, construing related clauses "in harmony, not set[ting] them at cross-purposes," *Jones v. Hendrix*, 599 U.S. 465, 478 (2023); *see also Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 101 (2012)

("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." (quoting *Davis v. Michigan Dept. of Treasury,* 489 U.S. 803, 809 (1989))).

To start, the Government's interpretation would render the recent Laken Riley Act largely superfluous. In 2025, Congress passed the Laken Riley Act, amending § 1226(c) to add § 1226(c)(1)(E). Section 1226(c)(1)(E) "mandates detention for non-citizens who meet certain criminal **and** inadmissibility criteria." *Martinez*, 2025 WL 2084238, at *7 (emphasis added). Two out of § 1226(c)(1)(E)'s three inadmissibility criteria are (1) noncitizens present in the United States without being admitted or paroled, 8 U.S.C. § 1182(a)(7); and (2) noncitizens who lack requisite documentation, *id.* § 1182(a)(7). If the Government's interpretation is correct, every noncitizen in the United States without being admitted—who are all applicants for admission—would be subject to mandatory detention under § 1225(b)(2) (unless the immigration officer determines that the noncitizen is "clearly and beyond a doubt entitled to be admitted"). This "would render Section 1[2]26(c)(1)(E)'s criminal conduct criterion superfluous whenever the noncitizen is inadmissible under Sections 1182(a)(6)(A) or (a)(7). Such an interpretation, which would largely nullify a statute Congress enacted this very year, must be rejected." *Gomes v. Hyde*, No. 1:25-CV-11571, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025); *see also Lopez Benitez*, 2025 WL 2371588, at *7 (same). "Here, the presumption against superfluity is at its strongest because the Court is interpreting two parts of the same statutory scheme[.]" *Olson*, 2025 WL 2374411, at *12. The Government also does not explain why § 1226(c)(1)(A) and (D) would mandate detention for certain inadmissible noncitizens if all noncitizens present in the United States who have not been admitted

were subject to mandatory detention under § 1225(b)(2). *See Rodriguez*, 779 F. Supp. 3d at 1258 (concluding the Government's interpretation "would render superfluous provisions of Section 1226 that apply to certain categories of inadmissible noncitizens").

Fancisco T.'s interpretation also better harmonizes the two statutes. According to Francisco T.'s interpretation, § 1225(b)(1) requires mandatory detention and expedited removal for some, but not all, arriving noncitizens. In turn, § 1225(b)(2) requires mandatory detention, but not expedited removal, for applicants for admission who are seeking admission. For the most part, § 1225(b)(2) thus operates as a catch-all detention provision for arriving noncitizens not subject to § 1225(b)(1). *See, e.g.*, 1 Shane Dizon and Pooja Dadhania, *Immigration Law Service* § 2:161 (2d. Ed. Aug. 2025 Update) ("In addition to the mandatory detention of noncitizens subject to expedited removal, DHS must detain and place into removal proceedings under INA § 240 [8 U.S.C.A. § 1229a] any noncitizen arriving from abroad who is not clearly and beyond doubt entitled to be admitted."). Noncitizens who have entered the country, illegally or legally, are then primarily subject to § 1226(a)'s discretionary detention framework. This understanding of the statutes' interplay is consistent with how courts have described the statutory scheme. *See Jennings*, 583 U.S. at 289 ("In sum, 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).") (emphasis added); *Kasneci*, 2012 WL 3639112, at *4 ("Mandatory detention is prescribed for certain noncitizens **seeking admission into** the United States, *see* 8 U.S.C. § 1225(b)(2), and noncitizens **apprehended in** the United States, *see* 8 U.S.C. § 1226(c).") (emphasis

added); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223, at *2 (D. Neb. Aug. 14, 2025) ("Courts have repeatedly held that § 1225 applies to arriving aliens, while § 1226 governs detention of 'aliens already in the country.'" (quoting *Jennings*, 583 U.S. at 289)); *Romero*, 2025 WL 2403827, at *1 (collecting cases).

The Government (once again) vigorously disagrees. According to the Government, "[p]roperly understood, § 1225(b) applies to two groups of 'applicants for admission': (b)(1) applies to 'arriving' or recently arrived noncitizens who must be detained pending expedited removal proceedings; and (b)(2) is a 'catchall provision that applies to all applicants for admission not covered by § 1225(b)(1),' *Jennings*, 583 U.S. at 287, who, like Petitioner, must be 'detained for a [non-expedited] proceeding under section 1229a of this title,' 8 U.S.C. § 1225(b)(2)." Gov.'s Mem. in Opp'n 11–12. The Government claims that "[a] contrary interpretation limiting (b)(2) to 'arriving' noncitizens would render it redundant and without any effect." *Id.* at 12. The Court is not persuaded.

Start with the Government's reliance on *Jennings*. There, the Supreme Court, in the process of summarizing the interplay between § 1225(b)(1) and (b)(2), stated that § 1225(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Jenning*, 583 U.S. at 287. Taken at face value, all noncitizens in the United States who have not been admitted would thus be subject to § 1225(b)(2) as the Government argues. But after completing its summary of § 1225, the Court continued as follows:

> Even once inside the United States, [noncitizens] do not have an absolute right to remain here. For example, [a noncitizen] 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 [noncitizens] who were inadmissible

> at the time of entry or who have been convicted of certain criminal offenses since admission. See §§ 1227(a)(1), (2).
>
> Section 1226 generally governs the process of arresting and detaining that group of [noncitizens] pending their removal. . . .
>
> In sum, 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).

Jenning, 583 U.S. at 287. *Jennings*'s summary of § 1226 and the interplay between the statutes' supports Francisco T.'s interpretation that noncitizens already in the country are subject to § 1226(a)'s discretionary detention framework, not § 1225(b)'s mandatory detention framework. Because "the language of an opinion is not always to be parsed as though . . . dealing with language of a statute," *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341 (1979), it suffices to say *Jennings* cuts both ways and does not move the needle in the Government's favor.

As for the Government's claim that § 1225(b)(1) applies to arriving noncitizens while § 1225(b)(2) must apply to someone else (*i.e.*, applicants for admission inside the United States), there are readily apparent problems with this structural argument. Mandatory detention under § 1225(b)(1) does not apply to all arriving noncitizens. *See* 8 U.S.C. § 1225(b)(1) (applying to noncitizens initially determined to be inadmissible due to misrepresentation or lack of valid documentation). Moreover, § 1225(b)(2)(C) permits the return of noncitizens "arriving on land" pending removal proceedings. Section 1225(b)(2)(C) only applies in the case of noncitizens described in § 1225(b)(2)(A), which excludes noncitizens "to whom [§ 1225(b)(1)] applies." If the Government were correct and § 1225(b)(2)(A) played no role in the detention of arriving noncitizens, §

1225(b)(2)(C) would be superfluous. The historical use of § 1225(b)(2) further belies the Government's contention that Francisco T.'s interpretation would render the paragraph superfluous. *See, e.g.*, *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 857–48 (D. Minn. 2019) (applying § 1225(b)(2)(A) to lawful permanent residents returning from abroad). And despite bemoaning how Francisco T.'s interpretation would leave little work to be performed by § 1225(b)(2), the Government ignores that its interpretation would leave little work to be done by § 1226. *Lopez Benitez*, 2025 WL 2371588, at *8 (concluding that the Government's interpretation would "narrow[] § 1226(a) such that it would have extremely limited (if any) application"); *see also Olson*, 2025 WL 2374411, at *12 ("[The Government's interpretation] would render § 1226 utterly superfluous.").

The Government next argues that because § 1225(b) is narrower than § 1226(a), "the specific detention authority under § 1225(b) governs over the general authority found at § 1226(a)." Gov.'s Mem. in Opp'n 12. Perhaps so. But this contention would only matter if Francisco T. were subject to detention under both statutes; it makes no difference as to determining whether he is subject to § 1225(b)(2) in the first place.

Finally, the Government argues that Francisco T.'s interpretation must be incorrect "because it would put noncitizens like him who 'crossed the border unlawfully' in a better position that those 'who present themselves for inspection at a port of entry.'" Gov.'s Mem. in Opp'n 14. For support, the Government turns to Congress's passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). *Id.* According to the Government, Congress passed the IIRIRA to replace certain aspects of the entry doctrine which put "immigrants who were attempting to lawfully enter the United States . . . in a worse position than persons who had crossed the border unlawfully." *Id.* (quoting

Torres, 976 F.3d at 928 (en banc)). The argument raises a fair point. It is plausible that Congress, after defining applicants for admission and eliminating certain aspects of the entry doctrine, would proceed to create an inspection and detention framework applicable to all applicants for admission, regardless of whether they successfully entered the United States by evading inspection. On the other hand, it is also plausible that Congress retained some distinctions between persons inside and outside the United States, a distinction "consistent with the long history of our immigration laws and with the Constitution." *Romero*, 2025 WL 2403827, at *12. After all, "once [a noncitizen] enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). In short, this argument likewise fails to move the needle.[10]

D. Longstanding Agency Practice

Although at most a minor consideration, longstanding agency practice offers a final modicum of support for Francisco T.'s interpretation. "[T]he longstanding 'practice of the government'—like any other interpretive aid—'can inform a court's determination of what the law is.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (quoting *NLRB v. Noel Canning*, 573 U.S. 513, 525 (2014)). "Historically, noncitizens who resided in the United States, but who had previously entered without inspection, were not deemed 'arriving aliens' under § 1225(b), but were instead subject to § 1226(a)." *Olson*, 2025 WL 2374411, at *11; *see also Rodriguez*, 779 F. Supp. 3d at 1259 (noting the "longstanding

[10] To the extent this a policy argument, it is not persuasive. *Patel v. Garland*, 596 U.S. 328, 3465 (2022) ("[P]olicy concerns cannot trump the best interpretation of the statutory text").

agency practice applying Section 1226(a) to inadmissible noncitizens already residing in the country"); *Martinez*, 2025 WL 2084238, at *4 ("[S]uch an approach would upend decades of practice . . . [and] has only been the official policy of the Department of Homeland Security ("DHS") for a few weeks."). As one court surmised, the Government's interpretation "is contrary to the agency's own implementing regulations, its published guidance, the decisions of its immigration judges (until very recently), [and] decades of practice." *Romero*, 2025 WL 2403827, at *9 (citation modified). The Government does not dispute that its novel interpretation upends decades of agency practice. *See* Gov. Resp. at 14–15. Although it is correct that no deference is owed to prior agency interpretations under *Loper Bright*, that does not render this history entirely irrelevant. *Cf. Romero*, 2025 WL 2403827, at *12 ("Realistically speaking, if Congress's intention was so clear, why did it take thirty years to notice?").

Based on the plain language of § 1225(b)(2)(A), the statutory structure of §§ 1225 and 1226, and longstanding agency practice, the Court recommends concluding that Francisco T. is not properly subject to mandatory detention under § 1225(b)(2).

III. Remedy

What remains is to decide the appropriate remedy.[11] Most courts, when faced with similar petitions, have ordered the Government to provide the petitioner a bond hearing. *Rodriguez*, 779 F. Supp. 3d at 1263 ("The Court finds that the specific harm Rodriguez

[11] As previously explained, the Government does not appear to contest the premise that if Francisco T. is not subject to detention under § 1225(b)(2), detention authority shifts to § 1226(a), in which case Francisco T. is entitled to a bond hearing. Because this premise appears to be undisputed, the Court declines to specifically analyze Francisco T.'s causes of action. If the Government disputes this premise, it must do so clearly when objecting to this Report and Recommendation.

alleges—that he is unlawfully barred from receiving a bond hearing on the merits—is remedied by granting his request for a bond hearing under Section 1226(a) and enjoining Defendants from denying bond on the basis that he is detained under Section 1225(b)(2)."); *Jose J.O.E.*, 2025 WL 2466670, at *8 (ordering the Government to provide a bond hearing within 7 days); *Lopez-Campos*, 2025 WL 2496379, at *10 (ordering immediate release or a bond hearing within seven days). That is the remedy Judge Bryan previously ordered when granting petitioner's motion for injunctive relief. Prelim. Inj. Order 10–11. Indeed, an immigration judge has since ordered Francisco T. be released from custody on bond. Dkt. No. 19 at 1.

The Court recommends only granting the petition insofar as Francisco T. requests a bond hearing (which has already been ordered and held). Granting release makes little sense given that the thrust of Francisco T.'s petition is that he is subject to § 1226(a)'s discretionary detention framework.[12] His requests for declaratory judgment have been mooted by the recent bond hearing where an immigration judge ordered his release on bond. As for Francisco T.'s request to "[s]et aside" the Government's policy of detaining applicants for admission under § 1225(b)(2), the Court is skeptical such broad relief would be appropriate even if the recent bond hearing did not moot the issue. *Cf. Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2556–58 (2025). Many of Francisco T.'s requests for relief are also

[12] Section 1226(a) provides: "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." According to Francisco T., "to detain a person under 8 U.S.C. § 1226(a), the Department must issue an I-200 to take a person into custody." Pet. ¶ 60 (citing 8 C.F.R. § 236.1(b)). It does not appear that the Government issued an I-200 here. *See generally* Pet.; Dkt. No. 7. If so, the proper remedy could be Francisco T.'s release. But granting release would be largely academic because the Government could—and presumably would—immediately detain Francisco T. under § 1226(a). The practical solution is to not disturb the prior relief granted.

predicated on conclusions that are not reached by this Report and Recommendation (*e.g.*, that the Government violated the Administrative Procedure Act).

Finally, there is the matter of Francisco T.'s request for fees and costs under the Equal Access to Justice Act (EAJA). Pursuant to District of Minnesota Local Rule 54.3(a), "[a] party must file and serve an application for fees under the Equal Access to Justice Act within 30 days of final judgment as that term is defined in 28 U.S.C. § 2412(d)(2)(G)." Because Francisco T. has yet to file a motion for EAJA fees, the issue is not ripe for a decision. The Court recommends resolving Francisco T.'s request for EAJA fees in the ordinary course.

RECOMMENDATION

For the reasons set forth above, the Court RECOMMENDS THAT: Francisco T.'s Verified Petition for Writ of Habeas Corpus (Dkt. No. 1) be GRANTED in part and DENIED in part as described herein.

Dated: September 5, 2025

s/ David T. Schultz
DAVID T. SCHULTZ
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court. It is not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).