IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

KENIBER ARDANY GIRON LOPEZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No. CIV-25-1175-SLP**
	)	
CORECIVIC CIMARRON CORRECTIONAL FACILITY, et al.,	)	
	)	
Respondents.	)	

REPORT AND RECOMMENDATION

Petitioner, Keniber Ardany Giron Lopez, a Guatemalan citizen proceeding *pro se*,[1] filed a Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 ("Petition") challenging his detention by the U.S. Immigration and Customs Enforcement ("ICE").[2] (Doc. 1).[3] United States District Judge Scott L. Palk referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C). (Doc. 5). In accordance with the briefing schedule, (Doc. 7), Respondents timely filed a

[1] A *pro se* litigant's pleadings are liberally construed "and held to a less stringent standard than formal pleadings drafted by lawyers." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991); *see Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). But the court cannot serve as Petitioner's advocate, creating arguments on his behalf. *See Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

[2] Petitioner is housed at Cimarron Correctional Facility in Cushing, Oklahoma. (Doc. 1, at 2).

[3] Citations to the parties' filings and attached exhibits will refer to this Court's CM/ECF pagination.

Response in Opposition to the Petition for Writ of Habeas Corpus.[4] (Doc. 9). Petitioner did not file a Reply. As fully set forth below, the undersigned recommends that the Court **GRANT** the Petition in part and order Respondents to provide Petitioner a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days or otherwise to release him if no hearing is held within that time.

I. Introduction

This action turns on one question: can Petitioner – an alien who has not been admitted or inspected, but has lived in the United States for twenty years – be classified as an alien who is an "applicant for admission" under 8 U.S.C. § 1225 or must he instead be classified as an alien under 8 U.S.C. § 1226? The answer to this question directly affects Petitioner's detention, as the parties agree that he is subject to mandatory detention if he is classified as an applicant for admission under § 1225 and that he is entitled to a bond hearing if he is classified as an alien under § 1226.

While the Immigration and Nationality Act ("INA") is not new, this question is newly before federal courts across the country because of a change in interpretation by the executive branch. For many years, Immigration Judges provided bond hearings for detained aliens who had entered the country without inspection. *See Jonathan Javier Yajure Hurtado*, 29 I. & N. Dec. 216, 225 n.6 (BIA 2025) ("*Hurtado*"). But on September 5, 2025, the Board of Immigration Appeals ("BIA") determined that an immigration judge

[4] The response was not filed on behalf of Respondent CoreCivic Cimarron Correctional Center, in part because it is not a federal entity. (Doc. 9, at 7 n.1). The undersigned agrees with the responding Respondents that a separate response is not necessary to resolve this matter.

does not have authority to hear a request for bond by an alien present in the United States who has not been admitted after inspection because the alien was "subject to mandatory detention" under Section 1225. *Id.* at 229. This change in procedure has led to a nationwide influx of habeas corpus petitions seeking bond hearings for aliens who were recently detained after living for years in the United States without inspection.

As discussed further below, nearly all federal courts reaching this issue have granted relief to similarly situated petitioners seeking a bond hearing. In this Court, United States Magistrate Judge Chris M. Stephens made the first substantive determinations on this issue, recommending that the Court grant habeas relief by ordering the respondents to provide the petitioners with bond hearings within five business days or otherwise releasing them. *Gallardo v. Olson*, No. CIV-25-1090-R, R. & R. (W.D. Okla. Oct. 28, 2025); *Escarcega v. Olson*, No. CIV-25-1129-J, R. & R. (W.D. Okla. Oct. 28, 2025); *Diaz v. Holt*, No. CIV-25-1179-J, R. & R. (W.D. Okla. Oct. 30, 2025). The undersigned finds Judge Stephens's legal analysis highly persuasive. And, because of the similarities in the allegations in the petitions, the counsel involved, and the arguments made by the government in response, the analysis herein largely tracks Judge Stephens's analysis in *Gallardo*, *Escarcega*, and *Diaz*.

II. Background

Petitioner entered the United States around twenty years ago without being inspected or admitted. (Doc. 1, at 2; Doc. 9, at 13). On September 11, 2025, ICE apprehended Petitioner. (Doc. 1, at 4). ICE then instituted removal proceedings, alleging he was an alien present in the United States who had not been admitted or paroled. (Doc.

9, at 13). Respondents assert that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2)(A). (*Id.*) Petitioner asserts that, at his custody redetermination hearing on September 17, 2025, the immigration judge applied *Hurtado* and denied his bond application. (Doc. 1, at Ex. 1, at 3). Petitioner's removal proceeding is ongoing. (Doc. 9, at 13).

III. Petitioner's Claims and Respondents' Response

In Ground One, the Petition asserts that Petitioner's detention violates the INA because Petitioner should be detained pursuant to Section 1226 instead of Section 1225.[5] (Doc. 1, at 6). He states that "[t]he Immigration Judge determined that [he is] an 'applicant for admission' and therefore the Immigration Court has no jurisdiction to consider my bond application." (*Id.*) In Ground Two, Petitioner contends the BIA and his immigration judge "fail[ed] to apply constitutional avoidance" when they decided and subsequently applied *Hurtado*. (*Id.*) In Ground Three, Petitioner argues his continued detention without a substantive bond hearing violates due process. (*Id.*) As relief, Petitioner asks the Court to "release [him] on reasonable terms so that [he] can effectively continue to pursue [his] immigration applications." (*Id.* at 7).

Respondents first contend that the Petition should be denied because it does not name Petitioner's custodian. (Doc. 9, at 14-15). In response to Ground One, Respondents

[5] The Petition specifically states that "INA § 236[] . . . explicitly delegate[s] authority to Immigration Judges . . . . By refusing to exercise jurisdiction, the Immigration Judge's ruling is in direct contradiction to the statute . . . ." (Doc. 1, at 6). Section 236 of the INA is codified at 8 U.S.C. § 1226. *See Caballero v. Baltazar*, No. 25-CV-03120-NYW, 2025 WL 2977650, at *1 (D. Colo. Oct. 22, 2025).

assert that judicial review is barred by 8 U.S.C. § 1252. (*Id.* at 15-18). They also assert that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2). (*Id.* at 18-25). For Ground Two, Respondents assert that "[c]onstitutional avoidance is not a separate claim for relief, but is instead a canon of statutory construction." (*Id.* at 14 n.7) (citing *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001)). Finally, for Ground Three, Respondents contend that Petitioner's due process claim is both premature and without basis. (*Id.* at 25-28).

IV. Standard of Review

To obtain habeas corpus relief, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241 (c)(3). "Challenges to immigration detention are properly brought directly through habeas." *Soberanes v. Comfort,* 388 F.3d 1305, 1310 (10th Cir. 2004) (citing *Zadvydas*, 533 U.S. at 687-88).

V. Analysis

A. The Petition Should Not Be Denied for Failure to Name Petitioner's Immediate Custodian.

Respondents' first argument is that the "Petition should be denied because it fails to name Petitioner's custodian." (Doc. 9, at 14) (citation modified). In his Petition, Petitioner lists Cimarron Correctional Facility and the Department of Homeland Security as respondents. (Doc. 1, at 1). According to Respondents, this is improper because the Supreme Court decided in *Rumsfeld v. Padilla* that "the proper respondent in a habeas proceeding is 'the person who has custody over the petitioner,'" also known as "the person with the ability to produce the prisoner's body before the habeas court." (Doc. 9, at 14)

(quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004)). Respondents contend that Petitioner's failure to name this "immediate custodian," *i.e.*, the warden at his correctional facility, mandates denial of the Petition. (*Id.* at 14-15).

At the outset, Respondents fail to cite any law clearly stating a petition must be summarily denied because it names the wrong respondent. And regardless of whether that is correct, *Rumsfeld* explicitly "decline[d] to resolve" Respondents' "immediate custodian" argument in the context of "an alien detained pending deportation." 542 U.S. at 435 n.8.

In this vacuum, many circuits do apply the immediate custodian rule. *Id.*; *see also Castillo-Hernandez v. Longshore*, 6 F. Supp. 3d 1198, 1204 (D. Colo. 2013) (noting "circuit split" on rule's applicability in relevant context). However, "[t]he Tenth Circuit has yet to weigh in on" whether the proper respondent in an immigration habeas case must be the immediate custodian of a petitioner. *Castillo-Hernandez*, 6 F. Supp. 3d at 1204. Within the Tenth Circuit, several courts contend that the proper respondent need not always be the immediate custodian. *See id.* at 1211 ("The immediate custodian rule does not apply to [a petitioner's] challenge to the immigration authorities' interpretation of a statute that could accord him a form of discretionary relief."); *Carbajal v. Holder*, 43 F. Supp. 3d 1184, 1187 (D. Colo. 2014) ("[T]he Court is not persuaded that the immediate custodian rule in *Padilla* necessarily applies in a habeas corpus case, like the instant action, in which a non-citizen challenges the legality of his or her pre-removal detention."); *Rafati v. Barr*, Case No. 20-CIV-411, 2020 WL 12968837, at *1 (E.D. Okla. Dec. 22, 2020) (permitting petitioner to name "ICE as a party respondent").

The undersigned notes that at least one case in this circuit came to the opposite conclusion. However, that case distinguishes itself both from above cases and the at-issue one. In *Fuentes v. Choate*, the district court held that the immediate custodian rule applied for an immigrant detainee who challenged "the very fact of her present confinement." Case No. 24-CIV-1377, 2024 WL 2978285, at *7 (D. Colo. June 13, 2024). In doing so, that court expressly declined to follow *Castillo-Hernandez*, cited above. *Id.* It did so in part because "while the petitioner in *Padilla* sought immediate release from custody, the *Castillo-Hernandez* petitioner's 'principal request [was] that [the court] direct an [immigration judge] to conduct a bond hearing . . . , which hearing might result in his release.'" *Id.* (quoting *Castillo-Hernandez*, 6 F. Supp. 3d at 1208-09). The court reasoned that such a request, which only commands that ICE provide access to a bond hearing where release is discretionary, was distinguishable from mandatory release for purposes of the immediate custodian rule because "a jailer has never been recognized as possessing the authority to consider granting an immigrant some sort of discretionary relief, and no such authority has ever been created through regulation." *Id.* (quoting *Castillo-Hernandez*, 6 F. Supp. 3d at 1210).

Here, Petitioner asks this Court to "release [him] on reasonable terms . . . ." Construed liberally and in the context of the rest of the Petition, this is a request to be released on an order of supervision following a bond hearing in front of an immigration judge. The undersigned is persuaded by the weight of cases in this circuit that the discretionary relief Petitioner seeks does not mandate application of the immediate custodian rule. And because ICE "is in complete control of detainees' admissions and

release" and is housed within the Department of Homeland Security, the undersigned construes the Petition to have appropriately named a party respondent but further adds as respondents "the Attorney General of the United States [Pamela Bondi] and the Secretary of Homeland Security [Kristi Noem]."[6] *Rafati*, 2020 WL 12968837, at *1 (quoting *Calderon v. Sessions*, 330 F. Supp. 3d 944, 953 (S.D.N.Y. 2018)); *id.* (determining that petitioner "appropriately named ICE as a party respondent," and adding Attorney General and Secretary of Homeland Security as respondents); *cf. Castillo-Hernandez*, 6 F. Supp. 3d at 1212 ("[T]his Court concludes that either the Attorney General or [the Department of Homeland Security] Secretary is the proper respondent.").

In addition to the above analysis, the undersigned's decision is informed by "the Supreme Court's policy on use of the habeas writ, which prescribes maintaining broad access to the writ's protections and has 'consistently rejected interpretations of the habeas corpus statute that would suffocate the writ in stifling formalisms or hobble its effectiveness with the manacles of arcane and scholastic procedural requirements.'"

[6] Caselaw in this district also states that "[i]f a petitioner names the wrong respondent, this Court may simply substitute the correct party." *Dopp v. McCoin*, Case No. 18-CIV-520, 2019 WL 3071984, at *2 (Feb. 28, 2019), *report and recommendation adopted*, 2019 WL 1952693 (W.D. Okla. May 2, 2019). The undersigned does not rely on this rule because it typically arises upon a court's *sua sponte* review of a petition and there is some indication, though in dissimilar procedural posturing, that such change is disfavored when a respondent raises the issue. *See, e.g.*, *Edwards v. Oklahoma*, Case No. 8-CIV-995 (W.D. Okla. Dec. 17, 2008) (dismissing petition on respondent's motion where substitution of parties "futile" in light of meritless petition), *report and recommendation adopted*, 2009 WL 73873 (W.D. Okla. Jan. 8, 2009), *aff'd*, 327 F. App'x 75, 76 (10th Cir. 2009) (affirming dismissal for improper respondent and adding "[t]his is especially true where . . . the pro se petitioner has been *repeatedly* advised of the error but has failed to respond at all to the matter.") (emphasis added).

Castillo-Hernandez, 6 F. Supp. 3d at 1214 (quoting *Hensley v. Municipal Court, San Jose Milpitas Judicial Dist., Santa Clara Cty.*, 411 U.S. 345, 350 (1973)).

B. The Court Has Jurisdiction to Consider the Petition.

Based on specific provisions of the INA at issue, Respondents argue this Court lacks jurisdiction to consider Petitioner's claims. (Doc. 9, at 15-18). Similar jurisdictional arguments have recently been rejected by multiple district courts throughout the country. *See, e.g.*, *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), --- F.3d. Supp. ----, 2025 WL 2682255, at *3 n.7 (E.D. Va. Sep. 19, 2025) ("Federal courts throughout the country have similarly found that these jurisdiction-stripping provisions do not deprive the federal courts of jurisdiction to review a noncitizen's challenge to the legality of his detention." (collecting cases)). As explained below, the undersigned agrees with those courts that have found jurisdiction exists to consider arguments challenging detention in circumstances similar to Petitioner's.

1. Sections 1252(a)(5) and 1252(b)(9).

Respondents first argue the Court lacks jurisdiction to consider the Petition because (1) the INA channels "claims related to removal orders" to a court of appeals rather than a district court, and (2) such claims include "the decision to charge and detain Petitioner under [8 U.S.C.] § 1225(b)(2)(A)." (Doc. 9, at 15-16) (citing 8 U.S.C. §§ 1252(a)(5) and 1252(b)(9)). Accordingly, Respondents argue that under § 1252(a)(5) and § 1252(b)(9), the decision to charge and detain Petitioner "can be reviewed by the appropriate court of appeals as part of an appeal of a final order of removal—but not this Court." (*Id.* at 16).

Several courts have recently rejected this jurisdictional argument for the fundamental reason that detention orders "are separate and apart from orders of removal." *Hasan*, 2025 WL 2682255 at *4 (citation modified). Challenges to detention orders "are legal in nature and challenge specific conduct unrelated to removal proceedings." *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS, 2025 WL 2652880, at *2 (D. Colo. Sep. 16, 2025) ("Congress did not intend the zipper clause to cut off claims that have a tangential relationship with pending removal proceedings. A claim only arises from a removal proceeding when the parties in fact are challenging removal proceedings.") (quoting *Mukantagara v. US. Dep't of Homeland Sec.*, 67 F.4th 1113, 1116 (10th Cir. 2023)) (citation modified); *Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *2-3 (D. Colo. Oct. 17, 2025) (rejecting jurisdictional argument, in part, because the petitioner's claims challenging detention under 8 U.S.C. § 1225 rather than § 1226 due to a change in policy was a challenge to specific conduct unrelated to removal proceedings).

The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018), recognized the limited circumstances where § 1252(b)(9) would bar a district court's jurisdiction. The Court in *Jennings* noted the aliens in that case "are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined. Under these circumstances, § 1252(b)(9) does not present a jurisdictional bar." *Id.*

Here, like many recent habeas cases by aliens challenging mandatory detention under § 1225(b)(2)(A), "Petitioner does not challenge any removal order because no order

of removal has yet been entered against him. Rather, he challenges the constitutionality and legality of his detention during the period before his removal hearing." *S.D.B.B. v. Johnson,* No. 1:25-cv-882, 2025 WL 2845170, at *3 (M.D.N.C. Oct. 7, 2025). As such, "§ 1252(b)(9) does not deprive the court of jurisdiction." *Id.* This interpretation of § 1252(a)(5) and § 1252(b)(9) tracks the same recent analysis of several district courts. *See, e.g., Caballero v. Baltazar*, No. 25-cv-3120-NYW, 2025 WL 2977650, at *4 (Oct. 22, 2025) (ruling § 1252(b)(9) does not present a jurisdictional bar to an alien challenging "the legality of his continued detention without a bond hearing"); *Hasan*, 2025 WL 2682255, at *4 ("Section 1252(b)(9) does not insulate detention orders from judicial review because they are separate and apart from orders of removal.") (citation modified); *Hernandez Marcelo v. Trump*, No. 3:25-cv-00094-RGE-WPK, --- F. Supp. 3d ----, 2025 WL 2741230, at *6 (S.D. Iowa Sep. 10, 2025) (concluding § 1252(a)(5) and § 1252(b)(9) are inapplicable because the habeas petitioner was challenging his detention without a bond hearing, not an order of removal); *Jose J.O.E. v. Bondi*, No. 25-cv-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670, at *7 (D. Minn. Aug. 27, 2025) (same) (collecting cases)). Notably, Respondents provided no example of a recent district court decision adopting their view.

The undersigned agrees with the prevailing analysis from other district courts that have recently considered this question and concludes that § 1252(a)(5) and § 1252(b)(9) do not deprive the Court of jurisdiction.

2. Section 1252(g)

Respondents also argue that the INA limits a district court's jurisdiction to consider "any cause or claim by or on behalf of any alien arising from the decision or action by

[DHS] to *commence* proceedings, *adjudicate* cases, or *execute* removal orders against any alien under this chapter." (Doc. 9, at 16) (quoting 8 U.S.C. § 1252(g)). Respondents assert that "the bar on considering the commencement of proceedings includes a bar on considering challenges to the *basis on which* DHS chooses to commence removal proceedings." (*Id.*)

In *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999), the Supreme Court explained that § 1252(g)'s jurisdictional bar applies only to "three discrete actions" – the commencement of removal proceedings, aajudication of removal proceedings, and execution of removal orders. The Supreme Court found it "implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." *Id.* More recently, in *Jennings*, the Court reaffirmed this narrow reading, explaining that *Reno* "did not interpret [§ 1252(g)] to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General." 583 U.S. at 294. Instead, the statutory language refers "to just those three specific actions themselves." *Id.*

Though § 1252(g) indeed imposes a jurisdictional bar on a court's ability to review certain habeas petitions, the restrictions are to be read narrowly. *See, e.g.*, *Reno*, 525 U.S. at 487 (referencing the Court's "narrow reading of § 1252(g)"); *Gutierrez*, 2025 WL 2962908, at *3 ("Section 1252(g) imposes a narrow judicial bar to a federal court's review of 'any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.'") (quoting 8 U.S.C. § 1252(g)); *Hasan*, 2025

WL 2682255, at *4 ("Section 1252(g) has a narrow reach."); *Garcia Cortes*, 2025 WL 2652880, at *1 ("These statutory bars are read narrowly."); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *3 (S.D. Fla. Sep. 9, 2025) ("The Supreme Court has given § 1252(g) a 'narrow reading,' emphasizing that it does not cover 'all claims arising from deportation proceedings' or impose 'a general jurisdictional limitation.'" (quoting *Reno,* 525 U.S. at 482, 487)).

Here, Petitioner does not challenge the commencement of removal proceedings, the adjudication of removal proceedings, or the execution of removal orders. Instead, he challenges "the narrow legal questions of whether [his] detention under 8 U.S.C. § 1225 violates the INA and whether he is entitled to a bond hearing under § 1226's discretionary detention framework." *Gutierrez*, 2025 WL 2962908, at *3. As such, Petitioner's claims fall outside the narrow jurisdictional limitations of § 1252(g) and, accordingly, § 1252(g) does not deprive the Court of jurisdiction. This conclusion is consistent with many district courts that have recently addressed this jurisdictional challenge from the government. *See, e.g., id.* (finding § 1252(g) did not strip the court of jurisdiction to consider petitioner's challenge to his detention under § 1225 rather than § 1226); *S.D.B.B.*, 2025 WL 2845170, at *3 (same); *Hasan*, 2025 WL 2682255, at *4 (same); *Garcia Cortes*, 2025 WL 2652880, at *1 (same); *Grigorian*, 2025 WL 2604573, at *4 (same).

Respondents cite only one decision, from the District of Minnesota, that has squarely ruled that § 1252(g) bars a district court's jurisdiction to consider a petitioner's challenge to detention. *See S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 WL 2617973, at *3 (D. Minn. Sept. 9, 2025). That decision "appears to represent an extreme

minority position, both in its own district and nationally." *Gonzalez Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *2 (W.D. Tex. Oct. 21, 2025); *see also Belsai D.S. v. Bondi*, No. 25-cv-3682 (KMM/EMB), 2025 WL 2802947, at *5 n.3 (D. Minn. Oct. 1, 2025) ("respectfully disagree[ing] with the conclusion reached by the Court in *S.Q.D.C.*").[7]

3. Conclusion

The undersigned concludes that neither § 1252(a)(5), § 1252(b)(9), nor § 1252(g) bars this Court from jurisdiction to consider Petitioner's challenge to his detention.

C. Section 1226(a) Applies to Petitioner's Detention.

Petitioner argues he is held in violation of INA § 236(a), which he states "explicitly delegate[s] authority to Immigration Judges" to hold bond hearings under 8 U.S.C. § 1226(a). (Doc. 1, at 6); *see also Caballero v. Baltazar*, No. 25-CV-03120-NYW, 2025 WL 2977650, at *1 (D. Colo. Oct. 22, 2025) ("[S]ection 236 of the Immigration and

[7] The district court in *S.Q.D.C.* relied on *Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016). *S.Q.D.C.*, 2025 WL 2617973, at *3. Respondents likewise rely on *Alvarez* to argue that "the bar on considering the commencement of proceedings includes a bar on considering challenges to the *basis on which* DHS chooses to commence removal proceedings." (Doc. 9, at 16). Not only is *Alvarez* distinguishable on its facts from those here, but district courts considering detention orders have also recently disagreed with jurisdictional arguments relying on *Alvarez*. *E.g.*, *Avila v. Bondi*, No. 25-3741 (JRT/SGE), 2025 WL 2976539, at *4 (D. Minn. Oct. 21, 2025); *Belsai D.S.*, 2025 WL 2802947, at *5 n.3; *Grigorian*, 2025 WL 1895479, at *4-5 (S.D. Fla. July 8, 2025).

Nationality Act[] . . . is codified at 8 U.S.C. § 1226 . . . ."). In doing so, he necessarily argues that § 1226(a), and not § 1225(b)(2), applies to him.[8]

Respondents contend that Petitioner is an "applicant for admission" and therefore properly detained under § 1225(b)(2)(A). (Doc. 9, at 18). That is, because Petitioner did not enter the country lawfully and has not offered to voluntarily depart, he is still considered an "applicant for admission" or "seeking admission" under § 1225. (*Id.* at 20). Further, Respondents claim (1) § 1226(a) is reserved for those who do not fall within the confines of § 1225(b)(2)(A), namely, aliens who entered the country lawfully, and (2) any overlap between the two provisions does not undermine ICE's interpretation of the two statutes. (*Id.* at 22-25).

The parties agree that if Petitioner is an "applicant for admission" under § 1225(b)(2)(A), he is not entitled to a bond hearing. (Doc. 1, at 6; Doc. 9, at 7). They further agree that if he is not an "applicant for admission" under § 1225, then Petitioner falls within the confines of § 1226(a), which would entitle him to a bond hearing. *Jennings*, 583 U.S. at 306 ("Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention."). The undersigned has reviewed the statutory text, Congressional intent, legislative history, and § 1226(a)'s application for the past three decades, as well as numerous recent cases addressing this exact issue. The undersigned agrees with the great weight of authority and finds that Petitioner falls within the confines

[8] By the same reasoning, the undersigned rejects Respondents' suggestion that Petitioner did not "plainly state" this ground for relief. (Doc. 9, at 19).

of § 1226(a), and not § 1225(b)(2)(A). As such, Petitioner is entitled to a bond re-determination hearing.

1. Statutory Interpretation of § 1225(b)(2)(A) and § 1226(a)

When interpreting a statute, the "inquiry begins with the statutory text, and ends there as well if the text is unambiguous." *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004). "If the statutory language is plain, [the Court] must enforce it according to its terms." *King v. Burwell*, 576 U.S. 473, 486 (2015). "But oftentimes the meaning—or ambiguity—of certain words or phrases may only become evident when placed in context." *Id.* (citation modified). "So when deciding whether the language is plain, the Court must read the words in their context and with a view to their place in the overall statutory scheme." *Id.* (citation modified).

Section 1225(a)(1) describes an "applicant for admission" as "an alien present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(l) (citation modified). The statute defines "admission" and "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *Id.* § 1101(a)(13). As relevant here, § 1225(b)(2)(A) allows an examining immigration officer to detain "an applicant for admission" under § 1229a if the alien "seeking admission is not clearly and beyond a doubt entitled to be admitted." *Id.* § 1225(b)(2)(A). Section 1226(a), on the other hand, authorizes detention of an alien "on a warrant issued by the Attorney General" pending removal proceedings. *Id.* § 1226(a).

At issue is whether "an applicant for admission" – that is, "an alien present in the United States who has not been admitted" – includes an alien like Petitioner who

intentionally avoided lawful entry. *See id.* § 1225(a)(l). The statutory text does not provide a definitive answer as to what it means to be present without admittance where, as here, the alien has already entered and spent many years residing in the United States. Even when statutory terms are unambiguous, context still matters. *See United States v. Bishop*, 412 U.S. 346, 356 (1973) ("[C]ontext is important in the quest for [a] word's meaning."); *United States v. Ceballos-Martinez*, 387 F.3d 1140, 1144 (10th Cir. 2004) (noting that statutory interpretation "requires [courts] to interpret Congress's choice of words in the context that it chose to use them"). Further, "it is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (citation modified). When considering the overall context of § 1225, the undersigned concludes the statute limits the scope of the terms "applicant for admission" and "seeking admission" in § 1225(b)(2)(A).

At the outset, giving effect to each clause and word of a statute includes an analysis of the statute's title. "A title is especially valuable where it reinforces what the text's nouns and verbs independently suggest." *Dubin v. United States*, 599 U.S. 110, 121 (2023) (citation modified). Section 1225 is titled: "Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing." (Emphasis added). The use of "arriving" to describe aliens indicates that the statute governs the entrance of aliens to the United States at the border or ports of entry.

This reading is bolstered by the fact that § 1225 establishes an inspection scheme for when to let aliens into the country. In fact, the subheading for § 1225(b)(2) reads

"Inspection of Other Aliens," reinforcing the idea that the subsection applies to those coming in, not already present. Section 1225(d) is labeled "Authority Relating to Inspections" and describes the powers of immigration officers to search and detain vessels and "arriving aliens." *See* 8 U.S.C. § 1225(d)(l) (authorizing immigration officers to "board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States"); *id.* § 1225(d)(2) (authorizing immigration officers to detain an "arriving" alien and incoming vessel or aircraft and to deliver the "arriving" alien for inspection). Section 1225 also explicitly addresses its effect on "stowaways" and "crewmen," words that likewise suggest arrival at a border or port of entry. *See id.* § 1225(a)(2) ("An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted shall be ordered removed upon inspection by an immigration officer."); *id.* § 1225(a)(3) ("All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.").

Further, § 1225's place in the overall statutory scheme supports the undersigned's reading. *See King*, 576 U.S. at 486 (holding that courts are meant to "construe statutes, not isolated provisions") (citation modified). That Congress separated removal of "arriving aliens" from its more general section for "Apprehension and detention of aliens" in § 1226, strongly implies that Congress enacted § 1225 for a specific, limited purpose. Whereas § 1225 governs removal proceedings for "arriving aliens," § 1226(a) serves as a catch-all. As the Supreme Court in *Jennings* explained, § 1226(a) is the "default rule" and "applies

to aliens already present in the United States." 583 U.S. at 288, 303.[9] The inclusion of both provisions in the INA is likely no coincidence, but rather a way for Congress to delineate between the specified categories of § 1225 and the more general provision of § 1226(a), which captures aliens who fall outside of § 1225's specificity.

After considering the text and statutory framework, the undersigned concludes the terms "applicant for admission" and "seeking admission" in § 1225(b)(2) do not cleanly apply to aliens like Petitioner. "The plain meaning of the phrase 'seeking admission' requires that the applicant must be presently and actively seeking lawful entry into the United States. The use of the present participle in § 1225(b)(2)(A) implies action – something that is currently occurring, and in this instance, would most logically occur at the border upon inspection." *Caballero*, 2025 WL 2977650, at *6 (citation modified). In contrast, Petitioner has resided in the United States continuously for twenty years and was not arrested when attempting to cross the border or pass through a port of entry illegally.

[9] Respondents argue that *Jennings* supports their position. (Doc. 9, at 19). The Court in *Jennings*, however, did not rule on whether non-admitted or inadmissible aliens were governed by § 1225(b)(2)(A) or § 1226(a). Accordingly, the undersigned takes the same approach as other courts that have recently addressed this issue and cites *Jennings* for its acknowledgement that § 1226(a) is the default rule but does not make a recommendation based on *Jennings*. *See, e.g.*, *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *5 n.4 (E.D. Mich. Sep. 9, 2025) ("The Court cites *Jennings* because it acknowledges § 1226(a) as the default rule. But the Supreme Court did not rule on whether non-admitted or inadmissible aliens fell within boundaries of § 1226(a) as opposed to § 1225(b)(2)(A)."); *S.D.B.B.*, 2025 WL 2845170, at *5 ("On the other hand, § 1226(a) sets out the 'default rule' for detaining and removing aliens 'already present in the United States.'") (quoting *Jennings*, 583 U.S. at 303).

(Doc. 1, at 2).[10] Ultimately, a textual analysis of the immigration framework suggests Petitioner's circumstances align with § 1226(a), not § 1225(b)(2)(A).

2. Legislative History and Recent Amendment

The legislative history and recent amendment of § 1226 also indicate the statute applies to aliens who reside in the United States but previously entered without inspection. First, § 1226(a)'s predecessor statute, 8 U.S.C. § 1252(a)(l),

> governed deportation proceedings for all noncitizens arrested within the United States. *See* 8 U.S.C. § 1252(a)(l) (1994) ("Pending a determination of deportability any noncitizen may, upon warrant of the Attorney General, be arrested and taken into custody."); *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) ("A deportation hearing was the 'usual means of proceeding against a noncitizen already physically in the United States.'"). This predecessor statute, like Section 1226(a), included discretionary release on bond. *See* § 1252(a)(l) (1994) ("Any such noncitizen taken into custody may, in the discretion of the Attorney General be continued in custody or be released under bond."). Upon passing [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996], Congress declared that the new Section 1226(a) "restates the current provisions in the predecessor statute regarding the authority of the Attorney General to arrest, detain, and release on bond a noncitizen who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229; *see also* H.R. Rep. No. 104-828, at 210 (same).

Rodriguez v. Bostock, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (citation modified); *see also Pizarro Reyes*, 2025 WL 2609425, at *7 ("If § 1226(a) adopted the predecessor[]

[10] On September 21, 2025 – after Petitioner's custody redetermination hearing was denied – Petitioner's wife, a U.S. citizen, filed a Petition for Alien Relative with the United States Citizenship and Immigration Services seeking his legal status after detention. (Doc. 1, at Ex. 1, at 17). This is not relevant to Petitioner's current detention under § 1225(b)(2)(A): "As § 1225(b)(2)(A) applies only to those noncitizens who are actively 'seeking admission' to the United States, it cannot, according to its ordinary meaning, apply to [Petitioner, who has] already been residing in the United States for several years." *Caballero*, 2025 WL 2977650, at *6 (quoting *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), --- F. Supp. 3d ----, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025)).

[statute]'s authority to release noncitizens unlawfully present in the United States on bond, then [petitioner] is entitled to discretionary release on bond as well.").

In addition, and contrary to Respondents' assertions, Congress' recent amendment to § 1226 renders the government's interpretation of § 1225(b)(2)(A) superfluous. Earlier this year, Congress amended § 1226 via the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025). The Laken Riley Act added § 1226(c)(l)(E), which mandates detention for aliens who

- are inadmissible under § 1182(a)(6)(A) (aliens present in the United States without being admitted or paroled, like Petitioner), § 1182(a)(6)(C) (misrepresentation), or § 1182(a)(7) (lacking valid documentation) and
- have been arrested for, charged with, or convicted of certain crimes.

8 U.S.C. § 1226(c)(1)(E)(i)-(ii).

Considering that § 1182(a)(6)(A)(i) specifically refers to "alien[s] present in the United States without being admitted or paroled," and that § 1226(c)(1)(E) requires detention without bond of these individuals if they have also committed certain felonies, the new statutory exception would be superfluous if § 1225(b)(2) already authorized their mandatory detention regardless of felony status. That is, because an "alien present in the United States" without admittance would be unlikely to prove that they are "clearly and beyond a doubt entitled to be admitted," ICE would never need to rely on § 1226(c)(1)(E) to detain them. *See Marx v. Gen. Rev. Corp.*, 568 U.S. 371, 386 (2013) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.") (citation modified). District courts have noted that adoption of Respondents' interpretation "would largely nullify a statute Congress enacted this very

year and must be rejected." *Pizarro Reyes*, 2025 WL 2609425, at *5 (quoting *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025)) (citation modified).

The undersigned's recommended interpretation is consistent with recent holdings of numerous district courts that have ruled on this exact issue. *See, e.g.*, *Menjivar Sanchez v. Wofford*, No. 1:25-cv-01187-SKO (HC), 2025 WL 2959274, at *5 (E.D. Cal. Oct. 17, 2025) ("The third problem with the government's argument is that application of section 1225(b)(2)(A) to noncitizens already in the country would render superfluous a recent amendment to section 1226(c)."); *Alvarez Puga v. Assistant Field Off. Dir., Krome N Serv. Processing Ctr.*, No. 25-24535-CIV, 2025 WL 2938369, at *5 (S.D. Fla. Oct. 15, 2025) ("If Respondents' interpretation of section 1225 is correct – that the mandatory detention provision in section 1225(b)(2)(A) applies to all noncitizens present in the United States who have not been admitted – then Congress would have had no reason to enact section 1226(c)(1)(E)."); *Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK, 2025 WL 2896348, at *8 (S.D. Ind. Oct. 11, 2025) ("Under Respondents' expansive interpretation of § 1225, the amendment would have no purpose. Section 1225(b)(2) would already provide for mandatory detention of every unadmitted alien, regardless of whether the alien falls within one of the new classes of non-bondable aliens established by the Laken Riley Act."); *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511, at *10 (E.D.N.Y. Oct. 6, 2025) (same); *Quispe v. Crawford*, 1:25-cv-1471-AJT-LRV, 2025 WL 2783799, at *5 (E.D. Va. Sep. 29, 2025) (same); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ, --- F. Supp. 3d ----, 2025 WL 2639390, at *9 (D.N.H. Sep. 8, 2025) (same); *Maldonado v.*

Olson, No. 25-cv-3142 (SRN/SGE), 2025 WL 2374411, *12 (D. Minn. Aug. 15, 2025) (same); *Gomes*, 2025 WL 1869299, at *6-7 (same).

3. BIA's Current and Historical Interpretations of § 1225(b)(2)(A) and § 1226(a)

On September 5, 2025, the BIA issued a precedential decision holding that an immigration judge lacks authority to consider a bond request for any person who is present in the United States without admission, treating such person as an applicant for admission and subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *Hurtado*, 29 I. & N. Dec. at 220, 229. The BIA in *Hurtado* concluded that § 1225(b)(2)(A) covers inadmissible aliens who lived unlawfully in the United States for longer than two years without apprehension. *Id.* at 229.

The undersigned reaches the opposite conclusion from the BIA's statutory analysis in *Hurtado.* Notably, this Court is not bound by the BIA's interpretation of § 1225(b)(2)(A). *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) ("Courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.") (citation modified). In *Hurtado*, the BIA characterized as a "legal conundrum" the idea that an alien's continued unlawful presence means they are not "seeking admission." 29 I. & N. Dec. at 221. However, an alien's continued presence cannot constitute "seeking admission" when that alien *never attempted* to obtain lawful status. This is especially true in light of § 1225's statutory context. The BIA also found that § 1225(b)(2)(A) does not render superfluous the Laken Riley Act. *Id.* at 222. Considering, however, that both § 1225(b)(2)(A) and § 1226(c)(1)(E) mandate detention

for inadmissible aliens, the fact that one includes additional conditions for such detention does not alter the redundant impact.

The BIA's decision in *Hurtado* reflects a sharp pivot from long-standing immigration practice and policies. For almost three decades, most aliens who entered without inspection and were later apprehended were placed in standard removal proceedings and received bond hearings, unless subject to an exception. *See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("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.") (citation modified). The decades of ICE practices lend support to Petitioner's entitlement to a bond re-determination hearing under § 1226(a) "because the longstanding practice of the government—like any other interpretive aid—can inform a court's determination of what the law is." *Loper Bright Enters.*, 603 U.S. at 386 (citation modified). Respect for Executive Branch interpretations of statutes may be "especially warranted" when the interpretation "was issued roughly contemporaneously with enactment of the statute and remained consistent over time." *Id.*

Accordingly, the government's historical application of immigration laws also supports the undersigned's conclusion that § 1226(a) applies to Petitioner. Again, this analysis aligns with numerous courts that have recently addressed this issue. *See, e.g.*, *Jimenez Garcia v. Raybon*, No. 25-cv-13086, 2025 WL 2976950, at *4 (E.D. Mich. Oct. 21, 2025) (finding that "ICE's decision to upend 30 years of reasoned statutory

interpretation is not persuasive"); *Sabi Polo v. Chestnut*, No. 1:25-CV-01342 JLT HBK, 2025 WL 2959346, at *11 (E.D. Cal. Oct. 17, 2025) ("Accordingly, the Court finds the well-reasoned decisions of the many district courts that have rejected the Government's expansive view of 1225(b)(2) far more persuasive than the new BIA ruling, a ruling at odds with its prior decisions and DHS's actions over the past thirty years.") (quoting *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at * 12 (N.D. Cal. Sep. 12, 2025)).

4. Conclusion

In sum, the undersigned is not persuaded by BIA's newfound statutory interpretation or Respondents' arguments and instead agrees with the myriad district courts that have recently applied § 1226(a) to govern detention of aliens like Petitioner. Respondents' arguments and BIA's decision to pivot from decades of consistent statutory interpretation and to mandate Petitioner's detention under § 1225(b)(2)(A) are contrary to nearly every court that has recently addressed this question of statutory interpretation. This includes the well-reasoned recommendations of Judge Stephens. *See supra* § I.

As a starting point, district courts within the Tenth Circuit have uniformly applied § 1226(a) to aliens living in the United States who were not apprehended at the border. *See, e.g.*, *Arauz v. Baltazar*, No. 1:25-CV-03260-CNS, 2025 WL 3041840, at *4 (D. Colo. Oct. 31, 2025) ("Simply put, because Petitioner has lived in the United States for nearly 40 years and was not detained while attempting to enter the country, he is improperly subject to mandatory detention under § 1225(b)(2)(A) and should instead be detained under § 1226(a)"); *Hernandez v. Baltazar*, No. 1:25-CV-03094-CNS, 2025 WL 2996643, at *7 (D.

Colo. Oct. 24, 2025) ("The Court joins the many other courts nationwide who have declined to accept Respondents' novel new interpretation of decades-old law."); *Caballero*, 2025 WL 2977650, at *8 ("The Court joins the numerous courts across the country that have held that [aliens not apprehended at the border, who have been present in the United States for many years without lawful status] are subject to the discretionary detention framework of § 1226(a)."); *Gutierrez v. Baltasar*, 2025 WL 2962908, at *4-5 (finding that "Petitioner is likely to succeed on the merits of his claims that he is unlawfully detained under 8 U.S.C. § 1225(b)(2)(A)'s mandatory detention authority and should be subject to 8 U.S.C. § 1226(a)'s discretionary scheme," and respondents had "readily admit[ed] that other district courts that have considered this same or similar issue have concluded that aliens who enter without inspection and then reside in the United States fall within the scope of Section 1226(a) rather than Section 1225(b)(2)(A)") (citation modified); *Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 WL 2676729, at *4 (D.N.M. Sep. 17, 2025) (holding that "once a noncitizen is within the United States, § 1226 generally governs the process of arresting and detaining these noncitizens pending their removal," which "is consistent with the plain text of §§ 1225 and 1226, traditional canons of statutory construction, the statute's legislative history, and longstanding agency practice") (citation modified).

Further, in the last few weeks alone, several district courts around the country have consistently applied § 1226(a) to govern detention proceedings for aliens like Petitioner.[11]

[11] In the past three days, at least eleven courts uniformly ruled that § 1226(a) governs detention for aliens like Petitioner. *See Vicens-Marquez v. Soto*, No. 25-16906 (KSH),

See, e.g., *Jimenez Garcia*, 2025 WL 2976950, at *4 ("To this Court, there is simply no question that § 1226(a)—not § 1225(b)(2)(A)—applies to noncitizens such as [petitioner] who have resided in the United States for many years and were not apprehended while arriving at the border."); *Sabi Polo*, 2025 WL 2959346, at *11 ("This Court . . . joins the numerous other district courts that have rejected the government's recent interpretation of the relationship between § 1225 and§ 1226."); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *6 (N.D. Ill. Oct. 16, 2025) ("In agreement with other district courts, this court rejects Respondents' expanded reading of § 1225(b)(2) and the term 'seeking admission.'"); *Padron Covarrubias v. Vergara*, No. 25-CV-112, 2025 WL 2950097, at *4 (S.D. Tex. Oct. 8, 2025) ("Along with most other courts that have considered this issue, the Court finds that [petitioner] is not properly detained without a bond hearing under Section 1225, and instead, Section 1226 applies."); *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025) ("As almost every district court to consider this issue has concluded, the statutory text, the statute's history, Congressional

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2025 WL 3097496, at *2 (D.N.J. Nov. 6, 2025); *Hernandez-Luna v. Noem*, No. 2:25-cv-1818-GMN-EJY, 2025 WL 3102039, at *5 (D. Nev. Nov. 6, 2025); *Mirzoev v. Olson*, No. 250cv012969, 2025 WL 3101969, at *3 (N.D. Ill. Nov. 6, 2025); *Garcia v. Noem*, No. 1:25-cv-1712, 2025 WL 3111223, at *3 (E.D. Va. Nov. 6, 2025); *Magadan v. Noem*, No. 3:25-cv-2889-JES-KSC, 2025 WL 3090089, at *2 (S.D. Cal. Nov. 5, 2025); *Sarmiento v. Perry*, 1:25-cv-1644-AJT-WBP, 2025 WL 3091140, at *2 (E.D. Va. Nov. 5, 2025); *Capote v. Sec'y U.S. Dep't Homeland Sec.*, No. 25-13128, 2025 WL 3089756, at *5 (E.D. Mich. Nov. 5, 2025); *Beltran v. Noem*, No. 25cv2650-LL-DEB, 2025 WL 3078837, at *7 (S.D. Cal. Nov. 4, 2025); *Mendoza v. Noem*, No. 1:25-cv-1252, 2025 WL 3077589, at *6 (W.D. Mich. Nov. 4, 2025); *Alonso v. Tindall*, No. 3:25-cv-652-DJH, 2025 WL 3083920, at *9 (W.D. Ky. Nov. 4, 2025); *Huamani v. Francis*, No. 25-cv-8110, 2025 WL 3079014, at *5 (S.D.N.Y. Nov. 4, 2025).

intent, and § 1226(a)'s application for the past three decades support finding that § 1226 applies to these circumstances.") (citation modified).

Numerous other courts have also come recently to the same conclusions about application of § 1226(a). *See, e.g.*, *Cerritos Echevarria v. Bondi,* No. CV-25-03252-PHX-DWL, 2025 WL 2821282, at *4 (D. Ariz. Oct. 3, 2025) ("In recent months, many district courts across the country have grappled with the same issue, and it appears that all but one of them has rejected Respondents' position and concluded that an alien in Petitioner's situation (*i.e.*, an alien who entered the United States without inspection, never formally applied for admission, and has been living in the United States for years or decades) is entitled to a bond hearing under § 1226(a)."); *Quispe*, 2025 WL 2783799, at *6 ("For the above reasons, Petitioner's detention is governed by § 1226(a)'s discretionary framework, not § 1225(b)'s mandatory detention procedures, as at least thirty federal district courts around the country . . . have concluded when faced with habeas petitions from comparably situated petitioners."); *Vazquez v. Freeley*, No. 2:25-cv-01542-RFB-EJY, 2025 WL 2676082, at *16 (D. Nev. Sep. 17, 2025) ("In sum, the Court finds that the text and canons of statutory interpretation, including the legislative history, regulations, and long history of consistent agency practice, as well as the doctrine of constitutional avoidance, demonstrate that Petitioner is likely to succeed in establishing he and similarly situated noncitizens are subject to detention under § 1226(a) and its implementing regulations, not § 1225(b)(2)(A)."); *Pizarro Reyes*, 2025 WL 2609425, at *4-7 ("After reviewing the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for

the past three decades, the Court finds that [petitioner] falls within the confines of § 1226(a), and not § 1225(b)(2)(A).").

Finally, the undersigned has considered Respondents' citations to three recent cases[12] adopting their position that aliens like Petitioner are "applicants for admission" despite years of residing in the United States. *See Vargas Lopez v. Trump*, No. 25CV526, --- F.3d. Supp. ----, 2025 WL 2780351, at *9 (D. Neb. Sep. 30, 2025); *Chavez v. Noem*, No. 3:25-cv-02325-CAB-SBC, --- F.3d. Supp. ----, 2025 WL 2730228, at *4 (S.D. Cal. Sep. 24, 2025); *Pena v. Hyde*, No. 25-11983-NMG, 2025 WL 2108913 (D. Mass. Jul 28, 2025). For the reasons previously discussed, the undersigned respectfully disagrees with the textual analysis and statutory interpretations by the three district courts. The undersigned instead agrees with the overwhelming number of courts that have recently addressed this question.

After carefully analyzing the statute's text, structure, history, and long-standing immigration practices, the undersigned recommends that the Court apply § 1226(a) to govern Petitioner's detention. Further, the undersigned concludes that Petitioner is entitled under § 1226(a) to a prompt individualized bond hearing before a neutral Immigration Judge. *See, e.g., Alvarez Puga,* 2025 WL 2938369, at *5 (finding "that section 1226(a)

[12] Respondents also cite two Tenth Circuit cases for the proposition that an alien is an applicant for admission whether he is arriving in the United States or is already present in the country without admission. (Doc. 9, at 20) (citing *Sierra v. Immigr. & Naturalization Serv.*, 258 F.3d 1213, 1218 (10th Cir. 2001); *Suarez-Tejeda v. United States*, 85 F. App'x 711, 712-13 (10th Cir. 2004)). Both cases, however, are inapposite because the alien petitioner had been stopped at the border and paroled into the United States. Accordingly, those cases are distinguishable on the facts and do not affect the undersigned's analysis.

and its implementing regulations govern [p]etitioner's detention, not section 1225(b)(2)(A)" and that petitioner "is entitled to an individualized bond hearing as a detainee under section 1226(a)"). Accordingly, the undersigned recommends that the Court grant the Petition in part and order Respondents to provide Petitioner with a bond hearing under § 1226(a) within seven days or otherwise release Petitioner if he has not received a lawful bond hearing within that period.

D. The Court Should Deny Petitioner's Constitutional Avoidance Claim

Petitioner's second ground for relief is titled "Failure to Apply Constitutional Avoidance" and explains that "[t]he Immigration Judge and the BIA have failed to choose an interpretation" of § 1225(b)(2)(A) "that avoids serious constitutional problems." (Doc. 1, at 6). While the undersigned also disagrees with the BIA's analysis, *see supra* § V.C.3, Respondents are correct that "[c]onstitutional avoidance is not a separate claim for relief, but is instead a canon of statutory construction." (Doc. 9, at 14 n.7) (citing *Zadvydas*, 533 U.S. at 689 (2001)); *see also Warner v. Shauers*, 574 U.S. 40, 50 (2014) (constitutional avoidance "is a tool for choosing between competing plausible interpretations of a provision") (internal quotation marks omitted). The Court should dismiss this claim.

E. The Court Should Decline to Address Petitioner's Due Process Claim.

In his third habeas claim, Petitioner argues that his continued detention without a bond re-determination hearing violates his rights to due process. (Doc. 1, at 6). If the Court grants Petitioner's requested relief for a bond re-determination hearing under § 1226(a), the undersigned recommends that the Court follow an approach of other district courts and decline to decide the merits of the due process claim, and allow Petitioner to

renew that claim if Respondents do not provide him with a bond hearing or release him within the ordered time. *See Pizarro Reyes*, 2025 WL 2609425, at *8 ("The Court will decline to decide the merits of [petitioner's] due process claim given that the Court will grant the relief he seeks based on its interpretation of the applicability of § 1226(a)."); *see also Jimenez Garcia*, 2025 WL 2976950, at *4 (same); *Alvarez Puga*, 2025 WL 2938369, at *6 (citing *Pizarro Reyes* and declining to decide the merits of petitioner's due process claim);[13] *Buenrostro-Mendez*, 2025 WL 2886346, at *3 n.4 (same).

VI. Recommendation and Notice of Right to Object

For the reasons discussed above, the undersigned recommends that the Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 (Doc. 1) be **GRANTED in part.** The undersigned recommends that the Court order Respondents to provide Petitioner with an individualized bond hearing under 8 U.S.C. § 1226(a) within seven days or otherwise release Petitioner if he has not received a lawful bond hearing within that period. The undersigned further recommends that the Court order Respondents to certify compliance by filing a status report within ten days of the Court's order.

The court advises the parties of their right to object to this Report and Recommendation by November 14, 2025, under 28 U.S.C. § 636(b)(1) and Fed. R. Civ.

[13] Respondents argue that Petitioner's due process claim insufficiently alleges facts to warrant habeas relief. (Doc. 9, at 25-26). Because the undersigned recommends that the Court grant relief under Petitioner's statutory claim and agrees that Petitioner's due process allegations are unclear and conclusory, this Report and Recommendation does not address the merits of any due process claim potentially raised by Petitioner.

P. 72(b)(2).[14] The Court further advises the parties that failure to make timely objection to this report and recommendation waives their right to appellate review of both factual and legal issues contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

ENTERED this 7th day of November, 2025.

Amanda L. Maxfield
AMANDA L. MAXFIELD
UNITED STATES MAGISTRATE JUDGE

[14] Given the expedited nature of these proceedings, the undersigned has reduced the typical objection time to Report and Recommendations to seven days. *See* Fed. R. Civ. P. 72(b)(2) advisory committee's note to 1983 addition (noting that rule establishing 14-day response time "does not extend to habeas corpus petitions, which are covered by the specific rules relating to proceedings under Sections 2254 and 2255 of Title 28."); *see also Whitmore v. Parker*, 484 F. App'x 227, 231, 231 n.2 (10th Cir. 2012) ("The Rules Governing § 2254 Cases may be applied discretionarily to habeas petitions under § 2241" and that "while the Federal Rules of Civil Procedure may be applied in habeas proceedings, they need not be in every instance – particularly where strict application would undermine the habeas review process.").