

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

JOSE ANGEL AVILA MUNOZ,            )  
  )  
    Petitioner,                            )  
v.    )  
  )  
RUSSELL HOLT et al.,                )  
  )  
    Respondents.                        )

Case No. CIV-25-1190-G

**REPORT AND RECOMMENDATION**

Petitioner Jose Angel Avila Munoz, a noncitizen<sup>1</sup>, seeks a writ of habeas corpus under 28 U.S.C. § 2241. Doc. 1.<sup>2</sup> United States District Judge Charles B. Goodwin referred the case to the undersigned Magistrate Judge for initial proceedings under 28 U.S.C. § 636(b)(1)(B), (C). Doc. 4. The United States responded. Doc. 8. So the matter is at issue.<sup>3</sup>

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<sup>1</sup> This Report and Recommendation “uses the term ‘noncitizen’ as equivalent to the statutory term ‘alien.’” *Nasrallah v. Barr*, 590 U.S. 573, 578 n.2 (2020) (citing 8 U.S.C. § 1101(a)(3)).

<sup>2</sup> Citations to a court document are to its electronic case filing designation and pagination. Except for capitalization, quotations are verbatim unless otherwise indicated.

<sup>3</sup> In the order for response, the undersigned gave Petitioner fourteen days to reply to Respondents’ response. *See* Doc. 5. That time has not expired but, given the recommendation, the undersigned concludes it is in the interest of justice to promptly file the Report and Recommendation. Petitioner may still object to this Report and Recommendation in the normal course.

For the reasons below, the undersigned recommends the Court grant Petitioner's habeas petition, in part, and order Respondents to provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a) within five business days or otherwise release Petitioner if he has not received a lawful bond hearing within that period.

**I. Factual background and procedural history.**

Petitioner has lived in the United States since at least 2004, and is a resident of Oklahoma City. Doc. 1, at 11. Petitioner is married to a United States citizen and has five stepchildren who are also citizens. *Id.* On July 14, 2025, Immigration and Customs Enforcement (ICE) detained him. *Id.* Petitioner is currently detained at the Cimarron Correctional Facility in Cushing, Oklahoma. *Id.* In September 2015, the State of Oklahoma convicted Petitioner in state court for driving while intoxicated. Doc. 8, Ex. 1, at 2. In July 2025, Oklahoma authorities arrested and charged Petitioner with driving while intoxicated. *Id.* Petitioner's criminal case is pending, and he cannot attend proceedings for his pending case due to his detention. Doc. 1, at 11-12.

On September 12, 2025, ICE charged Petitioner in Immigration Court as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without being admitted or paroled. Doc. 8, Ex. 1, at 2. Petitioner requested a bond hearing, but as he notes, IJs are constrained by

the Board of Immigration Appeals' (BIA) decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding that those who entered the country without admission or parole are ineligible for a bond hearing and detained pursuant to 8 U.S.C. § 1225(b)(2)(A). Doc. 1, at 12.<sup>4</sup>

## II. Petitioner's claims.

Petitioner raises two grounds for relief:

Ground One: Respondents' application of § 1225(b)(2) unlawfully mandates his continued detention and violates the Immigration and Nationality Act (INA).

Ground Two: His prolonged detention without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

*Id.* at 12-13.

Petitioner asks the Court to issue a writ of habeas corpus "requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to [] § 1226(a) within five days" and declare his detention unlawful. *Id.* at 14.

## III. Standard of review.

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<sup>4</sup> *Hurtado* is not binding on this Court. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) ("[C]ourts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.").

An application for a writ of habeas corpus “is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Habeas corpus relief is warranted only if the petitioner “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 v. Davis*, 533 U.S. 678, 687-88 (2001)).

#### **IV. Discussion.**

##### **A. The Court has jurisdiction to consider the petition.**

Respondents contend that 8 U.S.C. §§ 1252(a)(5), (b)(9) and 1252(g) bar the Court from hearing Petitioner’s claims related to his detention. Doc. 8, at 15-17. The undersigned disagrees.

Section 1252(a)(5) provides that “a petition for review filed with an appropriate court of appeals . . . shall be the sole and exclusive means for judicial review of an order of removal.” 8 U.S.C. § 1252(a)(5). Section 1252(b)(9) provides another bar to judicial review, specifically for “questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an

alien from the United States” “[e]xcept as otherwise provided in this section.” *Id.* § 1252(b)(9). Section 1252(b)(9) is a “jurisdiction-stripping ‘zipper clause,’” which “channel[s] review of all ‘decisions and actions leading up to or consequent upon final orders of deportation’ in the courts of appeal, following issuance of an order of removal.” *Mukantagara v. DHS*, 67 F.4th 1113, 1115 (10th Cir. 2023) (quoting *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-85 (1999)).

Section 1252(g) provides that “no court shall have jurisdiction to hear 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.” 8 U.S.C. § 1252(g). The Court reads § 1252(g) narrowly, *Reno*, 525 U.S. at 482, as it does not cover “all claims arising from deportation proceedings” or impose “a general jurisdictional limitation.” *Id.* Instead, it “applies only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Id.*

The Court has jurisdiction over the petition as Petitioner is only challenging the way Respondents are conducting his detention—the lack of bond hearing. *See Ferry v. Gonzales*, 457 F.3d 1117, 1131 (10th Cir. 2006) (holding that § 1252(a)(5) does “not eliminate a district court’s jurisdiction to

review habeas petitions challenging an alien’s detention” and affirming district court’s finding that it had jurisdiction to review a habeas petition challenging “DHS’s continued detention [of petitioner] without bond or without providing a bond hearing”).

Likewise, § 1252(b)(9) does not bar this Court’s review. Petitioner is not asking the Court to review a removal order (which has not been issued), or Respondents’ decision to detain him or seek his removal. And, by addressing the petition, the Court is not reviewing any part of the process by which Respondents will determine his eligibility for removal. *See Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018) (holding § 1252(b)(9) “does not present a jurisdictional bar” when “detained aliens” “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 . . . challenging any part of the process by which their removability will be determined”); *see also Cabalero v. Baltazar*, 2025 WL 2977650, at \*4 (D. Colo. Oct. 22, 2025) (finding § 1252(b)(9) does not present a jurisdictional bar to a noncitizen challenging “the legality of his continued detention without a bond hearing”); *cf. Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (holding § 1252(b)(9) did not strip the court of jurisdiction to address the issue of mandatory detention without bond under § 1226(c)).

Finally, § 1252(g) does not present a jurisdictional bar to this Court’s

review. Respondents argue § 1252(g)'s language strips this Court of jurisdiction to review any claim arising from the decision to commence proceedings against Petitioner—including the “basis on which DHS chooses to commence removal proceedings.” Doc. 8, at 16. But the Supreme Court finds this interpretation “implausible” because “the mention of three discrete events along the road to deportation was [not] a shorthand way of referring to all claims arising from deportation proceedings.” *Reno*, 525 U.S. at 482. And, in *Jennings*, the Supreme 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. Because Petitioner is only challenging his detention without a bond hearing and not the commencement of the removal proceeding itself, his claim falls outside the narrow jurisdictional limitations of § 1252(g). *See, e.g., Gutierrez v. Baltasar*, 2025 WL 2962908, at \*3 (D. Colo. Oct. 17, 2025) (finding “§ 1252(g) does not deprive the Court of jurisdiction to consider the narrow legal questions of whether Mr. Gutierrez’s 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” because these “‘purely legal’ questions fit the exception to § 1252(g)’s jurisdiction-stripping provision, as they can be decided in the abstract on an undisputed factual record and do not challenge

the Attorney General’s discretionary authority”).

**B. Section 1226 governs Petitioner’s detention.**

Petitioner asserts that Respondents have violated the Immigration and Nationality Act (INA) by detaining him under the mandatory detention provision in § 1225(b)(2). Doc. 1, at 12-13. He argues this provision does not apply to him because, prior to Respondents’ apprehension of him, he had previously entered and had been residing in the United States. So, as someone who is not a recent arrival seeking inspection and admission into the United States, his detention is governed—not by § 1225(b)(2)—but by § 1226(a). *Id.* at 6-11.

Section 1225(b)(2)(a) provides that:

[I]n 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 1229(a) of [Title 8].

8 U.S.C. § 1225(b)(2)(a). This section “authorizes the Government to detain certain aliens seeking admission into the country.” *Jennings*, 583 U.S. at 289.

Section 1226(a), on the other hand, “authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings.” *Id.* (emphasis added). “Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an

alien ‘pending a decision on whether the alien is to be removed from the United States.’” *Id.* (quoting § 1226(a)). “Except as provided in [Section 1226(c)], the Attorney General ‘may release’ an alien detained under § 1226(a) ‘on . . . bond’ or ‘conditional parole.’” *Id.* (quoting § 1226(a)(1)-(2)).<sup>5</sup>

The resolution of Petitioner’s claim turns on whether he is an “alien seeking admission” as that phrase is utilized in § 1225, or simply a detained alien under § 1226 who may be released on conditional parole or bond pending the outcome of his removal proceeding. The undersigned finds that § 1226 governs Petitioner’s detention.

As Petitioner notes, his “mandatory” detention arises out of a novel interpretation of §§ 1225 and 1226, which has ensnared other similarly positioned petitioners around the country. Doc. 1, at 6-9; *see, e.g., Savane v. Francis*, 2025 WL 2774452, at \*1 (S.D.N.Y. Sep. 28, 2025) (explaining that “[t]his is another case in a recent line of cases concerning the scope of the government’s authority to detain noncitizens during the pendency of removal proceedings”); *see also Vega v. Holt*, No. CIV-25-1184-JD, Doc. 11, at 22-23 &

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<sup>5</sup> Under § 1226(c), the “Attorney General shall take into custody any alien” who falls into one of several enumerated categories. 8 U.S.C. § 1226(c)(1). None of the categories are relevant to Petitioner’s case.

n.6 (W.D. Okla. Oct. 30, 2025) (Report & Recommendation) (collecting cases).

Under ICE's new internal guidance:

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. Effective immediately, it [sic] the position of DHS that such aliens are subject to detention under [§ 1225(b)(2)(A)] and may not be released from ICE custody except by [§ 1182] parole. . . . 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 [§ 1226(a)] during removal proceed[ings] are aliens admitted to the United States . . . with the exception of those subject to mandatory detention under [§ 1226(c)].

*Savane*, 2025 WL 2774452, at \*5-6 (quoting *ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*).

The Court begins with the INA's statutory definitions. *See BP Am. Prod. Co. v. Haaland*, 87 F.4th 1226, 1235 (10th Cir. 2023) (analyzing statute by leaning "on related statutory definitions in the Royalty Management Act.").

Section 1225(a)(1) defines an "applicant[] for admission" as:

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)[.]

8 U.S.C. § 1225(a)(1).

Section 1101(13)(A) of United State Code Chapter 8 provides that “[t]he terms ‘admission’ and ‘admitted’ mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.”

Respondent contends that Petitioner is technically an applicant for admission under § 1225(a)(1) because he entered the country without inspection. Doc. 8, at 13-14. While the undersigned may agree with that technical interpretation, that does not mean Petitioner is subject to automatic detention under § 1225(b)(2)(A). *Cf. Vega*, Doc. 11, at 12-13 (rejecting expansive interpretation of “applicant for admission” and “seeking admission” and agreeing with courts that find § 1225 “governs the entrance of noncitizens to the United States.”).

Section 1225(b)(2)(A) introduces a different phrase: “an alien seeking admission.” It provides that:

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.

*Id.* § 1225(b)(2)(A).

So, for Respondents’ position to control, the Court must read “alien seeking admission” as synonymous with “applicant for admission.” *See* Doc. 8,

at 20-21. But when Congress “uses certain language in one part of the statute and different language in another, the [C]ourt assumes different meanings were intended.” *Sosa v. Alvarez-Machain*, 542 U.S. 692, 712 n.9 (2004) (internal quotation marks omitted). And Respondents have presented nothing to the Court supporting a synonymous reading of the two terms besides a conclusory argument that they are “plainly synonymous.” Doc. 8, at 20-21.

So, an “alien seeking admission” must have a different meaning than “applicant for admission.” Section 1225(a)(3) bolsters this conclusion, to which Respondents make a fleeting reference, *id.* at 9:

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.

*Id.* (emphasis added).

As noted, the INA defines “admission” as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). “Seeking,” however, is undefined. “When a term is undefined in a statute, [the Court] must look to its ordinary meaning.” *Rocky Mountain Wild v. Dallas*, 98 F.4th 1263, 1291 (10th Cir. 2024). “Dictionary definitions are useful touchstones to determine the ‘ordinary

meaning’ of an undefined statutory term.” *Id.* (quoting *In re Mallo*, 774 F.3d 1313, 1321 (10th Cir. 2014)).

“Seeking” is the present participle of “seek,” which Merriam-Webster defines as “to resort to,” “go to,” “to go in search of,” “look for,” “to try and discover,” “to ask for,” “request,” “to try to acquire or gain,” “aim at,” “to make an attempt,” or “try.” *Seek*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/seeking#dictionary-entry-1> (last visited Nov. 10, 2025). So the use of the word “seeking” “denotes an active and present effort.” *Valverde v. Olson*, 2025 WL 3022700, at \*3 (E.D. Wis. Oct. 29, 2025); *see also Cabalero*, 2025 WL 2977650, at \*6 (“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.’” (quoting *Lopez-Campos v. Raycraft*, 2025 WL 2496379, at \*6 (E.D. Mich. Aug. 29, 2025))). As a result, an alien seeking admission is a noncitizen who, at the time of his arrest, is actively and presently pursuing lawful admission into the United States. *See Hernandez v. Baltazar*, 2025 WL 2996643, at \*5 (D. Colo. Oct. 24, 2025) (“Courts have found that [n]oncitizens who are just ‘present’ in the country . . . , who have been here for years upon years and never proceeded

to obtain any form of citizenship[,] . . . are not ‘seeking’ admission” under § 1225(b)(2)(A).” (quoting *Lopez-Campos*, 2025 WL 2496379, at \*6)).

Petitioner is not “seeking admission” as he has been in the United States for 21 years. *See* Doc. 1, at 11. And, as far as the Court is aware, has never sought a form of citizenship (asylum, permanent residency, refugee status, visa application, etc.). Nor does Petitioner’s Application for Cancellation of Removal, Doc. 8, Ex. 2, automatically convert him into an “alien seeking admission” as Respondents urge, Doc. 8, at 20. *See Lomeu v. Soto*, 2025 WL 2981296, at \*8 (D.N.J. Oct. 23, 2025) (“[Petitioner] sought to *remain in*, not enter, the United States . . . by seeking Cancellation of Removal and Adjustment of Status”). And Respondents have provided the Court with no legal authority to support such a proposition.

Petitioner was not “an alien seeking admission” under § 1225(b)(2)(A) when he was arrested. He is thus not subject to mandatory detention. Petitioner is instead subject to § 1226, and “is entitled to an individualized bond hearing as a detainee under [§] 1226(a).” *See Cabalero*, 2025 WL 2977650, at \*8 (“The Court joins the numerous courts across the country that have held that [noncitizens 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).”).

So the undersigned recommends the Court grant Petitioner's habeas petition in part and order Respondents to provide Petitioner with a bond hearing under § 1226(a) within five days of the Court's adoption of this Report and Recommendation or in the alternative, immediately release Petitioner.

**C. The Court should decline to address the merits of Petitioner's due process claim.**

Given the undersigned's recommendation as to the disposition of Petitioner's claim for relief under the INA, the undersigned recommends the Court refrain from addressing the merits of Petitioner's due process claim. Doc. 1, at 13. The Court can grant him the relief he seeks under § 1226(a). *See Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at \*8 (E.D. Mich. Sep. 9, 2025) ("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).").

**V. Recommendation and notice of right to object.**

For the reasons set forth above, the undersigned recommends the Court **grant** Petitioner's habeas application, in part, and **order Respondents to provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a) within five business 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 seven business days of the Court's order.**

The undersigned advises the parties of their right to file an objection to this Report and Recommendation with the Clerk of this Court by November 17, 2025, in accordance with 28 U.S.C. § 636 and Federal Rule of Civil Procedure 72.<sup>6</sup> The undersigned further advises the parties that failure to make timely objections to this Report and Recommendation waives the right to appellate review of both factual and legal questions contained herein. *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991). This Report and Recommendation disposes of the issues referred to the undersigned Magistrate Judge in the captioned matter.

**ENTERED** this 10th day of November, 2025.

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<sup>6</sup> Given the expedited nature of these proceedings, the undersigned has reduced the typical objection time to this Report and Recommendation 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 "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").

  
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SUZANNE MITCHELL  
UNITED STATES MAGISTRATE JUDGE