UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

CARLOS ESTEBAN SEVERINO PETITIONER

v. CIVIL ACTION NO. 4:25-cv-00124-DJH (*e-filed*)

MIKE LEWIS, Jailer, Hopkins County Jailer;
and SAMUEL OLSON, Field Office
Director, Chicago Field Office, Immigration and
Customs Enforcement RESPONDENTS

RESPONDENT'S MOTION TO DISMISS AND RESPONSE TO ORDER TO SHOW CAUSE

The United States, Respondent, on behalf of Samuel Olson, [1] acting in his official capacity as Interim Field Office Director, Chicago Field Office, U.S. Immigration and Customs Enforcement ("ICE"), respectfully requests the Court dismiss Petitioner Carolos Severino's habeas petition for lack of jurisdiction. As explained more fully below, the Court lacks subject matter jurisdiction to review the Agency's action to detain Petitioner as it arises from the Agency's decision to commence his removal proceedings and would require the Court to answer legal questions. *See* 8 U.S.C. §§ 1252(b)(9)&(g). Accordingly, the Court should dismiss the instant petition. If, however, the Court retains jurisdiction over the petition, the Court should deny the petition, because Severino is lawfully detained as an alien present in the United States without being admitted or paroled. *See* 8 U.S.C. § 1225(b).

---

1 This response is filed on behalf of Federal Respondent Samuel Olson. 28 U.S.C. § 517 allows the Office of the United States Attorney to make appearances in court to attend to the United States' interests, and consistent with that statute and *Roman v. Ashcroft*, 340 F.3d 314, 319-20 (6th Cir. 2003), this filing attends to the United States' interests to the extent that the petition also names Mike Lewis, the Hopkins County Jailer, as a respondent.

BACKGROUND

Severino is Removable as an Inadmissible Alien Present in the United States Without Being Admitted or Paroled and as an Alien Present Without Valid Entry Documents.

Petitioner was apprehended in Waukegan, Illinois, on October 9, 2025, when he encountered uniformed Border Patrol Agents on the side of a road, immediately began to flee, and was eventually caught after a foot race and rebuffing the English and Spanish verbal commands of the pursuing federal agent. Ex. A (copy of Form I-213, "Record of Deportable/Inadmissible Alien"). Severino then claimed to have "papers" but was unable to produce any immigration documents to demonstrate he was lawfully admitted to the United States. *Id.* After being unable to answer several basic questions about his immigration status, the officer determined Severino had lied about his legal presence in the United States. *Id.* In his possession, however, Petitioner had an identification card issued from the government of Mexico.[2] *Id.* Database searches by the agents premised upon the information found in the identification card failed to confirm Severino's original story that he was in the United States lawfully and when he was again pressed, he finally admitted he was present in violation of federal law. *Id.* Petitioner was then placed under arrest for violating United States immigration code. *Id.*

Based upon his attempt to escape contact with law enforcement, his unlawful presence in the United States, and his previous refusal to obey a federal agent's commands, Severino was physically detained and transported to an ICE facility in

---

2 The petition confirms that Severino is a native and citizen of Mexico. Pet. at PageID#1.

Broadview, Illinois, prior to the issuance of a Notice to Appear ("NTA"). *Id.* There, Severino advised that he originally entered the United States on or about December 1, 1994, near San Diego, California, without admission by an immigration officer and without any lawful right to enter. *Id.* He admitted that he is not a citizen of the United States and has no application or petition that would afford him the right to remain. *Id.* Petitioner did not express fear of persecution or torture should he return to Mexico and claimed to have two children who were United States citizens. *Id.*

Determined to be removable as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General, and not in possession of any valid paperwork that would permit him entry, an ICE agent commenced removal proceedings on October 9, 2025, the day Severino was apprehended, by serving Petitioner with an NTA to appear before an immigration judge on October 19, 2025. *Id.*; *see also* Ex. B (copy of NTA). By document dated October 9, 2025, Petitioner expressed his desire to have a hearing before the immigration court to determine whether he may remain in the United States, but did not claim therein that he believed he would face harm if he returned to Mexico.[3] Ex. C (copy I-826 – "Notice of Rights and Request for Disposition"). Petitioner was also provided a Warrant of Arrest. Ex. D (copy of "Warrant of Arrest of Alien").[4]

---

[3] There is no record of Petitioner ever claiming a need for asylum in the United States.

[4] The language of the warrant of arrest referencing § 1226 is not an invocation of § 1226 or an admission that the provision applies to Severino, but simply "describes the agents to whom the warrant is directed and identifies the two sources for their arrest authority. This language

Petitioner initiated the current action by on October 27, 2025 [DN 1]. In his petition for a writ of habeas corpus under 28 U.S.C. § 2241, Severino challenges the Department of Homeland Security's ("DHS") action to detain him, as part of the commencement of his removal proceedings. He is seeking, *inter alia*, a declaration that his detention violates his due process rights and the Immigration and Nationality Act ("INA"). Accordingly, he requests the Court order his release.

Specifically, Servino contends he is detained unlawfully in violation of his constitutional due process rights and an incorrect interpretation of immigration law, seeking for this Court to release him and direct an immigration judge to conduct a bond hearing. Pet. at PageID#2-4. He claims that because he entered and remained in the country for several years before being discovered and taken into detention, he cannot be detained pursuant to 8 U.S.C. § 1225(b) but must be detained pursuant to 8 U.S.C. § 1226, which would permit him to request release on bond before an immigration judge. *Id.* at PageID#6-17. He argues that he can no longer be viewed as statutorily "seeking admission" for purposes of mandatory detention under § 1225(b)(2) because he asserts that identifying language only applies to immigrants at the nation's border or some other point of entry, rather than to a noncitizen already present in the United States. *Id.* Finally, Severino contends his due process rights have been violated. *Id.* at PageID#14-15.

---

does not state that [Petitioner] is subject to the discretionary detention provisions of Section 1226 or excepted from the provisions of Section 1225." *Rojas v. Olson*, 2025 WL 3033967 at *9 (E.D.Wis. October 30, 2025).

LEGAL FRAMEWORK

I. 8 U.S.C. § 1252 Limits the Court's Jurisdiction to Review Certain Immigration Decisions and Actions.

Relevant here, Congress included two separate provisions of the INA to prohibit the Court from entertaining certain habeas challenges—8 U.S.C. §§ 1252(b)(9), (g). First, Section 1252(g) provides that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). This provision bars review of an alien's claim that the government is "selectively enforcing immigration laws against them in violation of their First and Fifth Amendment rights," because such claims represent a "challenge to the Attorney General's decision to 'commence proceedings' against them." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 474, 487 (1999) (quoting 8 U.S.C. § 1252(g)). Detention during removal proceedings is an "aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure").

Second, Section 1252(b)(9) provides that "[j]udicial 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 under this subchapter shall be available only in judicial review of a final order." 8 U.S.C. § 1252(b)(9). Indeed, Congress specified that "no court shall

have jurisdiction, by habeas corpus under [28 U.S.C. § 2241] or any other habeas corpus provision . . . or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact." *Id.; see also id.* § 1252(a)(5) (applying the same jurisdictional bar to "judicial review of an order of removal"). Habeas petitions challenging the legal basis for detaining in the first place require a court to answer "legal questions" that arise from "an action taken to remove an alien," so the claims "fall within the scope of § 1252(b)(9)." *Jennings v. Rodriguez*, 583 U.S. 281, 295 n.3 (2018) (plurality opinion) (assuming that detention is an action taken to remove an alien).[5]

II. Alternatively, Severino Bears the Burden of Proving his Detention is Unlawful Under 8 U.S.C. § 1225(b), Because He is an Applicant for Admission.

Should the Court exercise jurisdiction over this case, the Court may only grant a writ of habeas corpus if the Petitioner is in federal custody in violation of the Constitution or a federal law. 28 U.S.C. § 2241. Petitioner bears "'the burden to show that he is in custody in violation of the Constitution of the United States.'" *Morrison v. Holder*, 2012 WL 5830435, 2012 U.S. Dist. LEXIS 164910, at 6 (N.D. Ohio Nov. 16, 2012) (quoting *Dodge v. Johnson*, 471 F.2d 1249, 1251 (6th Cir. 1973)); *see also Martinez v. Larose*, 968 F.3d 555, 565 (6th Cir. 2020) (placing the burden on Petitioner to prove his removal is reasonably foreseeable).

5 *See also id.* at 317 (Thomas, J., concurring in part and concurring in the judgment) ("Section 1252(b)(9) is a general jurisdictional limitation that applies to all claims arising from deportation proceedings and the many decisions or actions that may be part of the deportation process. Detaining an alien falls within this definition . . . . The phrase any action taken to remove an alien from the United States must at least cover congressionally authorized portions of the deportation process that necessarily serve the purpose of ensuring an alien's removal.") (cleaned up).

As an applicant for admission, Severino's detention is governed by 8 U.S.C. § 1225(b). The Supreme Court's decision in *Jennings* controls this determination. Therein, the Court explained, "the Government must determine whether an alien seeking to enter the country is admissible." *Jennings*, 583 U.S. at 281. An alien—such as Petitioner— "who arrives in the United States, or is present in this country but has not been admitted, is treated as an applicant for admission." *Id.* (cleaned up). This is further defined in 8 U.S.C. § 1225(a)(1) ("[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission") and 8 U.S.C. § 1101(a)(13)(A) ("[a]dmission" is "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer").

As an "applicant for admission," Petitioner must "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S at 287. Section 1225(b)(1), also known as Expedited Removal Proceedings, addresses both the detention and removal of "aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.* (cleaned up). Such aliens "are normally ordered removed without further hearing or review . . . [unless the alien] indicates either an intention to apply for asylum . . . or a fear of persecution, then that alien is referred for an asylum interview." *Id.*

Section 1225(b)(2), however, "is broader . . . [and] serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Jennings*, 583 U.S. at 287. Such aliens are subject to the 8

U.S.C. § 1229a removal statute and referred "for a removal proceeding if an immigration officer determines that they are not clearly and beyond a doubt entitled to be admitted into the country." *See Jennings*, 583 U.S. at 288 (cleaned up). Further, they "shall be detained" for those removal proceedings. 8 U.S.C. § 1225(b)(2)(A).

ARGUMENT

I. The Court Should Dismiss This Habeas Petition, Because the Court Lacks Jurisdiction to Review it, Under 8 U.S.C. §§ 1252 (b)(9), (g).

On the day that Severino was first discovered as unlawfully residing in the United States, an ICE agent served him with an NTA that commenced formal removal proceedings that included his detention. His petition asks this Court to review ICE's decision to detain him pursuant to § 1225(b)(2). The Court lacks jurisdiction to consider Severino's petition under two provisions of the INA.

First, 8 U.S.C. § 1252(g) strips the Court of subject matter jurisdiction over Petitioner's claims as they are "arising from the decision or action by [DHS] to commence proceedings, adjudicate cases, or execute removal orders against any alien . . . ." 8 U.S.C. § 1252(g); *see also Karki v. Jones*, 2025 U.S. App. LEXIS 20660, at *8-9, 2025 WL 1638070 at *4-8 (6th Cir. Aug. 13, 2025) (explaining that § 1252(g) applies to habeas claims and does not violate the Suspension Clause). Here, Petitioner is challenging ICE's decision to detain him, under 8 U.S.C. § 1225(b)(2), at the commencement of his removal proceedings, under 8 U.S.C. § 1229a. The decision to detain him arose from the commencement of his removal proceedings, which began once the NTA was issued on October 9, 2025, the day he was first apprehended in the United States. *See Ex.* B. The

detention, therefore, is "connected directly and immediately" with the commencement of Severino's removal proceedings. *See Tsering v. ICE*, 403 F. App'x 339, 343 (10th Cir. 2010) (cleaned up); *see also Humphries v. Various Federal USINS Employees*, 164 F.3d 936, 943 (5th Cir. 1999). Thus, the Court cannot review the Agency's decision to detain him.

"Other circuits have recognized this straightforward point." *Öztürk v. Hyde*, 2025 WL 2679904, at *2 (2d Cir. Sept. 19, 2025) (Menashi, J., concurring). "By its plain terms," Section 1252(g) "bars [the courts] from questioning [the government's] discretionary decisions to commence removal" of the Petitioner, which include the "decision to take him into custody and to detain him during his removal proceedings." *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016); *see also Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013) ("Securing an alien while awaiting a removal determination constitutes an action taken to commence proceedings."); *Suri v. Trump*, 2025 WL 1806692, at 11 (4th Cir. July 1, 2025) (Wilkinson, J., dissenting) (When the government detains an alien "pending a decision on whether the alien is to be removed—the detention arises from the commencement of proceedings or adjudication of cases."). Accordingly, "claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction." *Limpin v. United States*, 828 F. App'x 429, 429 (9th Cir. 2020); *see also Sissoko v. Rocha*, 509 F.3d 947, 949-50 (9th Cir. 2007) (petitioners' "detention arose from [the Agency]'s decision to commence expedited removal proceedings. As a result, 8 U.S.C. § 1252(g) applies to the [petitioners'] claim . . . . [W]e hold that 8 U.S.C. § 1252(g)'s jurisdiction-stripping language covers [their] false arrest claim . . . [which] directly challenges [the Agency's]

decision to commence expedited removal proceedings."); *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) ("We construe § 1252(g), which removes our jurisdiction over 'decisions to commence proceedings' to include not only a decision in an individual case *whether* to commence, but also *when* to commence, a proceeding.") (cleaned up).

Respondents acknowledge that Section 1252(g) does not cover "all claims" arising from decisions to commence proceedings, adjudicate cases, or execute removal orders. *See Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020). But it continues to bar review of narrow matters "arising from" those decisions—such as the Agency's decision to detain Severino. *See id.* Holding otherwise ignores the term "arising from" in the statute and flouts the maxim of statutory construction against superfluities. That maxim "instructs courts to interpret a statute to effectuate all its provisions, so that no part is rendered superfluous." *Hibbs v. Winn*, 542 U.S. 88, 89 (2004). Deciding that Section 1252(g) only revokes the Court's jurisdiction over the Agency's ultimate decision to commence proceedings, adjudicate cases, or executive removal orders renders the provision "arising from" superfluous. Accordingly, the Court should interpret section 1252(g) to revoke the Court's jurisdiction to review the Agency's decision to detain Severino, as it was "arising from" the Agency's decision to commence his removal proceedings on the very day he was apprehended.

Secondly, 8 U.S.C. § 1252(b)(9) strips the Court of jurisdiction to review his habeas claims as the petition requires the Court to answer legal and factual questions "arising from any action taken or proceeding brought to remove . . . " him. *See* 8 U.S.C.

§ 1252(b)(9). Legally, Severino asks the Court to interpret the INA to determine which legal authority authorizes his detention during his removal proceedings. Pet. at PageID#6 ("This case concerns the detention provisions at §§ 1226(a) and 1225(b).").] By making such a challenge, the adjudication of this habeas petition would require the Court to answer the "legal question" that arises from the Agency's "action taken to remove an alien." *See* 8 U.S.C. § 1252(b)(9). Further, Petitioner seeks a declaration that the government's "actions to detain Petitioner violate the Due Process Clause of the Fifth Amendment and violates the Immigration and Nationality Act." Pet. at PageID#16. Such a holding would require the Court to make the factual determination that Severino is not removable as inadmissible, because he was: (1) admitted or paroled into the United States, or (2) has documentation authorizing his presence in the United States.[6] It cannot do so.

If the Court exercised jurisdiction, in contravention of Section 1252(b)(9), to make the factual determination as to his admissibility and the legal holding identifying the statute governing his detention, it could create the absurd holding that "it is unconstitutional for the government to detain aliens pending removal for a reason that allows the government to remove them." *Öztürk*, 2025 WL 2679904 at *2 (Menashi, J.,

---

[6] Severino does not contest this factual basis. In any event, the record basis to justify Petitioner's arrest and subsequent detention cannot be separated from the factual support for the initiation of his removal proceedings. The factual support for his arrest is an assessment by an ICE Agent that he was in the United States illegally and for not having any documentation allowing him to remain in the United States. Ex. A & Ex. B. This is the same assessment made to support commencing his removal proceedings through issuance of an NTA (and the subsequent decision to detain him). *See* Ex. A at p. 4 and Ex. B at p. 4 (referencing both Sec. 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the [INA]).

concurring). This is exactly what Congress sought to preclude in Section 1252(b)(9). "Congress channeled judicial review of removal proceedings into a single proceeding to avoid such an incoherent result." *Id.* By enacting Section 1252(b)(9), "Congress plainly intended to put an end to the scattershot and piecemeal nature of the review process that previously had held sway in regard to removal proceedings." *Aguilar v. ICE*, 510 F.3d 1, 9 (1st Cir. 2007) (citing H.R. Rep. No. 109-72, at 174). It designed the statutes "to consolidate and channel review of *all* legal and factual questions that arise from the removal of an alien into the administrative process, with judicial review of those decisions vested exclusively in the courts of appeals." *Id.* (emphasis in original). It is reasonable to conclude, therefore, that the jurisdictional bars do not prevent the adjudication of a claim that is "unrelated to any removal action or proceeding," *Delgado v. Qurantillo*, 643 F.3d 52, 55 n.3 (2d Cir. 2011) (cleaned up), or "independent of challenges to removal orders," H.R. Rep. No. 109-72, at 176 (2005). But when petitioners, such as Severino, are "challenging the decision to detain them in the first place" arguing there is no factual support for initiating removal proceedings or legal support for detaining them throughout the duration of those proceedings, that is a challenge to the removal proceedings that Congress has barred. *Jennings*, 583 U.S. at 294 (plurality opinion); *see also id.* at 314 (Thomas, J., concurring in part and concurring in the judgment) ("§ 1252(b)(9) removes jurisdiction over [aliens'] challenge to their detention.").

The Supreme Court in *Jennings* and in *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) found that § 1252(b)(9) did not limit the jurisdiction of the Court for the claims made in

those cases. *See Jennings* at 294-95. In doing so, the Court gave district courts guidance as to the claims that *would* be limited by § 1252(b)(9).

> The parties in this case have not addressed the scope of § 1252(b)(9), and it is not necessary for us to attempt to provide a comprehensive interpretation. For present purposes, it is enough to note that respondents are not asking for review of an order of removal; *they are not challenging the decision to detain them in the first place* or to seek removal; and they are not even challenging any part of the process by which their removability will be determined. Under these circumstances, § 1252(b)(9) does not present a jurisdictional bar.

Id. (emphasis added); *see also Preap*, 586 U.S. at 402 (quoting *Jennings*).

Severino is "challenging the decision to detain [him] in the first place" at the commencement of his formal removal proceedings on the day he was discovered as unlawfully present in the United States. He specifically challenges ICE's removal proceedings decision to detain him under § 1225(b)(2). *See, e.g., Li v. United States Citizenship & Immigr. Servs.*, 2021 WL 6882637, at *2 (C.D. Cal. Dec. 2, 2021) (distinguishing *Jennings* and finding lack of jurisdiction under § 1252(b)(9)); *and Conteh v. Wolf*, 2020 WL 6363910 at *5 (D. Mass. Oct. 29, 2020) ("Justice Alito's framework is particularly instructive. In concluding that the claims in Jennings were *not* subject to § 1252(b)(9)'s jurisdictional bar, he seems to have set forth three categories of claims that *are*: (1) cases where an alien is seeking review of an order of removal; (2) cases where an alien is seeking review of the government's decision to detain him or seek removal; and (3) cases where an alien is seeking to challenge 'any part of the process by which [the alien's] removability will be determined.'").

Accordingly, the Court should dismiss Severino's habeas petition for lack of jurisdiction, as it challenges decisions arising from the Agency's action to commence his removal proceedings, requires the Court to answer legal and factual questions, and in any event, may be presented before the immigration judge, the Board of Immigration Appeals (BIA), and then to the Sixth Circuit Court of Appeals—but not to this Court.

II. Alternatively, the Court Should Deny the Habeas Petition, Because Severino is Lawfully Detained Under 8 U.S.C. § 1225(b)(2).

As a preliminary matter, the Court should hold that Severino is being detained under 8 U.S.C. § 1225(b)(2).[7] Even if the Supreme Court's decision in *Jennings* did not control this determination,[8] the Court should accord *Skidmore* deference to the BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025) and hold that § 1225(b)(2) properly applies to Petitioner.[9]

---

[7] Congress created mandatory detention under § 1225(b)(2). If the noncitizen is an applicant for admission in formal removal proceedings, he shall be detained. Period. No determination of whether the Petitioner is a danger to the community, or a flight risk is statutorily required.

[8] *See Jennings*, 583 U.S. at 287 (An "applicant for admission," must "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).").

[9] Petitioner incorrectly contends that the decision in *Matter of Yajure Hurtado* is inconsistent with the Supreme Court's decision in *Jennings v. Rodriguez*, supra. Pet. at PageID#8-10. Because *Jennings* did not address the issue presented in *Hurtado* and the dicta relied upon by Petitioner does not demonstrate that the Supreme Court in any manner intended to support Petitioner's position here, there is no conflict between the cases. While the predominant issue in *Jennings* did not address the detention in the current case, the issue in *Hurtado* is on point and the reason Petitioner desires to discourage the Court from the Board of Immigration Appeals decision. *Hurtado* does not strip the immigration judge's authority to hear a bond request. Rather, Congress precluded immigration judges from entertaining bond proceedings when it drafted § 1225(b)(2). And because § 1225(b)(2) is the applicable detention statute for applicants for admission like Severino, he is not afforded a bond hearing, as a matter of law.

As the BIA determined, "aliens who are present in the United States without admission are applicants for admission as defined under . . . 8 U.S.C. § 1225(b)(2)(A)[] and must be detained for the duration of their removal proceedings." *Hurtado*, 29 I. & N. Dec. at 220 (citing *Jennings*, 583 U.S. at 300 (holding that these provisions of the INA "unequivocally mandate that aliens falling within their scope [of section 1225(b)(1) and (2)] shall be detained," and that "[u]nlike the word may, which implies discretion, the word shall usually connotes a requirement")). The Court should defer to this persuasive interpretation of the statute, even if it is not bound by it. *See Pemberton v. Bell's Brewery, Inc.*, 150 F.4th 751, 763, n. 4 (6th Cir. 2025) (explaining that *Skidmore* deference survived the Supreme Court's decision in *Loper Bright Enters v. Raimondo*, 603 U.S. 369, 402 (2024); *see also Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (explaining that agency has always been one of the factors that may give an Agency's interpretation "power to persuade, if lacking power to control"))). Likewise, under *Loper Bright*, the Court should not defer to DHS's prior practices because those did not accord with the clear statutory text of §§ 1225 and 1226. *Cf.* Pet. at PageID#4.[10]

Contrary to other holdings, *see e.g. Beltran Barrera v. Tindall*, 2025 WL 2690565, at 3 (W.D. Ky. Sep. 19, 2025), the BIA's decision is persuasive and accurately construes the statutory text. As the BIA explained, an "applicant for admission" under 8 U.S.C. § 1225(a)(1), by virtue of his entry without inspection, must necessarily be considered as

---

[10] "Prior administration's generous interpretations of these laws, while relevant to understanding the text, do not and cannot rewrite it." *Rojas v. Olson*, 2025 WL 3033967 at *9 ("[T]here is no estoppel against the federal government.").

"seeking admission," as the term of art is used in 8 U.S.C. § 1225(b)(2)(A). *Hurtado*, 29 I. & N. Dec. at 220. This interpretation is supported by agency precedent, *see Matter of Lemus*, 25 I. & N. Dec. 734, 743 & n.6 (BIA 2012) (noting that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense [including aliens present in the United States who have not been admitted] are nevertheless deemed to be 'seeking admission' under the immigration laws"), and the Supreme Court's decision in *Jennings* which ignored the "seeking admission" portion of § 1225(b)(2)(A), instead interpreting the relevant portion of this provision to be whether an official determined they were "not clearly and beyond a doubt entitled to be admitted," *Jennings*, 583 U.S. at 281.

This interpretation also makes sense. A contrary reading creates a "legal conundrum," because there "is no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer 'seeking admission,' and has somehow converted to a status that renders him or her eligible for a bond hearing under . . . 8 U.S.C. § 1226(a)." *Hurtado*, 29 I. & N. Dec. at 221. Petitioner does not refute this. *See generally* Pet. at DN 1.[11]

---

[11] Severino engages in the semantic gamesmanship to claim he is not "an applicant for admission" subject to detention under § 1225(b)(2). Pet. at PageID#9. He claims he has been in the United States since 1995, but that he is not seeking admission, as set forth in the INA. *Id.* at PageID#1-2. The argument that Severino may be determined as seeking admission had he been apprehended at or near the board but is no longer seeking admission because he was found in the interior of the United States years after unlawfully crossing the border, as if he discovered some alternative manner to attain a lawful admission or has been simply passing through the United States for the past 30 years, defies common sense and the facts of this case. Severino knows, as demonstrated by his attempt to evade law enforcement and lie about his status when

Moreover, the Laken Riley Act, Pub. L. No. 119-1, January 29, 2025, 139 Stat. 3 (2025), does nothing to contradict this interpretation.[12] Section 1226(c) was amended to require the Attorney General to take into custody certain "criminal aliens" who are deemed inadmissible, under specific grounds, whom *also* "[are] charged with, . . . arrested for . . . convicted of . . . admits having committed or admits committing acts which constitute . . . burglary, theft, larceny, shoplifting, . . . assault of a law enforcement officer . . . or any crime that results in death or serious bodily injury to another" once that "alien is released." 8 U.S.C. § 1226(c)(1)(E). This detention statute, by its plain terms, applies only to certain criminal aliens being released from custody for that crime. And nothing in this provision of the INA "alter[s] or undermine[s] the provisions of . . . 8 U.S.C. § 1225(b)(2)(A), requiring that aliens who fall within the definition of the statute shall be detained for a proceeding under [8 U.S.C. 1229a]." *Hurtado*, 29 I. & N. Dec. at 222. If it did, the terms of 8 U.S.C. § 1225(b)(2)(A) would be rendered superfluous and thus, such interpretation "would be in contravention of the 'cardinal principle of statutory construction,' which is that courts are to 'give effect, if

apprehended, that he is "not clearly and beyond a doubt entitled to be admitted." 8. U.S.C. § 1225(b)(2)(A). Because he has not been lawfully admitted, nor does he claim otherwise, his exhibited desire to stay in the United States, rather than voluntarily deport, makes him an applicant for admission by definition.

[12] "[L]egislation passed in 2025 has little bearing on the meaning of legislation enacted in 1996. Indeed, nothing in the Laken Riley Act suggests any Congressional thoughts concerning the issues presented in this case. This recent legislation was aimed at making sure that certain aliens, whom Congress deemed dangerous, were necessarily detained pending their removal, lest they commit further crimes while released. These newly added provisions do not indicate anything with respect to either party's proposed interpretation of Sections 1225 or 1226." *Rojas*, 2025 WL 3033967 at *9.

possible, to every clause and word of a statute, rather than to emasculate an entire section.'"[13] *Id.* (quoting *United States v. Menasche*, 348 U.S. 528, 538-39 (1955)).

Severino does not contest his removability for being present in the United States without being admitted or paroled. *See generally* Pet. at DN 1. Thus, the Court should treat him as an applicant for admission that is seeking admission. "Admission" is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). And an "[a]pplicant for admission" is "[a]n alien present in the United States who has not been admitted . . . ." 8 U.S.C. § 1225(a)(1).[14] Read in tandem with the statute's plain terms, as the Court must do,[15] the INA makes clear that all unadmitted and uninspected aliens are

---

13 Importantly here, § 1226(c)(1) does not *solely* apply to those who have not been admitted to the United States. *See* 8 U.S.C. § 1226(c). To this end, lawful permanent residents who have been admitted to the United States may be subject to mandatory detention under the Laken Riley Act. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(A)(i); *Azumah v. USCIS*, 107 F.4th 272, 273 (4th Cir. 2024). It also reaches those who were admitted erroneously and are deportable for being inadmissible at the time of admission. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(C)(i). The Laken Riley Act is not redundant with § 1225(b)(2).

14 Severino, as a noncitizen, is "present in the United States" and "has not been admitted." This cannot be disputed. Under the plain language of 8 U.S.C. § 1225(a)(1), he patently meets the definition of "applicant for admission." Petitioner's arguments to the contrary only attempt to add ambiguity where there is none. There exists no statutory foundation to conclude otherwise. If Severino is not actively pursuing lawful permission to remain in the United States, there should be no contest at his removal proceedings.

15 When interpreting a statute, "the inquiry 'begins with the statutory text, and ends there as well if the text is unambiguous.'" *In re Vill. Apothecary, Inc.*, 45 F.4th 940, 947 (6th Cir. 2022) (quoting *Binno v. Am. Bar Ass'n*, 826 F.3d 338, 346 (6th Cir. 2016)); *see also King v. Burwell*, 576 U.S. 473, 486 (2015). Each word in the statute should be read in line with "its ordinary, contemporary, common meaning." *Kentucky v. Biden*, 23 F.4th 585, 603 (2022) (quoting *Walters v. Metro. Educ. Enters., Inc.*, 519 U.S. 202, 207 (1997)). "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997); *see also Beecham v. United States*, 511 U.S. 368, 372 (1994) ("The plain

"applicants for admission," regardless of their proximity to the border, the length of time they have been present here, or whether they ever had the subjective intent to properly apply for admission.[16]

In fact, the INA makes clear that "applicants for admission" may be required to testify as to their "purposes and intentions . . . in *seeking admission*." 8 U.S.C. § 1225(a)(5) (emphasis added). It therefore follows that an "applicant for admission" and a person "seeking admission" are one and the same. As such, the Court should avoid this "patently absurd" interpretation which draws a distinction between the terms. *See United States v. Brown*, 333 U.S. 18, 27 (1948) (a court can reject the plain language interpretation of a statute if such an interpretation would lead to "patently absurd consequences"). While this may seem counterintuitive, "[w]hen a statute includes an explicit definition, [courts] must follow that definition." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (cleaned up).

---

meaning that we seek to discern is the plain meaning of the whole statute, not of isolated sentences."). Often, "the 'meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.'" *Id.* (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)); *see also Stenberg v. Carhart*, 530 U.S. 914, 942 (2000) ("When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning.").

[16] Section 1226(a) applies to aliens within the interior of the United States who were once lawfully admitted but are now subject to removal from the United States under 8 U.S.C. § 1227(a). *See Jennings*, 583 U.S. at 287–88; *see also* 8 U.S.C. § 1226(a)(3) (demonstrating that the statute pertains to aliens who were once lawfully in the United States). Section 1226(a) allows DHS to arrest and detain an alien during removal proceedings and release them on bond, but it does not mandate that all aliens found within the interior of the United States be processed in this manner. 8 U.S.C. § 1226(a). Nothing in the plain language of § 1226(a) entitles an applicant for admission to a bond hearing.

Here, we know that Severino is seeking admission by his own signed declaration. Petitioner requested on October 9, 2025, that the immigration court determine whether he "may remain in the United States." Ex. C. While we know that Severino secretly entered the United States and illegally lived within as if he were lawfully present, the only way he may remain in the United States is to be formally admitted. So, even if this Court believes the argument that "seeking admission" under § 1225(b)(2) requires some present tense meaning, and denies that the language is simply another way of referring to aliens who are applicants for admission, the evidence before the Court is that Severino is currently actively seeking lawful admission from an immigration court. Ex. C; *see also Rojas v. Olson*, 2025 WL 3033967 at *8 (E.D.Wis. October 30, 2025) ("In the Court's view, this language is best read as simply another way of referring to aliens who are applicants for admission. [The petitioner] would pack a lot of meaning into what appears to be an alternate phrasing").

Although district courts have taken issue with ICE's interpretation of 8 U.S.C. § 1225, other courts have supported ICE's interpretation. In *Chavez v. Noem*, the Southern District of California explained that "[s]uch a reading of the statute comports with Congress' addition of § 1225(a)(1) by [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)]. Prior to 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.'" *Chavez v. Noem*, --- F.Supp.3d ----, 2025 WL 2730228, at 4–5 (S.D. Cal. Sept. 24, 2025) (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)); *see also Pipa-Aquise v. Bondi*, 2025 WL 2490657, at

2 (E.D. Va. Aug. 5, 2025); *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913, at 2 (D. Mass. July 28, 2025); *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). Just last week, two more district courts agreed that applicants for admission, like Petitioner, are detained under 8 U.S.C. § 1225. *Sandoval v. Acuna*, 2025 WL 3048926 (W.D.La. October 31, 2025) (rejecting Petitioner's "recent arrival" interpretation of § 1225(b)(2)); *Rojas v. Olson*, 2025 WL 3033967 (E.D.Wis. October 30, 2025) (rejecting each of Petitioner's arguments made herein); *but see, e.g., Barrera*, 2025 WL 2690565. The addition of § 1225(a)(1), thus, "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.'" *Torres*, 976 F.3d at 928.

As Petitioner is properly detained under 8 U.S.C. § 1225(b)(2), Severino cannot show that his detention violates his due process rights. "[D]ue process is flexible," and "calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *see also Landon v. Plasencia,* 459 U.S. 21, 34 (1982). As an applicant for admission detained under 8 U.S.C. § 1225(b)(2), he does not have due process rights beyond those provided in 8 U.S.C. § 1225. *See DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) ("[A]n alien in respondent's position has only those rights regarding admission that Congress has provided by statute."). This "rests on fundamental propositions: the 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." *Id.* at 139 (cleaned up).

Severino does not allege that the Agency failed to follow the procedures set forth in 8 U.S.C. § 1225. The record makes clear that he was given notice of the charges against him, he has access to counsel, he made no claim to fear returning to his country of origin, and he will have an opportunity to be heard by an immigration judge. Accordingly, he cannot show that his detention violates any procedural due process rights.[17]

III. This Court Cannot Release Petitioner Prior to the Immigration Judge Entertaining a Bond Hearing

Petitioner incorrectly asserts a right to detention pursuant to § 1226, even though he is an applicant for admission under the INA. Section 1226 is a detention statute that pertains to individuals factually dissimilar to Petitioner. Nevertheless, Petitioner requests that this Court find he should be detained under § 1226 but then requests as relief that the Court immediately release him. Pet. at PageID#18. That is a legal oxymoron. His request denies the very process statutorily mandated by the detention statute he claims as applicable.

Section 1226 "generally governs the process of arresting and detaining . . . aliens pending their removal." *Jennings*, 583 U.S. at 288. Section 1226(a) provides that "an alien

17 Alternatively, should the Court determine it maintains jurisdiction over this petition and make the legal determination that he is detained under 8 U.S.C. 1226, the Court should not grant Petitioner's request for release. Rather, the Court should require that Severino exhaust his administrative remedies and seek a bond determination from the Immigration Judge.

may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). "To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2280–81 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

If DHS decides to release the noncitizen, it may set a bond and/or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that a noncitizen should remain detained during the pendency of her removal proceedings, the noncitizen may request a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the noncitizen, based on a variety of factors that account for the noncitizen's ties to the United States and evaluate whether the noncitizen poses a flight risk or danger to the community, and on what terms. *See Guerra*, 24 I.&N. Dec. 37, 40 (BIA 2006);[18] *see also* 8 C.F.R. § 1003.19(d).

Section 1226(a) does not provide a noncitizen with a right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does § 1226(a) explicitly address the burden of proof that should apply or any particular factor that

---

[18] The BIA has identified the following non-exhaustive list of factors the immigration judge may consider: "(1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States." *Guerra*, 24 I. & N. Dec. at 40.

must be considered in bond hearings. Rather, it grants DHS and the Attorney General broad discretionary authority to determine whether to detain or release a noncitizen during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

The right to a bond hearing for noncitizens under § 1226 only occurs when the noncitizen is detained under § 1226. When a court concludes that § 1226 is the appropriate detention statute for a habeas petitioner, it is not concluding that release is appropriate, but rather that detention is appropriate under § 1226. Section 1226 release under bond occurs when the detained noncitizen moves for a bond hearing and bond, and circumstances forming bond and release, are determined by an immigration judge, not by a district court.

The idea that § 1226 simply permits release is antithetical to its language and its statutory purpose of detention. A finding that a detained noncitizen should be detained under § 1226, rather than § 1225(b)(2), is not a finding for release, but rather a finding that the noncitizen should be detained, unless he moves the immigration court for a bond and is so granted. If a district court finds it has the authority to direct which detention statute is appropriate for Petitioner and concludes DHS is incorrect in its interpretation and application of the statutes, ordering an immediate release and a future bond hearing violates the very detention statute that the court purports to enforce and usurps the discretion of the immigration judge who must conclude jurisdiction is proper before considering any request for bond. Ordering release rather

than a bond hearing invades the adjudication of the removal proceeding and usurps the Attorney General's statutory authority to determine whether an alien detained pending removal proceedings should be released on bond.

This is particularly relevant here where we have a noncitizen who has avoided detection for decades, fled ICE agents on foot, and then lied about his status in a failed attempt to evade apprehension once caught. Whether he is a flight risk is a decision for an immigration judge under § 1226 and not a decision available under the habeas laws.

CONCLUSION

For the reasons stated herein, the Court should deny the petition for a writ of habeas corpus.

Respectfully submitted,

KYLE G. BUMGARNER
United States Attorney

/s/ Michael D. Ekman
Michael D. Ekman
Assistant United States Attorney
717 W. Broadway
Louisville, KY 40202
(502) 625-7102/ Fax: (502) 625-7110
Michael.Ekman@usdoj.gov
Counsel for the United States

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2025, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to counsel for the Petitioner.

/s/ Michael D. Ekman
Michael D. Ekman
Assistant United States Attorney