

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

OSCAR MEDINA-HERRERA,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-25-1203-J
)	
KRISTI NOEM, et al.,)	
)	
Respondents.)	
)	

REPORT AND RECOMMENDATION

Petitioner Oscar Medina Herrera, a noncitizen¹, seeks a writ of habeas corpus under 28 U.S.C. § 2241. Doc. 4.² United States District Judge Bernard M. Jones referred the case to the undersigned Magistrate Judge for initial proceedings under 28 U.S.C. § 636(b)(1)(B), (C). Doc. 3.³ The United States responded, Doc. 14, and Petitioner replied, Doc 18. So the matter is at issue.

¹ 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)).

² Before the Court is Petitioner’s amended habeas petition, Doc. 4, which supersedes the original petition, Doc. 1.

³ Citations to a court document are to its electronic case filing designation and pagination. Except for capitalization, quotations are verbatim unless otherwise indicated.

For the reasons below, the undersigned recommends the Court grant Petitioner's habeas petition, in part, and order Respondents to bring Petitioner before an immigration judge (IJ) for 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 is a citizen of Mexico, who is currently detained at Cimarron Correctional Facility in Cushing, Oklahoma. Doc. 4, at 7, 14. He entered the United States without inspection "more than 22 years ago." *Id.* at 7. He has been a resident of Sanger, Texas, since 2017. *Id.* at 10. He has a wife and three children who are United States citizens. *Id.* He works as a Field Operations Manager in Texas and is a licensed plumber. *Id.* at 10-11.

On December 27, 2018, Petitioner was detained by Immigration and Customs Enforcement (ICE) pursuant to a warrant issued under 8 U.S.C. § 1226(a). *Id.* at 12. On January 25, 2019, an IJ granted Petitioner bond, which he posted. *Id.* Petitioner "appeared for every one of his immigration hearings" which "culminated in a final hearing on an application for cancellation of removal." *Id.* The Department of Homeland Security (DHS) dismissed Petitioner's removal proceedings following the final hearing "as it was of the opinion that [Petitioner] had the good moral character and equities for his

application to be granted.” *Id.* The IJ noted in his order granting the parties’ joint motion to dismiss that Petitioner was not identified as “an enforcement priority [for] DHS” which informed the immigration court “that [Petitioner] [was] not a threat to society or national security.” Doc. 8, Ex. 3, at 3. The proceedings were then “dismissed and both parties waived appeal.” Doc. 4, at 13.

On July 16, 2025, Petitioner was detained again by ICE. *Id.* at 7. “[Petitioner] and his wife were driving home from a gathering of their family and friends when they pulled off the highway and parked on the shoulder of the road.” *Id.* at 13. Petitioner admits “he had a few drinks and was technically publicly intoxicated” when a police officer approached his car and informed Petitioner and his wife of “an accident a little further down the highway in which one of the drivers had abandoned the scene” and their vehicle. *Id.* Petitioner was arrested and subsequently transferred to ICE custody. *Id.* at 13-14.

ICE issued a notice to appear (NTA) to Petitioner, charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A). *Id.* at 14; *see* § 1182(a)(6)(A)(i) (“An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.”). He was then “moved hundreds of

miles away [from Texas] to the Cimarron Detention Center . . . in Cushing, Oklahoma.” Doc. 4, at 14. Petitioner filed a motion for a bond hearing and submitted extensive evidence “as well as a prehearing statement, which demonstrated [he] was neither a flight risk nor a danger to the community.” *Id.*

On August 1, 2025, the IJ held a hearing in which she “refused to hold a bond hearing” and “curtly cut off every attempt [by Petitioner’s] counsel . . . to address any jurisdictional concerns.” *Id.* at 15. “[T]he IJ acted as though it should have been obvious that she did not have jurisdiction based on . . . the fact that [Petitioner] last entered without inspection in 2003 and the Supreme Court’s decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).” *Id.*

On August 3, 2025, Petitioner filed a motion to reconsider the bond decision, but on August 13, 2025, the IJ denied the motion to reconsider. *Id.* at 16.

II. Petitioner’s claims.

Petitioner raises three grounds for relief:

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

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

Ground Three: His continued detention “without a bond hearing pursuant to . . . § 1226 or 8 C.F.R. § 1003.19 is unlawful as ICE and [Enforcement for Immigration Removal (EOIR)] failed to adhere to the law and mandatory process.”

Id. at 40-42.

He asks the Court to issue a writ of habeas corpus “requiring that Respondents release [him] [i]mmediately, or provide [him] with a bond hearing before a neutral IJ pursuant to 8 U.S.C. § 1226(a) within three days.” *Id.* at 43.

He also seeks declaratory judgment pursuant to 28 U.S.C. § 2201, declaring:

[T]hat [entry without inspection (EWI)] noncitizens encountered in the interior long after their entry who are placed in removal proceedings and are not described in § 1226(c) or 8 C.F.R. § 1003.19(h)(2), are entitled to a bond hearing before a neutral adjudicator[.]

Id.

And, finally, he seeks an award of attorney’s fees and costs under the Equal Access to Justice Act (EAJA). *Id.*

III. Standard of review.

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 (2001)).

“When called on to resolve a dispute over a statute’s meaning,” the Court should “seek[] to afford the [statute’s] terms their ordinary meaning at the time Congress adopted them” and to “exhaust all the textual and structural clues bearing on the meaning.” *Niz-Chavez v. Garland*, 593 U.S. 155, 162 (2021) (internal quotation marks omitted). This Court’s “‘sole function’ is to apply the law as [the Court] finds it, . . . not defer to some conflicting reading the government might advance.” *Id.* (internal citation omitted); *see also Oklahoma v. U.S. Dep’t of Health & Hum. Servs.*, 107 F.4th 1209, 1222 n.11 (10th Cir. 2024) (stating that the court “must independently interpret the statutory phrase irrespective of the parties’ positions”), *judgment vacated on other grounds*, 145 S. Ct. 2837 (2025).

IV. Discussion.

A. The Court has jurisdiction to consider the petition.

Respondents contend that the “Court cannot consider Petitioner’s challenge to DHS’s commencement of proceedings and resulting detention”

because 8 U.S.C. §§ 1252(a)(5), (b)(9) and 1252(g) deprive the Court of jurisdiction. Doc. 14, at 20.⁴ 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)).

⁴ Respondents also assert that Petitioner’s references to the Administrative Procedures Act, All Writs Act, and Declaratory Judgment Act, Doc. 4, at 6, are erroneous as these statutes do not confer jurisdiction upon the Court. Doc. 14, at 16-19. The undersigned agrees with Respondents that “this is a habeas-only case,” *id.* at 17, 19, and does not address the cited statutes any further.

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 his detention is being conducted — 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*, 583 U.S. at 294-95 (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 Caballero 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. 14, at 21. 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 contends that Respondents violated the INA by detaining him under the mandatory detention provisions under § 1225(b)(2). Doc. 4, at 3-5, 40-41. He argues this provision “does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings.” *Id.* at 41.

The Court’s inquiry “begins with the statutory text” and ends there if it “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). “[O]ftentimes the ‘meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.’” *Id.* (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000)). “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.* (quoting *Brown & Williamson*, 529 U.S. at 133).

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; *see also Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025) (“[Section] 1225 governs removal proceedings for ‘arriving aliens.’”).

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)).⁵ “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)). Courts have described § 1226(a) as a “catchall” provision which “capture[s] noncitizens who fall outside of the specified categories” of § 1225. *Pizarro Reyes*, 2025 WL 2609425, at *5.

The resolution of Petitioner’s claim turns on whether he is a noncitizen “seeking admission” as that phrase is used in § 1225, or an arrested and detained noncitizen who—having never sought to obtain lawful status—falls under § 1226 and may be released on conditional parole or bond pending the outcome of his removal proceeding.

⁵ The *Jennings* Court acknowledged § 1226 as the default rule for detaining and removing noncitizens “already present” in the country. *Jennings*, 583 U.S. at 303. The Court did not, however, specify whether the “already present” rule applied only to persons who had once entered the country lawfully—as Respondents argue—or to all noncitizens present in the country whether lawfully admitted or not—as Petitioner argues. Because *Jennings* is not definitive, the Court continues its analysis.

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. 4, at 23-24 n.56; *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 Escarcega v. Olson*, No. CIV-25-1129-J, Doc. 14, at 18-19 (W.D. Okla. Oct. 28, 2025) (collecting cases), adopted, Doc. 17 (W.D. Okla. Nov. 20, 2025).

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 § 1225's title. "[T]he title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute." *Dubin v. United States*, 599 U.S. 110, 121 (2023) (internal quotation marks omitted). And "a title is especially valuable where it reinforces what the text's nouns and verbs independently suggest." *Id.* (internal quotation marks and alteration omitted).

Section 1225 is titled: "Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing." (emphasis added). Use of the term "arriving" to describe noncitizens clarifies that the section governs the entrance of noncitizens to the United States. Section 1225 is also located between two other sections dealing with the arrival of noncitizens: § 1224, "Designation of ports of entry for aliens arriving by aircraft," and § 1225a, "Preinspection at foreign airports."

This interpretation is bolstered by § 1225's overall inspection scheme for allowing noncitizens into the country and the section's subheadings all related to "arriving" noncitizens. *See, e.g.*, § 1225(b)(1) (labeled "Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled" and describing their immediate removal "without further hearing or review" unless there is a claim for asylum or a fear of persecution); § 1225(b)(2) (labeled "Inspection of other aliens" and describing detention of

noncitizens “seeking admission”); § 1225(d) (labeled “Authority Relating to Inspections” and describing the powers of immigration officers to search and detain vessels and “arriving aliens”).

Next, the Court looks to 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 admissions” 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 States 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. 14, at 23-28. While the undersigned may agree with that technical interpretation, that does not mean Petitioner is subject to mandatory detention under § 1225(b)(2)(A). *Escarcega*, Doc. 17, at 14 (“[I]f all ‘applicants

for admission' are also 'seeking admission,' then § 1225(b)(2)(A)'s inclusion of the phrase 'seeking admission' would be redundant and courts should avoid statutory interpretations that 'make[] any part [of the statute] superfluous.'" (quoting *Fuller v. Norton*, 86 F.3d 1016, 1024 (10th Cir. 1996)).

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.

8 U.S.C. § 1225(b)(2)(A). Courts interpreting this narrowing language have thus concluded § 1225 primarily "governs the entrance of noncitizens to the United States," not those already present. *Escarcega*, Doc. 14, at 12; *see also Jennings*, 583 U.S. at 297 ("[Section] 1225(b) applies primarily to aliens *seeking entry into the United States* ('applicants for admission' in the language of the statute)." (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. 21, 2025). So the use of “seeking” “denotes an active and present effort.” *Valverde v. Olson*, 2025 WL 3022700, at *3 (E.D. Wis. Oct. 29, 2025); *see also Caballero*, 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, a noncitizen seeking admission is a person who, at the time of his or her detention, 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)).

This conclusion is bolstered by § 1225’s placement in the overall statutory scheme. *See, e.g., King*, 576 U.S. at 486 (holding that courts are meant “to construe statutes, not isolated provisions” (internal quotation marks omitted)). Congress separated the removal of arriving aliens from its more general section for “Apprehension and detention of aliens” in § 1226. This implies Congress’s enactment of § 1225 was for a specific, limited purpose, which the Supreme Court underscored in *Jennings*. *See id.* 583 U.S. at 289 (noting that §§ 1225(b)(1) and (b)(2) “authorize[] the Government to detain certain aliens seeking admission into the country” and that §§ 1226(a) and (c) “authorize[] the Government to detain certain aliens already in the country pending the outcome of removal proceedings”); *see also Zadvydas*, 533 U.S. at 693 (“The distinction between an alien who has effected entry into the United States and one who has never entered runs throughout immigration law. . . . But once an alien 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.”). And § 1225(a)(3), which Respondents make a fleeting reference to, Doc. 14, at 26, further supports this distinction:

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); *see also United States v. Woods*, 571 U.S. 31, 45 (2013) (noting that “or” “can sometimes introduce an appositive . . . [but] its ordinary use is almost always disjunctive, that is, the words it connects are to ‘be given separate meanings.’”).

Congress’s recent amendment of § 1226 through the Laken Riley Act also bolsters the Court’s interpretation and renders Respondents’ interpretation of § 1225(b)(2)(A) superfluous. This amendment mandates that ICE “shall take into custody” any noncitizen who is both inadmissible under § 1182(a)(6)(A)(i) (“present in the United States without being admitted or paroled”) and is “charged with, [] arrested for, [] convicted of, [or] admits having committed” certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E)(i)-(ii). “Considering that § 1182(a)(6)(A)(i) specifically refers to aliens ‘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 a felony, the recently created statutory exception would be redundant if § 1225(b)(2)

authorized their detention as well. . . . 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,’ [so] ICE would never need to rely on § 1226(c)(1)(E) to detain them.” *Pizarro Reyes*, 2025 WL 2609425, at *5 (quoting *Gomes v. Hyde*, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025)). As this interpretation “would largely nullify a statute Congress enacted this very year,” the Court should reject it. *Id.* (internal quotation marks omitted); *see also Marx v. Gen. Rev. Corp.*, 568 U.S. 371, 386 (2013) (“[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.”).

Petitioner is not “seeking admission” as he has been in the United States for over 22 years. *See* Doc. 1, at 7, 10. And, as far as the Court is aware, he has never sought a form of citizenship (asylum, permanent residency, refugee status, visa application, etc.). *See, e.g., Pizarro Reyes*, 2025 WL 2609425, at *6 (“The Court . . . finds it difficult to square a noncitizen’s continued presence with the term ‘seeking admission,’ when that noncitizen never attempted to obtain lawful status.”). Nor does Petitioner’s pending Application for Cancellation of Removal, Doc. 14, Ex. 1, automatically convert him into an “alien seeking admission” as Respondents urge, Doc. 14, at 9-10, 15-16. *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.

Additionally, prior to his 2025 detention, Petitioner was previously detained pursuant to § 1226(a) in 2018. Doc. 8, Ex. 2, at 5 (noting that Petitioner “was served a Warrant of Arrest/Notice to Appear.”); *see also Patel v. Crowley*, 2025 WL 2996787, at *5 (N.D. Ill. Oct. 24, 2025) (“The record shows that the Government has consistently treated Patel as detained under the authority of Section 1226(a) since the date he was first apprehended after crossing the border, and settled law precludes the Government from now switching gears to contend that he has actually been detained under Section 1225(b)(2).”).

So, when ICE arrested and detained Petitioner, he was not subject to mandatory detention under § 1225(b)(2)(A). Instead, Petitioner is subject to § 1226, and “is entitled to an individualized bond hearing as a detainee under [§] 1226(a).” *See Caballero*, 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).”).

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. 4, at 41, as the Court can grant him the relief he seeks under § 1226(a). *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).").

D. The Court should deny Petitioner's request for declaratory relief.

Petitioner also seeks declaratory relief "pursuant to 28 U.S.C. § 2201, declaring that EWI noncitizens encountered in the interior long after their entry who are placed in removal proceedings . . . are not described in § 1226(c) or 8 C.F.R. § 1003.19(h)(2), [and] entitled to a bond hearing before a neutral adjudicator." Doc. 4, at 43. In short, Petitioner asks the Court to declare the status and legal rights of non-parties to this proceeding. This is relief the Court

cannot grant, so the undersigned recommends denying Petitioner's request for declaratory relief in this respect. *Trump v. CASA, Inc.*, 606 U.S. 831, 844 (2025) (“[N]either declaratory nor injunctive relief . . . ‘can directly interfere with enforcement of contested statutes or ordinances except with respect to the particular federal plaintiffs.’” (quoting *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975))).

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 28, 2025, in accordance with 28 U.S.C. § 636 and Federal Rule of Civil

Procedure 72.⁶ 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 21st day of November, 2025.



SUZANNE MITCHELL
UNITED STATES MAGISTRATE JUDGE

⁶ 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").