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

SOLERO DAFRED URBINA-GARCIA, Petitioner,	)	
v.	)	CIV-25-1225-J
RUSSELL HOLT, et al., Respondents.	)	

REPONSE IN OPPOSITION TO
THE PETITION FOR WRIT OF HABEAS CORPUS

ROBERT J. TROESTER
United States Attorney

/s/ Scott Maule
Scott Maule (OBA 31760)
Assistant U.S. Attorney
United States Attorney's Office
Western District of Oklahoma
210 Park Avenue, Suite 400
Oklahoma City, OK 73102
(405) 553-8832/8700
scott.maule@usdoj.gov

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Respondents United States Attorney General Pamela Bondi, United States Secretary of the Department of Homeland Security Kristi Noem, and United States Immigration and Customs Enforcement, Chicago Field Office Director of Enforcement and Removal, Russell Holt (collectively, "Respondents"[1]), pursuant to the Court's Order (Doc. 5), respond to the Petition for Writ of Habeas Corpus (Doc. 1), and respectfully submit that the Court should deny the Petition and enter an order of dismissal.

INTRODUCTION

Petitioner is a noncitizen challenging DHS' decision to detain him pursuant to 8 U.S.C. § 1225(b)(2)(A), rather than 8 U.S.C. 1226(a). The practical difference between the two sections is that noncitizens detained under § 1226(a) *may* be eligible for a bond hearing at the *discretion* of DHS, but noncitizens detained under § 1225(b)(2)(A) may not be

[1] Respondent Scarlet Grant, Warden of the Cimarron Correctional Center, is not a federal official and this response is therefore not filed on her behalf. It is respectfully submitted that Warden Grant's interests in this litigation are contractually derivative of the federal respondents' interests and that a separate response from Warden Grant is not necessary to resolve the Petition or effectuate relief.

released on bond. Petitioner contends that he should be regarded as detained pursuant to § 1226 and provided a bond determination. He also asserts that any ongoing detention without a bail determination violates the due process.

Thus, this case largely turns on the plain language of the Immigration and Nationality Act ("INA"). 8 U.S.C. § 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 1229a of this title.

Importantly, the factual predicate for the application of the statute is not in dispute. The Petition does *not* assert that Petitioner is somehow not "seeking admission." That omission is no accident given the ongoing removal proceedings.

Instead, Petitioner lodges a structural challenge. First, Petitioner argues that recent enforcement of § 1225(b)(2)(A) is a change in policy by the new administration. And while that contention is true, it is hardly a reason to resist the plain language of the statute. Petitioner also notes that several district courts see it differently and have ruled against the government largely based on the change in enforcement and associated interpretations of statutory structure premised on that change to conclude that § 1225 only applies to "arriving aliens," despite the notable *absence* of that phrase in § 1225(b)(2)(A).[2] But those

[2] Indeed, the Honorable Judge Stephens has recently so ruled in recent cases. *See, e.g.*, Oct. 28, 2005 Orders in *Escarcega v. Olson*, Case No. 25-cv-1129-J and *Gallardo v. Olson*, Case No. 25-cv-1090-R; *but see Sandoval v. Acuna*, 6:25-cv-1467, 2025 WL 3048926, at *6 (W.D. La. Oct. 21, 2025) (rejecting district court opinions "that rest on the premise that §§ 1225 and 1226 are mutually exclusive" after surveying the statutory structure and history).

opinions do not account for the language and history of the INA, to say nothing of the resulting conundrum of what role § 1225(b)(2)(A) plays if so interpreted.

Before 1996, the INA only contemplated inspection of noncitizens arriving at ports of entry. Other noncitizens like Petitioner who entered illegally were not subject to § 1225. But Congress changed that in 1996 with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") to place those who entered illegally on equal footing with those encountered at the border. Thus, § 1225(a)(1) now defines "alien[s] present in the United States" as "applicants for admission." Further, IIRIRA created two provisions outlining different processes for noncitizens encountered at the border and *those found within*. While § 1225(b)(1) addresses detention of those aliens "arriving in the United States" and provides for expedited removal, § 1225(b)(2) addresses "[i]nspection of *other* aliens" (i.e., including those *not* arriving) and provides for full removal proceedings making it clear that § 1225 includes those noncitizens already in the country and that those noncitizens receive full (not expedited) proceedings.

The additional detention authority under § 1226 does not change this understanding. While § 1225(b)(2)(A) allows detention when an immigration officer encounters noncitizens and makes determinations regarding their admissibility, § 1226(a) also provides for detention using a different means and order of operation; namely, the issuance of a warrant and then examination of the noncitizen. The two provisions should be read together to provide flexibility and discretion for *different* means of examination and detention, applied to overlapping but not coexistent groups of noncitizens. A contrary ruling imperils intended flexibility, ignores the history of IIRIRA, and introduces statutory

ambiguity by giving legal significance to a class of noncitizen *not* recognized in the INA; namely, those illegally present but not seeking admission.[3]

Moreover, Petitioner's request to construe his detention as pursuant to § 1226(a) rather than § 1225(b)(2)(A) is a challenge to how DHS commenced proceedings (not his mere detention), which is barred by the jurisdiction stripping provision of the INA. That is especially true given that § 1226 does not guarantee a bond determination.

Finally, Petitioner advances a conception of due process that precludes any detention of noncitizens without a bond determination. That expansive position has never been adopted by the Supreme Court, despite repeated invitations to do so. Moreover, in other contexts, the Court has only recognized an obligation to conduct bond determinations after periods of detention much longer than Petitioner has faced.

Accordingly, the Petition should be denied.

BACKGROUND

I. Legal Framework

A. Applicants for Admission

In the INA, Congress established rules governing when certain aliens/noncitizens[4]

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[3] Limiting § 1225 to "arriving aliens" will have serious implications for other immigration enforcement. Under § 1225, DHS has exercised its unreviewable authority to designate noncitizens that have entered illegally and been present in the country for up to two years (i.e., not "arriving") for expedited removal. *See* 8 U.S.C. § 1225(b)(1)(A)(iii); Designating Aliens for Expedited Removal, 90 FR 8139 (Jan. 24, 2025). Petitioner's construction of § 1225 cannot be squared with that statutorily authorized initiative.

[4] This response "uses the term 'noncitizen' as equivalent to the statutory term "alien." *Nasrallah v. Barr*, 590 U.S. 573, 578 n.2 (2020).

may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of "applicants for admission"—a subset of noncitizens. Section 1225 defines an "applicant for admission" as any "alien present in the United States who has not been admitted *or* who arrives in the United States." 8 U.S.C. § 1225(a)(1) (emphasis added). The INA 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)(A). In other words, an applicant for admission is a noncitizen who (1) is present in the United States and did not lawfully enter the country *or* (2) is arriving in the United States.

Pursuant to § 1225(a)(3), *all* applicants for admission are subject to inspection by immigration officers to determine if they are admissible.

Petitioner does not advance a meaningful argument as to why he is not an "applicant for admission" subject to inspection.

B. Removal Proceedings with Mandatory Detention: 8 U.S.C. § 1225

Applicants for admission may primarily be placed in removal proceedings one of two ways, either through expedited removal under § 1225(b)(1), or through regular removal proceedings under § 1225(b)(2).

Section 1225(b)(1), titled "Inspection of aliens arriving in the United States ... ," describes the two categories of applicants for admission that are subject to expedited removal proceedings. The first category includes those aliens who are arriving and

inadmissible under 8 U.S.C. § 1182(a)(6)(c) or (a)(7).[5] *Id.* § 1225(b)(1)(A)(i). The second category includes those noncitizens who have "not been admitted or paroled into the United States," who have not "affirmatively shown, to the satisfaction of an immigration officer, that [they have] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," and who also are inadmissible under Section 1182(a)(6)(c) or (a)(7). *Id.* § 1225(b)(1)(A)(i), (iii)(II). Noncitizens within the two categories described in § 1225(b)(1) are subject to expedited removal, *see* 8 C.F.R. § 235.3(b), and "shall be detained" until removed (or until the end of asylum or credible fear proceedings). 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV).[6]

Section 1225(b)(2), titled "Inspection of other aliens," "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)[.]" *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (citing 8 U.S.C. §§ 1225(b)(2)(A), (B)) (emphasis added). Under § 1225(b)(2)(A), all other applicants for admission who an immigration officer determines are "not clearly and beyond a doubt entitled to be admitted" shall be detained for removal proceedings under 8 U.S.C. § 1229a. Thus, § 1225(b)(2)(A) generally provides for detention during full removal proceedings for aliens who are applicants for admission, but who do not fall within one of the two categories described in § 1225(b)(1) (*i.e.*, arriving aliens and other aliens subject to expedited removal). Section

[5] Section 1182(a)(6)(c) and (a)(7) address inadmissibility based on misrepresentation or the lack of valid entry documents.

[6] Depending on the circumstances, an alien who is ordered removed under Section 1225(b)(1)(A)(i) but who is not removed within 90 days of the removal order, *may* be released under an order of supervision. 8 U.S.C. § 1231(a)(3).

1225 does not provide a bond hearing for aliens detained under that provision.

C. Warrants for Arrest Pending Deportation: 8 U.S.C. § 1226

While § 1225 applies to applicants for admission, § 1226 applies more generally to *all* noncitizens (including for example, legal permanent residents, stowaways, and others who are *not* applicants for admission), even if the noncitizen has not yet encountered or been examined by immigration officers. Further, § 1226 is initiated by warrants issued by the Secretary of DHS. Thus, § 1226 provides procedures for detention and removal of a broader class of noncitizens and uses a different means to do so.

Section 1226(a) provides that if the Secretary[7] of DHS issues a warrant, regardless whether there was prior interaction or examination by an immigration officer, a noncitizen may be arrested and detained "pending a decision on whether the alien is to be removed from the United States." The section is a means of effectuating detention prior to any examination by an immigration officer. Following arrest, and subject to certain restrictions, the noncitizen may be examined and remain detained or may be released on bond or conditional parole. *Id.* By regulation, immigration officers can release such an alien if he demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If not released by an immigration officer, the alien can request a custody redetermination by an immigration judge before a final order of removal is issued. *See id.* §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

[7] The INA's statutory references to the Attorney General are "a legal artifact," and the term "Attorney General" should be read to mean the "Secretary of Homeland Security." *Awe v. Napolitano*, 494 Fed. Appx. 860, 862 n. 3 (10th Cir. 2012).

Within that broader category of all noncitizens, § 1226(c)(1) pertains to the mandatory detention of noncitizens who have had certain interactions with the criminal justice system. *See* 8 U.S.C. 1226(c) ("The Attorney General shall take into custody *any* alien who--" (emphasis added)). To this end, lawful permanent residents–*i.e.*, those who *have been admitted* to the United States and are *not* applicants for admission–may be subject to this mandatory detention provision. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(A)(i); *Nielsen v. Preap*, 586 U.S. 392 (2019) (lawful permanent resident detained pursuant to § 1226). It also reaches other noncitizens who are *not* applicants for admission, such as noncitizens admitted erroneously but who are nevertheless deportable for being inadmissible at the time of admission. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(C)(i).

In summary, § 1225 only applies to applicants for admission and requires examination by an immigration officer, while § 1226 more generally applies to *all* noncitizens, even if not yet encountered or examined by immigration officers and is initiated by warrants—even prior to inspection. While there is some overlap between the provisions, it is consistent with the broad purposes of the INA, the different means and remedies necessary to effectuate them, and the discretion afforded the Executive to do so.

II. Petitioner's Background

Petitioner is an applicant for admission. Specifically, Petitioner alleges that he has been present in the United States since approximately 2017 without being inspected or admitted. Petitioner was detained and placed into deportation proceedings on September 2,

2025.[8] Petitioner is charged with being inadmissible pursuant to Section 212(a)(6)(A)(i) of the INA (8 U.S.C. § 1182(a)(6)(A)(i)). Petitioner's removal proceeding remains ongoing while he is detained at the Cimarron Correctional Facility pursuant to § 1225(b)(2)(A). *See* Petition at 11, ¶¶ 40-42.

III. Petitioner's Claims

Petitioner asserts two counts. Count I alleges a statutory violation of the INA and challenges DHS's commencement of proceedings pursuant to § 1225(b)(2)(A). Count II alleges a broader due process violation stemming from Petitioner's ongoing detention without a bond determination.

ARGUMENT

The Petition should be denied. Count I challenges DHS's decision to detain Petitioner under § 1225(b)(2)(A) and therefore runs headlong into the INA's jurisdiction channeling and stripping provisions, depriving this Court of jurisdiction. Further, Petitioner's statutory assertions misread the INA and cannot account for the plain language of the statue and the purpose of IIRIRA's amendment to § 1225. Count II's claim of a due process violation is premature and without basis.

I. Petitioner's Statutory Argument Is Jurisdictionally Barred and Misreads the INA

[8] Noncitizens, like Petitioner, who are placed in removal proceedings under 8 U.S.C. § 1229a are entitled to retain counsel, receive notice of the charges of removability, have a hearing, and present a defense, cross-examine witnesses, and compel production of documents and witnesses. See 8 U.S.C. § 1229a(b)(1); 8 U.S.C. § 1229a(b)(4)(A); 8 C.F.R. § 1240.10(a).

A. Petitioner's Statutory Claim (Count I) Is Barred by the INA's Jurisdiction Channeling and Stripping Provisions

This Court cannot consider Petitioner's challenge to DHS's commencement of proceedings pursuant to § 1225(b)(2)(A) rather than § 1226(a). As explained below, the INA channels challenges arising from actions taken to remove an alien to the appropriate court of appeals.

Congress has provided noncitizens with a vehicle to challenge the statutory provision that DHS relies on to detain and remove noncitizens. Specifically, the INA provides that claims related to removal orders are to be presented to the appropriate court of appeals through a petition for review. 8 U.S.C. § 1252(a)(5). Review of a final order includes review of "all 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." *Id.* § 1252(b)(9) (emphasis added). The decision to effectively begin those proceedings via § 1225(b)(2)(A) and immediate filing of an NTA is integral to the removal proceedings and a question of law that can be reviewed by the appropriate court of appeals as part of any appeal of a final order of removal—but not this Court. *See Acxel S.Q.D.C. v. Bondi*, No. CV 25-3348 (PAM/DLM), 2025 WL 2617973, at *3 (D. Minn. Sept. 9, 2025) ("1252(b)(9) consolidates all questions of law and fact, including constitutional and statutory challenges, arising from removal proceedings into one petition for review—the review of a final removal order before a circuit court of appeals." (cleaned up)).

In addition to the channeling provision, Congress also limited what types of claims

district courts can review. Specifically, 8 U.S.C. § 1252(g) states that, except as otherwise provided in Section 1252, courts lack 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." (emphasis added). 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. *See Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars [courts] from questioning ICE's discretionary decisions to commence removal—and thus necessarily prevents [courts] from considering whether the agency should have used a different statutory procedure to initiate the removal process.").

Accordingly, Congress—in sections 1252(a)(5) and (b)(9)—provided aliens (like Petitioner) with a vehicle to challenge the basis on which ICE seeks to detain and remove them in the court of appeals; but Congress also—in sections 1252(b)(9) and (g)—deprived district courts of jurisdiction to review an alien's challenge to DHS's decision about the basis of removal proceedings.

Petitioner will no doubt try to sidestep the jurisdictional bar by claiming that he is not challenging the decision to *commence* proceedings, but merely his ongoing detention. While Petitioner's due process claim (Count II) arguably only challenges his ongoing detention, Count I expressly challenges the basis of the *commencement* of proceedings against him and is barred. Boiled down to its essence, Count I contends that DHS should have used its arrest powers under § 1226. But that is foreclosed by § 1226 itself. *See* 8

U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review."). Moreover, even under § 1226, release on a bond is not guaranteed. It is a matter of discretion. As a result, challenging the application of §1225 rather than § 1226 is not a direct challenge regarding detention.

Further, upon examination and detention, DHS filed charges. Petition at ¶ 42. Thus, the immigration officer's examination of Petitioner directly and immediately effected *commencement* of the proceedings and therefore triggers the jurisdictional bar. *See Namgyal Tsering v. U.S. Immigr. & Customs Enf't*, 403 F. Appx 339, 343 (10th Cir. 2010) ("We agree with the Fifth Circuit that claims that clearly are included within the definition of arising from are those claims connected *directly and immediately* with a decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." (cleaned up)).

Petitioner's functional request for relief underscores this point. He asks the Court to *reconstrue Executive actions* into something they are not (§ 1226 instead of § 1225), undermining prosecutorial discretion. Yet, "§ 1252g was directed against … attempts to impose judicial constraints upon prosecutorial discretion." *Veloz-Luvevano v. Lynch*, 799 F.3d 1308, 1315 (10th Cir. 2015) (quoting *Reno v. Am.–Arab Anti–Discrimination Comm.*, 525 U.S. 471, 485 n. 9 (1999)); *See also* 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review.").

Thus, as opposed to the challenge to detention in Count II, Count I challenges the application of § 1225, which only collaterally affects the potential for release on bond.

Acxel S.Q.D.C., 2025 WL 2617973, at *3 ("Petitioner precisely challenges Respondents' decision to detain him. Although he contends that § 1252(b)(9) does not bar his claims because he is challenging his ongoing detention, not the initial decision to detain him, this difference does not alter the Court's conclusion.").

Accordingly, this Court is without jurisdiction to hear Petitioner's statutory challenge.

B. Petitioner's Statutory Argument Misconstrues the INA

The plain language of § 1225(b)(2)(A) straightforwardly applies in this case. To escape that conclusion, some courts have suggested ambiguity based on the title and/or structure of the provision and past practice, and others read a limitation of "arriving noncitizen" into the language of § 1225(b)(2)(A) that is conspicuously absent from the actual text. As noted below, each of those contentions is in error.

Before addressing those points, however, it should be noted that Petitioner does not meaningfully explain his arguments in the Petition. Most of the Petition consists of recitations of DHS's historical enforcement practices, explanations of the recent changes, and then identification of several courts' disagreement (without unpacking their holdings or arguments). But beyond generally arguing that "the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner" (Doc. 1 at 10, ¶ 34), the Petition does *not* set forth the basis of that argument. Indeed, there is only one substantive paragraph explaining why § 1225(b) does not apply (¶ 38), and it merely quotes generalized language from *Jennings* addressed below.

While the Respondents attempt to respond to anticipated arguments below, when seeking relief, it is incumbent upon Petitioner to plainly state all the reasons for the relief he seeks. Indeed, "[t]he habeas rule instructs the petitioner to 'specify all the grounds for relief available to [him]' and to 'state the facts supporting each ground.'" *Mayle v. Felix*, 545 U.S. 644, 649 (2005). Rule 1 and basic fairness demand nothing less. Accordingly, Respondents request that the Court preclude or not entertain arguments not explicitly included—or merely referenced without elaboration—in the Petition.[9]

1. Section 1225(b)(2)(A) Does Not Contain an "Arriving" Limitation

Congress used the phrase "arriving alien" throughout Section 1225. *See, e.g.* 8 U.S.C. §§ 1225(a)(2), (b)(1), (c)(1), (d)(2). The phrase distinguishes a noncitizen presently or recently "arriving" in the United States from other "applicants for admission" who, like Petitioner, have been in the United States without being admitted. But Congress *did not* use the word "arriving" to limit the scope of § 1225(b)(2)(A)'s mandatory-detention provision. Had Congress intended to limit § 1225(b)(2)(A)'s scope to "arriving" noncitizens, it would have used that phrase like it did in § 1225(b)(1), a mere one subsection prior. But Congress did not and that omission must be given effect. *Russello v. United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."

[9] Likewise, the string cite at pages 8-9 of the Petition should not be construed as putting the United States on notice of other arguments, as each case is factually unique and it is unreasonable to task the Respondents with reviewing and responding to all possible arguments from those various cases.

(cleaned up)); *Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004) (concluding that "[t]he Government's request that we read [a specific] phrase into [a statutory] exception, when it is clear that Congress knew how to specify [those words] when it wanted to, runs afoul of the usual rule that when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended.").

Despite the lack of an "arriving" limitation, Petitioner asserts in conclusory form that the "statute's entire framework is premised on inspections at the border of people who are 'seeking admission' to the United States." Petition at 10, ¶ 38. But that sweeping statement cannot account for the definition of an applicant for admission that includes those found in the country and § (b)(2)(A)'s lack of the "arriving modifier."

The Title of § 1225 underscores this point. The title reads: "Inspection by immigration officers, *expedited removal of in admissible arriving aliens*, **referral for hearing.**" The first underlined portion is a reference to subpart (a)'s inspection obligations. The second italicized portion refers to the expedited proceedings of (b)(1) for "arriving aliens." Importantly, however, the third part of bolded text is a reference to the full removal proceedings under (b)(2)(A) for noncitizens present in the country. That is because "arriving aliens" are subject to *expedited* removals and do not get hearings pursuant to § 1229a. In contrast, noncitizens present in the country are provided full removal hearings under (b)(2)(A) ("detained for a proceeding under section 1229a"). *See Sandoval*, 2025 WL 3048926, at *4 ("However, aliens subject to removal under § 1225(b)(2) are not subject to expedited removal but, rather, removal proceedings in the ordinary course

pursuant to § 1229a."). No other portion of § 1225 provides for hearings.[10] Thus, the title is consistent with the Respondents' reading—and inconsistent with Petitioner's interpretation.

Likewise, the subpart titles of §§ 1225(b)(1) and (b)(2) are consistent. The title of (b)(1) is "Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled." In contrast, (b)(2) has *no* reference to arriving aliens. It reads "Inspection of other aliens." Again, the use of "arriving" in some parts of § 1225 and not others must be given effect. Petitioner's interpretation renders the references to "arriving" superfluous.

2. *Petitioner's Interpretation Undermines the Purpose of the IIRIRA*

Petitioner's interpretation effectively repeals a statutory fix Congress enacted with IIRIRA. Specifically, prior to the IIRIRA, an "anomaly" existed "whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020). The addition of § 1225(a)(1) "ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an 'applicant for admission.'" *Id.*; *see also* H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("This subsection is intended to

[10] It is also clear that the "hearing" in the title is a reference to the § 1229a removal hearing. That is plain from the use of the term throughout § 1225. *See, e.g.*, 8 U.S.C. § 1225 ("In no case may a stowaway be considered an applicant for admission or eligible for a *hearing under section 1229a of this title*." (emphasis added)).

replace certain aspects of the current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry.").

Petitioner's argument would undo that fix and incentivize noncompliance with immigration laws by providing more protection to those that bypass border inspections and evade detection to reside within the United States—a result at odds with the intent of Congress when amending § 1225 of the INA. *See Chavez v. Noem*, Case No. 3:25-cv-02325-CAB, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (rejecting Petitioner's reading because it would repeal the IIRIRA statutory fix); *Sandoval*, 2025 WL 3048926, at *6 n.7 ("For this Court to conclude that an alien who has unlawfully entered the United States and managed to remain in the country for a sufficient period of time is entitled to a bond hearing, while those who seek lawful entry and submit themselves for inspection are not, not only conflicts with the unambiguous language of the governing statutes, but would also seemingly undermine the intent of Congress in enacting the IIRIRA.").

Petitioner points to the commentary implementing regulations for IIRIRA to suggest that the Executive understood § 1225 to only apply to arriving aliens. Specifically, he cites (without quotation) to 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). *See* Petition at ¶ 26. But the commentary actually reads: "*Despite being applicants for admission*, 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." 62 Fed. Reg. at 10323 (emphasis added). Thus, contrary to Petitioner's assertion, the italicized portion acknowledges the plain language of the statute that noncitizens in the country *are* "applicants for admission" under § 1225, but announces the *discretionary* choice to use § 1226 for detentions and thus permit bond hearings. A new administration has deviated from that prior choice, as it is permitted to do. Thus, Petitioner and several courts conflate enforcement discretion with statutory interpretation, which then leads to concern about ambiguity that does not exist.

3. The Laken Riley Act Does Not Render § 1225(b)(2)(A) Superfluous

Petitioner suggests a recent amendment to the INA—the Laken Riley Act ("LRA")—would be superfluous if the government's reading of § 1225(b)(2)(A) is accepted. But Petitioner confuses a Venn diagram of overlapping enforcement schemes that facilitate prosecutorial discretion with perfectly congruent (and therefore superfluous) enforcement provisions that do not exist. Instead, in both 1996 and 2025, Congress wanted *more* enforcement of immigration restrictions and enacted complementary provisions to effectuate that purpose.

Section 1226(a)'s general detention authority, which permits the issuance of warrants to detain all noncitizens for their removal proceedings, must be read alongside § 1225, which specifically addresses the detention of applicants for admission which is a subset of noncitizens subject to § 1226. And § 1226 does not displace the more specific provisions in § 1225 governing the detention of applicants for admission. It is well established that where "there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one." *Guidry v. Sheet Metal Workers Nat. Pension*

Fund, 493 U.S. 365, 375 (1990) (citation omitted). Here, § 1225 is narrower in scope than § 1226. It applies only to "applicants for admission," which includes noncitizens present in the United States who have not been admitted. *See* 8 U.S.C. § 1225(a)(1).

To be sure, as amended by the LRA, § 1226(c)(1)(E) mandates detention for a group of noncitizens that includes a narrow subset of applicants for admission that may also be subject to § 1225(b)(2)(A) detention; namely, those who both entered without inspection and were arrested for, committed, or have admitted to committing one of a list of enumerated crimes. But § 1226(c)(1)(E) applies to *all* noncitizens who meet the criminal criteria and is thus broader. Conversely, the mandatory detention provisions of § 1226(c)(1)(E) do not reach the rest of applicants for admission under § 1225(b)(2)(A) who do *not* meet the criminal criteria. Put simply, the two enforcement provisions have overlap much like a Venn diagram, but they are not perfectly overlapping so as to make a provision superfluous. *See Jennings* 583 U.S. at 305 (rejecting a claim of superfluity in the INA context by observing "[a]lthough the two provisions overlap in part, they are by no means congruent" and "apply to different categories of aliens in different ways"); *Am. Car Rental Ass'n v. Humphreys*, No. 1:24-CV-02450-DDD, 2025 WL 1758898, at *5 (D. Colo. May 29, 2025) ("There is, to be sure, significant overlap between the two. But the canon against superfluity only requires what its name implies; it does not require that each provision have entirely distinct coverage—just that total superfluity be avoided.").

As the Supreme Court has acknowledged, some overlap and redundancies "are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply

because of the shortcomings of human communication." *Barton v. Barr*, 590 U.S. 222, 239 (2020). "Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.*; *Rimini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019) ("Sometimes the better overall reading of the statute contains some redundancy."). Section 1225(b)(2)(A) allows detention upon encountering an immigration agent and § 1225(c) provides for detention by the issuance of a warrant. Two *different* routes to detention, in addition to two different (albeit with some overlap) groups of noncitizens affected.

Moreover, if Petitioner's construction is correct, then one would expect to find a cross-reference to § 1225(a)(1) in § 1226(c)(1)(E)(i) or simply a reference to all "applicants for admission." That would be the direct manner accomplishing what Petitioner suggests. But the LRA has no such cross reference, demonstrating that the LRA amendment is not limited to "applicants for admission."

Petitioner's assertion is also contradicted by the statute. The plain language of the LRA applies to *all* noncitizens who meet its criminal criteria, not just "applicants for admission." For example, § 1226(c)(1)(E)(i) applies to noncitizens inadmissible under "paragraph … (6)(C) … of section 1182(a)." In turn, the referenced paragraph (6)(C) of § 1182(a) addresses misrepresentation of material facts and applies *even if a noncitizen obtained admission* (meaning, not an "applicant for admission") by fraud or misrepresentation. *See* 8 U.S.C. § 1182(a)(6)(C) ("Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided

under this chapter is inadmissible."). Put simply, even as amended by the LRA, § 1226 applies to *all* noncitizens and sweeps much broader than Petitioner argues. It is plainly not limited to applicants for admission. *Sandoval*, 2025 WL 3048926, at *5 ("Petitioner's argument that § 1226 would be rendered superfluous under Respondents' interpretation of § 1225(b)(2) is unpersuasive. The statutory scheme of the INA does not render these two provisions mutually exclusive, and there are many other categories of aliens to whom § 1226(a) is applicable, but not § 1225(b)(2)").

Finally, even if there is some overlap in the class of noncitizens between § 1225(b)(2)(A) and the LRA, the two provisions provide different means, procedures, and obligations that independently demonstrate a lack of superfluity. Section 1225(b)(2)(A) requires a personal examination of the noncitizen by an immigration officer and then, based on determinations drawn from the examination, potential detention. But § 1226 is different. It permits a warrant to be issued and a noncitizen detained in order to facilitate the later examination and determinations regarding admission. Further, while examination of any particular applicant for admission under § 1225 is subject to discretion as encountered, § 1226 imposes a mandate of arrest for all noncitizens regardless of other enforcement priorities. As such, the two provisions use different means, have different obligations, and invert the order of detention and examination. Those differences independently undercut any the assertion of superfluity.

4. Claims of Passive Residency Do Not Alter Whether a Noncitizen Is an Applicant for Admission Subject to Detention

Petitioner may argue in reply (it is not found in the Petition) that he is not "seeking

admission." Essentially, Petitioner may (but has not yet) argue that passive residency is not "seeking admission." Although some courts have adopted that reasoning, those opinions fail to give effect to the plain language of the statute, defy cannons of statutory interpretation, and are wrongfully decided. Indeed, the Supreme Court has treated § 1225(b)(2)(A) as applying to "*all applicants for admission* not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287 (emphasis added); *see also Sandoval*, 2025 WL 3048926, at 5 n.5 ("The fact that Petitioner may have lacked the subjective intent to ever apply for admission does not prevent her from being categorized as an "applicant for admission" under § 1225. For this Court to hold otherwise would clearly contravene the plain statutory language and Congress's intent.").

"As always, we start with the statutory text." *Garland v. Cargill*, 602 U.S. 406, 415 (2024). Statutory language "is known by the company it keeps." *Dubin v. United States*, 599 U.S. 110, 124 (2023) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). In the context presented, "seeking admission" and "applying for admission" are plainly synonymous. Congress has linked these two variations of the same phrase in Section 1225(a)(3), which requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive—a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013).

Read properly, a person "seeking admission" is just another way of describing a person applying for admission, meaning he is an applicant for admission, which includes

both those individuals arriving in the United States and those already present without admission—which are regarded as if at the border. *See Sierra v. Immigr. & Naturalization Serv.*, 258 F.3d 1213, 1218 (10th Cir. 2001) ("Although he has been physically present in the United States for more than twenty years, Sierra is legally considered to be detained at the border and hence as never having effected entry into this country." (cleaned up)); *Suarez-Tejeda v. United States*, 85 F. App'x 711, 712–13 (10th Cir. 2004) ("He is treated as if stopped at the border for purposes of immigration law." (quotation omitted)); *Jimenez-Rodriguez v. Garland*, 996 F.3d 190, 194 n. 2 (4th Cir. 2021) ("Because Jimenez-Rodriguez was never lawfully admitted, he qualifies as someone "seeking admission"); Sandoval, 2025 WL 3048926, at *3 (W.D. La. Oct. 31, 2025) ("Thus, under the plain text of § 1225(a)(1), any alien physically present in the United States who has not been admitted is an 'applicant for admission,' regardless of how long they have been in the country or whether they intended to apply or enter properly."); *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) ("just because Vargas Lopez illegally remained in this country for years does not mean that he is suddenly not an 'applicant for admission' under § 1225(b)(2)"); *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (noncitizens residing in the United States "are 'applicants for admission' and thus subject to the mandatory detention provisions of … § 1225(b)(2)"); *Pena v. Hyde*, Civ. Action No. 25-11983-NMG,

2025 WL 2108913 (D. Mass. July 28, 2025) (alien unlawfully present in the country for 20 years was nonetheless an "applicant for admission").[11]

Another statutory provision supports this understanding. Section 1101(a)(13)(C), the definition section of the INA, explains that a legal permanent resident "shall not be regarded as *seeking an admission* ... unless the alien ... has abandoned or relinquished that status." (emphasis added) Put differently, if a former legal permanent resident is found within the country after having relinquished their status, that noncitizen is deemed to be "seeking admission." That is because noncitizens found illegally in the country are deemed as seeking admission. Any contrary reading creates a class of noncitizens not found in the INA.

Further, to reiterate, Petitioner's interpretation effectively repeals a statutory fix of the entry doctrine under the IIRIRA. Petitioner's argument would undo that fix and incentivize noncompliance with immigration laws by providing more protection to those that bypass border inspections and evade detection to reside within the United States—a result plainly at odds with the intent of the INA.[12]

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[11] Although Petitioner cites several cases to the contrary, Doc. 1 at 8-9, those cases are not binding and often turn on different facts such as the revocation of prior bond, the prior issuance of a warrant under Section 1226, or contesting that they are not "seeking admission." Further, even some of those courts acknowledge the issue is close. *See, e.g.*, *Echevarria, v. Bondi*, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282, at *5 (D. Ariz. Oct. 3, 2025) ("The Court clarifies, however, that it views this issue as presenting a complicated and debatable question.").

[12] Additionally, a contrary reading leads to the absurd result that immigration officers cannot immediately detain a noncitizen residing in the United States without determining if they were somehow *actively* seeking admission (a standard not identified or defined in the INA or implementing regulations). Instead, the proper standard for the immigration

Moreover, it bears repeating that Petitioner (with the assistance of counsel) has *not* asserted or argued that he is somehow not "seeking admission." Moreover, Petitioner has *not* offered to voluntarily depart, *see* 8 U.S.C. § 1229(c) (Voluntary Departure).

5. Petitioner's Passing Citation to Jennings Is Misplaced

Petitioner notes that *Jennings* observed that § 1225 applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." Doc. 1 at 11, ¶ 38 (citing *Jennings*, 583 U.S. at 287). From that quote, Petitioner argues that "the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended." *Id.* at ¶ 39. However, Petitioner's initial quote picks up after—and therefore omits—the critical qualifying phrase "*generally begins*"—meaning the Court was not explaining *all* applications of 1225. Rather, the border is where its application begins, not where it *ends*. Indeed, the quoted sentence cites to all of § 1225 generally, *not* § 1225(b)(2)(A) specifically.

In *Jennings*, the Supreme Court addressed whether aliens were entitled to periodic bond hearings during detentions under §§ 1225 and 1226 that became prolonged. 583 U.S. at 291-92. In doing so, the Court suggested that § "1225(b) applies *primarily* to aliens seeking entry into the United States," *id.* at 297 (emphasis added), and that § 1226(a) is the "default rule" for aliens "inside the United States," *id.* at 288. But *Jennings* goes on to confirm that § 1225(b)(2) should apply to aliens who entered without inspection.

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officer is that which is plainly stated in the INA; namely, whether the noncitizen is "entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A).

Specifically, the *Jennings* Court described § 1225(b)(2) as a "catchall provision that applies to *all applicants for admission* not covered by § 1225(b)(1)." *Id.* at 287 (emphasis added). And the Court did *not* limit § 1225(b) to those just arriving in the United States. In short, *Jennings'* general description of the statutory framework does not support Petitioner's sweeping reading and the Court was not addressing the statutory question at issue here.

* * *

In summary, the Court is without jurisdiction over DHS' election to *commence* proceeding under § 1225(b)(2)(A). Further, the plain text of § 1225(b)(2)(A) applies to Petitioner as an applicant for admission. Petitioner does not meaningfully advance contrary arguments and those hinted at require reading requirements into the statute that are not there or finding superfluity where it does not exist. Accordingly, relief under Count I of the Petition should be denied.

II. Petitioner's Constitutional Due Process Argument (Count II) Is Premature and Without Basis

Petitioner's constitutional claim is not well developed. While he alleges that his detention violates Fifth Amendment, he does not explain why. Presumably, Petitioner contends that *any* detention without a bail determination violates due process. But that broad claim is unsupported.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001)), the Court held that detention for six months (approximately 182 days) was presumptively permissible. When this case was filed, Petitioner had only been detained 44 days. As of the date of this filing, he has been detained 62 days. That falls far short of the six months set forth in *Zadvydas*. And in

Zadvydas, the petitioner was facing the prospect of indefinite detention. That is also not the case here. While detention pursuant to § 1225(b) is mandatory, it is *not* indefinite. On the contrary, "§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time." *Jennings*, 583 U.S. at 299. Specifically, "detention must continue . . . until removal proceedings have concluded." *Id.* (internal citation omitted). But "[o]nce those proceedings end, detention under § 1225(b) must end as well." *Id.* at 297. In short, the Petition is premature and without basis.

Granting the Petition under the premise that all detention must be subject to bond hearings would require a reading of the Due Process Clause that the Supreme Court has never endorsed and in fact has repeatedly avoided. *See Jennings*, 583 U.S. at 297 ("nothing in the statutory text imposes any limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings"). This Court should decline to take such a drastic step. *See Mathews v. Diaz*, 426 U.S. 67, 81 (1976) ("Any rule of constitutional law that would inhibit the flexibility of the political branches of government to respond to changing world conditions should be adopted only with the greatest caution."); *Demore v. Kim*, 538 U.S. 510, 522 (2003) ("And, since *Mathews,* this Court has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.").

As noted above, the federal statute *mandates* Petitioner's detention. And the Supreme Court has held, nowhere in the statutory rubric did Congress mention a bond hearing or state a maximum period of time within which an alien could be held in such mandatory detention without providing a bond hearing. *See Jennings*, 583 U.S. at 297.

Petitioner has not been admitted to the U.S., and for any noncitizen who has not been admitted into the country, the INA provides the only process due under the Constitution. *United States v. Thuraissigiam*, 591 U.S. 103, 138-40 (2020); *see also Demore*, 538 U.S. at 523 ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings. At the same time, however, this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." (cleaned up)).

Indeed, the Supreme Court has described "our century-old rule" as:

> [T]he power to admit or exclude aliens is a sovereign prerogative; the Constitution gives the political department of the government plenary authority to decide which aliens to admit; and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted.

Thuraissigiam, 591 U.S. at 139 (cleaned up); *see also U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.").

Against that backdrop, if Petitioner contends that his detention violates constitutional standards, he must do more than state it in conclusory fashion. *US v. Clay*, 148 F.4th 1181, 1201 (10th Cir. 2025) ("It is well-settled that arguments inadequately briefed in the opening brief are waived." (quotation omitted)). The Respondents and the Court should not be left to guess the basis for Petitioners' claim or only discover it upon reading the reply brief. *Clay,* 148 F4th at 1201 ("We also will not consider issues raised for the first time in a reply brief or issues raised in a cursory fashion in the opening brief and then developed in a reply" (cleaned up)).

Accordingly, Petitioner's due process claim should be denied.

CONCLUSION

The Respondents respectfully request that the Court deny the Petition and dismiss the case.

Dated: November 3, 2025

Respectfully submitted,
ROBERT J. TROESTER
United States Attorney

/s/ Scott Maule
Scott Maule (OBA 31760)
Assistant U.S. Attorney
United States Attorney's Office
Western District of Oklahoma
210 Park Avenue, Suite 400
Oklahoma City, OK 73102
(405) 553-8832/8700
scott.maule@usdoj.gov