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

ARTURO MANUEL GUTIERREZ SOSA,	)	
	)	
PETITIONER,	)	
	)	
v.	)	Case. No. CIV-25-1257-PRW
	)	
RUSSELL HOLT, et al.,	)	
	)	
RESPONDENT.	)	
	)	

RESPONSE IN OPPOSITION TO
THE PETITION FOR WRIT OF HABEAS CORPUS

Respectfully submitted,

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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 Field Office Director Russell Holt (collectively, "Respondents"[1]), pursuant to the Court's Order (Doc. 6), 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 the decision by the Department of Homeland Security ("DHS") to detain him pursuant to 8 U.S.C. § 1225(b)(2)(A). Petitioner claims that the provision only applies to recent entrants at the border and that his detention should have been brought under 8 U.S.C. § 1226(a) since he has resided in the country since 2001. The practical difference between the two sections is that noncitizens detained under § 1226(a) may be eligible for bond hearings, but not under § 1225(b)(2)(A). Apart from that statutory argument, Petitioner also asserts the constitutional claim that his ongoing detention without a bond hearing violates due process. Accordingly, Petitioner requests immediate release or a bond hearing in five days.

The Court should deny the Petition. First, under the Immigration and Nationality

[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.

Act ("INA"), 8 U.S.C. § 1252(g) and (b)(9), this Court lacks jurisdiction to review DHS's decision to commence proceedings and detain Petitioner. Second, even if the Court were to determine it has jurisdiction, it should deny the Petition. Section 1225(b)(2)(A) of the INA requires the detention of an "applicant for admission" if an "examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." An "applicant for admission" includes any "alien present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). Petitioner plainly meets that definition and does not challenge his non-entitlement for admission. Finally, Petitioner has not suffered a due process violation.

BACKGROUND

I. Legal Framework

A. Applicants for Admission

In the INA, Congress established rules governing when certain noncitizens 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." 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 an alien 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 Section

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

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) describes two categories of applicants for admission, which together describe many—but not all—applicants for admission. The first category includes those aliens who are arriving and inadmissible under 8 U.S.C. § 1182(a)(6)(c) or (a)(7).[2] *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). Aliens 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).[3]

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

[3] 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).

But those two categories do not encompass all applicants for admission. Section 1225(b)(2) "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 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, or other aliens subject to expedited removal). Section 1225 does not provide a bond hearing for aliens detained under that provision.

Although 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. Further, DHS "may 'for urgent humanitarian reasons or significant public benefit' temporarily parole aliens detained under §§ 1225(b)(1) and (b)(2)," *Jennings* at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)); *see* 8 C.F.R. §§ 212.5 (implementing regulations), 235.1(h)(2). "[P]arole of such alien[s] *shall not* be regarded as an admission of the alien[s]." 8 U.S.C. § 1182; *see id.* § 1101(a)(13)(B).

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

The two categories of aliens described in § 1225(b)(1), and the additional catchall category of noncitizens described in § 1225(b)(2) who also meet the definition of "applicants for admission," do not encompass all aliens who may be subject to removal. For those noncitizens who fall outside those categories or have not yet been encountered or examined by an immigration officer, another provision – § 1226 – provides procedures for detention and removal. Unlike § 1225, § 1226 is not limited to applicants for admission, but *broadly applies to all aliens facing removal.*

Thus, § 1226 provides procedures for detention and removal of aliens that are different from those provided for aliens subject to detention under § 1225. Section 1226(a) provides that if the Secretary[4] of DHS issues a warrant, regardless of 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." It is a means of detention prior to examination. Following arrest, and subject to certain restrictions, the alien may 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

[4] 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); *see also United States v. Sandoval*, 390 F.3d 1294, 1296 n.2 (10th Cir. 2004) (noting that in March 2003 the Immigration and Naturalization Service "ceased to exist" as an agency within the Department of Justice, and that its functions were transferred to DHS)).

officer, the alien can request a custody redetermination by an immigration judge at any time before a final order of removal is issued. *See id.* §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

Within that broader category, § 1226(c)(1) pertains to the mandatory detention of certain noncitizens who generally have had interactions with the criminal justice system, and importantly here, does not *solely* apply to those who have not been admitted to the United States. *See* 8 U.S.C. 1226(c)(1) ("The Attorney General shall take into custody *any* alien" (emphasis added)). To this end, lawful permanent residents – *i.e.*, those who *have been admitted* to the United States – 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 those who may have been admitted erroneously but 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 applies to applicants for admission, while § 1226 more generally applies to noncitizens, even if not yet encountered or examined by immigration officers, and it is initiated by warrants issued by the Secretary of DHS. While there is some overlap between the provisions, that overlap does not render either superfluous. Rather, it is consistent with the broad purposes of the INA, the different means and remedies necessary to effectuate them, and the discretion afforded to the Executive to do so.

II. Petitioner's Background

Petitioner is a native of and citizen of Mexico. Ex. 1, Notice to Appear at 1. He is an applicant for admission to the United States. Specifically, as alleged in the Petition, he has been present in the United States since approximately 1999. Doc. 1 at 11, ¶ 40; *see also*

Ex. 1 at 1. On or about July 8, 2025, Petitioner was placed into removal proceedings[5] with the issuance of a Notice to Appear based on his presence in the United States without being inspected, admitted, or paroled. Ex. 1 at 1 & Ex. 2, Dec. of Kara Gabriel at ¶ 4. On October 8, 2025, law enforcement encountered Petitioner. He was taken into ICE custody because he admitted he entered the United States without admission and it was determined he did not have any authorization to remain in the United States. Ex. 2 at ¶ 6. Petitioner is scheduled for an immigration court hearing on October 31, 2025. As of October 29, 2025, there is no indication that Petitioner has filed a request for a bond hearing. *Id.* at ¶ 7.

Petitioner's removal proceeding remains ongoing while he is detained at the Cimarron Correctional Facility. Petitioner is being detained pursuant to § 1225(b)(2)(A).

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

[5] 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).

channeling and stripping provisions, depriving this Court of jurisdiction. Further, Petitioner's statutory assertions misread the INA and cannot account for the statutory definition of "applicants for admission." 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

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 and resulting detention 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 aliens with a vehicle to challenge the statutory provision that DHS relies on to detain and remove noncitizens. Specifically, Congress provided, in the INA, 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 charge and detain Petitioner under § 1225(b)(2)(A) is integral to his removal proceedings and a question of law that can be reviewed by the appropriate court of appeals as part of an appeal of a final order of removal—but not this Court.

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 *detention*. But that isn't correct. While Petitioner's due process claim (Count II) arguably *only* challenges his ongoing detention, Count I expressly challenges the statutory basis of the proceedings against him. Indeed, as Petitioner argues, his mandatory detention flows from the

commencement of proceedings under § 1225 rather than § 1226. Thus, the statutory challenge is directed towards the commencement of proceedings.

Petitioner's contention that proceedings could have been commenced under § 1226 underscores this point. Petitioner 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)).

DHS did not choose to commence proceedings pursuant to § 1226. Instead, it commenced proceedings by detaining Petitioner pursuant to § 1225(b)(2)(A) and it is that election that Petitioner actually challenges. *S.Q.D.C. v. Bondi*, No. CV 25-3348 (PAM/DLM), 2025 WL 2617973, at *3 (D. Minn. Sept. 9, 2025) ("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."). Indeed, Petitioner seeks to stop the commencement of proceedings as initiated by demanding a declaration "that Petitioner's detention is unlawful." Doc. 1 at 14; *see also Alvarez v.*, 818 F.3d at 1203 ("securing an alien while awaiting his removal hearing constitutes an action taken to commence proceedings" (cleaned up)).

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

B. Petitioner's Statutory Argument Misconstrues the INA and Cannot Account for the Statutory Definition of "Applicant for Admission"

At the outset, two observations are in order. First, Petitioner is correct that the Government altered its policy and now applies § 1225(b)(2)(A) removals to the fullest extent authorized by statute. But a change, without more, is just that. It does not render the new enforcement strategy invalid. More is required—especially when seeking the extraordinary relief of habeas corpus.

Second, and most critically, Petitioner is plainly an "applicant for admission." 8 U.S.C. § 1225(a)(1) ("applicant for admission" includes any "alien present in the United States who has not been admitted"); Doc 1 at 11, ¶ 40 ("Petitioner has resided in the United States since 1999"). That is significant because § 1225(b)(2)(A) provides for mandatory detention "*in the case of an alien that 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." (emphasis added). In this case, the officer determined just that—and the Petition does not contest it. Accordingly, under the plain language of the statute, Petitioner is subject to mandatory detention under § 1225. Petitioner's assertion that he could *also* be detained under § 1226(a) does not alter that plain reading of § 1225.

Accordingly, Petitioner is left to make other arguments to divert from the plain language of the statute. First, it is anticipated that Petitioner may claim that, even as an applicant for admission, he is not "seeking" admission. Second, Petitioner may claim that the Government's reading renders parts of § 1226 superfluous. Finally, Petitioner relies on

an incomplete quote from *Jennings* that does not stand for the proposition ascribed. Each is addressed in turn.

Before doing so, however, it should also 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 (*id.* at ¶ 38) explaining why § 1225(b) does not apply, 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.[6]

[6] 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.

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

Petitioner may argue that "seeking admission" somehow narrows the category of "applicants for admission" subject to mandatory detention under § 1225(b)(2)(A) to only those aliens inspected at a port of entry. Essentially, Petitioner would 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). While Petitioner does not specifically allege that he is seeking admission, it is clear that he is doing so by his continued residency for over twenty-five years. Conversely, Petitioner has *not* offered or moved to voluntarily depart, *see* 8 U.S.C. § 1229(c) (Voluntary Departure), again underscoring that he is *seeking* to stay.

"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. 8 U.S.C. § 1225(a)(1). *See Sierra 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"); *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").[7]

Importantly, 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 an alien 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)'s mandatory-detention provision. Had Congress intended to limit § 1225(b)(2)'s scope to "arriving" aliens, it could have simply used that phrase like it did in § 1225(b)(1). Instead, Congress used the phrase "alien seeking admission" as a plain synonym for "applicant for admission." Indeed, the prefatory phrase "in the case of an alien who is an applicant for admission" underscores the point. 8 U.S.C. § 1225(b)(2)(A). Moreover, *all* aliens (regardless of whether they are actively seeking legal admission or passively residing in the country) must be inspected by immigration officers. 8 U.S.C. § 1225(a)(3).

Further, Petitioner's interpretation effectively repeals a statutory fix Congress enacted with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 3009 (1996). Specifically, prior to the IIRIRA,

[7] Although Petitioner cites several cases to the contrary, Doc. 1 at 8-9, those cases are not binding and often turn on different facts. Further, even some of those courts acknowledge the issue is close. *See, e.g., Francisco Cerritos Echevarria, v. Pam Bondi, et al.*, 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.").

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.* 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.[8]

2. *Mandatory Detention Under Section 1225 Does Not Render Section 1226 Superfluous and Is Consistent With Congressional Enactments*

To the extent Petitioner argues that the application of Section 1225 to noncitizens already in the country renders § 1226(c) superfluous and/or is inconsistent with the Laken Riley Act, Petitioner is wrong.

First, as noted in the background section, despite some overlap, the two provisions cover different aliens and use different mechanisms. Overlap, without more, does not

[8] 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). Instead, the proper standard for the immigration 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).

undermine the Respondents' reading. Rather, some overlap is consistent with the broad purposes of the INA and the different means and remedies necessary to effectuate them.

Section 1226(a)'s general detention authority, which permits the issuance of warrants to detain aliens for their removal proceedings, must be read alongside Section 1225, which specifically addresses the detention of applicants for admission. 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 aliens present in the United States who have not been admitted. *See* 8 U.S.C. § 1225(a)(1). Thus, § 1225 applies to Petitioner.

To be sure, 8 U.S.C. § 1226(c)(1)(E) mandates detention for a narrow category of aliens who entered the country without inspection: those who both entered without inspection and were later arrested for, committed, or have admitted to committing one of a list of enumerated crimes. It requires DHS to take such aliens into custody after their release from criminal custody and detain them. *See Nielsen*, 586 U.S. at 414-15 (explaining that Section 1226(c)(1)'s "when released" clause clarifies that DHS custody begins "upon release from criminal custody," not before, and that it "exhort[s] [DHS] to act quickly" to detain the individual.). The fact that § 1226(c)(1)(E) provides further rules for detention of one category of aliens who entered without inspection does not mean that § 1225(b)(2)(A) no longer applies to all other such aliens.

Put differently, it is true that for a certain subset of aliens—those who entered without inspection and then committed (or may have committed) certain crimes—Congress has now mandated their detention in two separate provisions, both § 1225(b)(2)(A) and § 1226(c)(1)(E). But any potential redundancy in requiring mandatory detention for that subset of aliens does not mean that § 1225(b)(2)(A) does not still govern the detention of other aliens who entered without inspection. As the Supreme Court has acknowledged, 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.* 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.

Nor is there any indication that Congress intended courts to ignore the detention provisions in § 1225. In enacting the Laken Riley Act (which added § 1226(c)(1)(E)), Congress did not alter § 1225(b)(2)(A). *See* PL No. 119-1, 139 Stat. 3 (2025). It is implausible that in the Laken Riley Act, Congress intended—without ever saying so—to displace the authority in § 1225(b)(2)(A) to detain applicants for admission who are present in the United States and have not been admitted. Petitioner would have the Court believe that a congressional act seeking to *increase* enforcement *reduced* mandatory detentions.

Moreover, that argument suffers a basic chronology problem. The Laken Riley Act passed Congress on January 22, 2025, and was signed by the President on January 29,

2025. But as noted in the Petition, the more expanded use of § 1225 was not announced by ICE and DOJ until July 8, 2025. Doc. 1 at 7, ¶ 28. Further, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 216 (BIA 2025) was decided later, in September of 2025. As such, Congress did not have the benefit of knowing the Executive's expanded use of § 1225 when it passed the Laken Riley Act.

3. Petitioner's Passing Citation to Jennings Is Misplaced

The one argument Petitioner actually asserts in the Petition is that the Supreme Court explained in *Jennings* that § 1225(b)(2)(A) 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 10-11, ¶ 38 (citing J*ennings*, 583 U.S. at 287). From that quote, Petitioner concludes 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 11, ¶ 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(b)(2)(A). Rather, the border is where its application begins, not 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. 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 was not addressing the statutory interpretation 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 (passive vs. active seeking, when passive seeking is not lawful or contemplated) or a finding of superfluity that does not exist and is explained by context and chronology. 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

At the time the Petition was filed, Petitioner had only been in custody for 15 days. The only case or argument Petitioner asserts in support of his due process argument (Count II) is a general quote from *Zadvydas* regarding freedom from imprisonment. Doc. 1 at 13, ¶ 51 (quoting *Zadvydas v. Davis*, 533 U.S. 678 (2001)). That is it. Nothing more is proffered.

That lone assertion is woefully insufficient to warrant consideration of relief. *United States 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). Indeed, the only case cited, *Zadvydas*, stands for the proposition that detention is presumptively permitted for six months. Petitioner's current 24th day of detention here falls far short. And in *Zadvydas*, the petitioner was facing the prospect of indefinite detention. That is also not the case here. Although 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.

If Petitioner contends that his detention violates constitutional standards, he must do more than state it in conclusory fashion. The Respondents and the Court should not be left to guess the basis for Petitioner's claims 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)).

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 without meaningful briefing. *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.").

Should the Court nonetheless entertain some version of Petitioner's argument, it should be denied.

To assess the merits of Petitioner's constitutional claims, it is necessary to determine first what due process rights Petitioner possesses. As noted above, federal statute *mandates* Petitioner's detention. 8 U.S.C. § 1225(b)(2)(A). 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 alien who has not been admitted into the country pursuant to law, 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 regarding due process rights of an alien seeking initial entry" as "rest[ing] on fundamental propositions" that:

> [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. This rule would be meaningless if it became inoperative as soon as an arriving alien set foot on U.S. soil. When an alien arrives at a port of entry—for example, an international airport—the alien is on U.S. soil, but the alien is not considered to have entered the country for the purposes of this rule. On the contrary, aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are "treated" for due process purposes "as if stopped at the border."

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."). Those holdings cannot be squared with Petitioner's apparent claim that no detention of noncitizens without a bond determination is ever permissible under the Due Process Clause.[9]

CONCLUSION

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

[9] Again, if Petitioner is advancing a more nuanced position, it is not stated.

Dated: October 31, 2025.

Respectfully submitted,

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