UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

RIGO HERRERA-ESCOBAR

Petitioner

V.

Case No. 0:25-cv-62212-RS

Agency File [redacted]

PAMELA BONDI, Et. Al.

Defendants-Respondents

REPLY TO RESPONDENTS' RETURN IN OPPOSITION TO THE VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Petitioner, by and through undersigned counsel, hereby replies to the Respondents' Response to Petitioner's Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief; and herein replies as follows:

I. LEGAL BASIS FOR DETENTION

The respondents argue the petitioner is an "alien[1] seeking admission" under Section 1225(b)(2) because he entered the United States illegally. They contend it does not matter how long he has been in the country. The petitioner argues he is not an "alien seeking admission" because was arrested years after his unlawful entry, so Section 1226(a) applies. Not only do many district courts across the United States come down on the side of the petitioner but also Florida District Courts. *See Carcamo v. Noem,* No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263 (M.D.

[1] Due to certain policy changes the term "alien" and "non-citizen" may be used interchangeably to preserve the wording in decisions of this and other courts.

Fla. Nov. 7, 2025); see also *Puga v. Assistant Field Off. Dir., Krome N. Serv. Processing Ctr.*, No. 25-24535-CIV, 2025 WL 2938369 (S.D. Fla. Oct. 15, 2025).

A. THE STATUTORY INTERPRETATION

The plain language of the statute supports the petitioner's position, as do the legislative history and case law.

Under the INA, sections 1225 and 1226 govern the detention of aliens before a final order of removal. Section 1225 covers "applicants for admission" who are aliens "present in the United States who [have] not been admitted." *Gomes v. Hyde,* No. 25-cv-11571, 2025 WL 1869299, at *2 (D. Mass. July 7, 2025) (alteration in original; citation and footnote call number omitted). Section 1225(a)(3) requires all applicants for admission to be inspected by an immigration officer, see 8 U.S.C. § 1225(a)(3); and certain applicants for admission may be subject to removal proceedings under section 1225(b), *see id.* § 1225(b); see also *Dep't of Homeland Sec. v. Thuraissigiam,* 591 U.S. 103, 108–09 (2020) (citations omitted). "Because [s]ection 1225 is mandatory, a 'noncitizen detained under [s]ection 1225(b)(2) may be released only if he is paroled for urgent humanitarian reasons or significant public benefit.' " *Barrera v. Tindall,* No. 25-cv-541, 2025 WL 2690565, at *2 (W.D. Ky. Sept. 19, 2025) (alterations added; quoting *Gomes,* 2025 WL 1869299, at *1). Section 1225(b)(2) applies where an alien is "seeking admission" into the United States. 8 U.S.C. § 1225(b)(2)(A).

Section 1225(b)(2) mandates the detention of applicants for admission "if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to admission[.]" (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." 8 U.S.C. § 1101(a)(13)(A). By using the term "seeking admission," Section 1225(b)(2)

limits its application to aliens actively attempting to lawfully enter the United States. That interpretation is supported by Section 1225's repeated reference to "arriving aliens" and the existence of Section 1226—a separate statute that allows for detention and removal of aliens already present in the country

Unlike section 1225, section 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings[.]" *Jennings v. Rodriguez,* 583 U.S. 281, 289 (2018) (emphasis and alteration added). Section 1226(a) sets out a discretionary detention framework for aliens arrested and detained "[o]n a warrant issued by the Attorney General," 8 U.S.C. § 1226(a) (alteration added); and authorizes the Attorney General to "continue to detain the arrested alien[,]" release him on a "bond of at least $1,500[,]" or release him on "conditional parole[,]" id. § 1226(a)(1)–(2) (alterations added). While the arresting immigration officer makes an initial custody determination, aliens detained under section 1226(a) may appeal that determination in a bond hearing before an immigration judge. See 8 C.F.R. §§ 1236.1(c)(8), (d)(1). "Federal regulations provide that aliens detained under [section] 1226(a) receive bond hearings at the outset of detention." *Jennings,* 583 U.S. at 306 (alteration added; citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)); *see also Lopez Benitez v. Francis,* No. 25-Civ-5937, 2025 WL 2371588, at *13 (S.D.N.Y. Aug. 13, 2025) ("To be sure, a noncitizen detained under [section] 1226(a) is undoubtedly entitled to a bond hearing before an immigration judge." (alteration added)).

Respondents contend that Petitioner qualifies as "an alien seeking admission under 8 U.S.C. § 1225(b)(2)(A)" — despite having been physically present in the United States for years before his arrest and detention — because section 1225(b)(2)(A) applies broadly to all applicants for admission. (See [D.E. 8], at 7). In contrast, Petitioner asserts that 1225 "does not apply to

people like Petitioners, who have already entered and were residing in the United States at the time they were apprehended". (See [D.E. 1] (hereafter ("Pet.") at ¶ 53 (quotation).

Whether Petitioner is detained under section 1225(b)(2) or section 1226(a) is an issue of statutory interpretation that hinges on the meaning of "seeking admission." The Court should apply traditional tools of statutory construction, beginning with the plain meaning of the statutes, to decipher the meaning of that phrase. *See Shotz v. City of Plantation*, 344 F.3d 1161, 1167 (11th Cir. 2003); *see also Fed. Election Comm'n v. Reform Party of U.S.*, 479 F.3d 1302, 1307 (11th Cir. 2007).

To begin, the phrase "seeking admission" is ambiguous in the context of the INA. See 8 U.S.C. §§ 1101, 1225. Section 1225 defines an "applicant for admission" as "[a]n alien present in the United States who has not been admitted or who arrives in the United States[.]" Id. § 1225(a)(1) (alterations added). And "admission" and "admitted" are defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." Id. § 1101(a)(13) (alterations added).

But the INA does not define "seeking admission." *Id.* § 1225(b)(2)(A) (emphasis added); *see generally id.* § 1101. Some courts have noted that the phrase "implies action — something that is currently occurring, and...would most logically occur at the border upon inspection." *Lopez-Campos v. Raycraft,* No. 2:25-cv-12486, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025) (alteration added); *see also Rosado v. Figueroa,* No. 25-cv-02157, 2025 WL 2337099, at *11 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025). And in the context of the title of section 1225, which references "arriving" aliens, § 1225; and its function — establishing an inspection scheme for when to allow aliens into the country — the language appears susceptible to multiple interpretations. *See Yates v. United States,* 574 U.S.

528, 537 (2015) ("The plainness or ambiguity of statutory language is determined not only by reference to the language itself, but as well by the specific context in which that language is used, and the broader context of the statute as a whole." (alterations adopted; quotation marks and citation omitted)).

The interpretation of the applicable statutes by Respondents here overlooks part of the language in § 1225(b)(2)(A), it gives little consideration to the overall statutory scheme, and it ignores § 1226. Section 1225(b)(2)(A) requires mandatory detention of all "applicants for admission" if the examining immigration officer determines that "an alien seeking admission is not clearly beyond a doubt entitled to be admitted."

"Applicant for admission" is defined in the statute as an alien "present in the United States who has not been admitted." § 1225(a)(1). It is undisputed that when Petitioner was arrested he was present in the United States and had not been admitted. Therefore, he clearly qualifies as an "applicant for admission" under this broad language. The statute that mandates detention does not state that all "applicants for admission" shall be detained. It narrows this mandatory detention to aliens who are "seeking admission."

Had Congress intended for this subsection to apply to all applicants for admission, it could have said so by simply replacing the phrase "an alien seeking admission" with the term "an applicant for admission;" or to be even more succinct, it could have replaced the phrase "an alien seeking admission" with the word "alien." Under either of these constructions, it would be clear that "applicant for admission" means the same thing as "alien seeking admission," which is Respondents' interpretation of the statute. But this is not the language that Congress chose. This interpretation is also clear in *Jennings* as illustrated below.

Aliens who are arrested pursuant to § 1226(a) are clearly entitled to a bond hearing. *See J.A.M. v. Streeval,* No. 4:25-CV-342 (CDL), 2025 WL 3050094, at *2 (M.D. Ga. Nov. 1, 2025). The petitioner was arrested by the respondents on October 2, 2025. [D.E. 1] ("Pet.), at ¶33. At the time of his arrest, the petitioner was an alien in the United States who had not been lawfully admitted, and thus he falls within the broad definition of "applicant for admission," BUT based on the present record, he was not attempting to be lawfully admitted and had been residing in the United States for over a decade. Therefore, he does not qualify as an "alien seeking admission" subject to mandatory detention under § 1225(b)(2)(A), which requires both presence and seeking admission.

B. THE PETITIONER'S READING COMPORTS WITH CONGRESSIONAL INTENT

When considering amendment of the INA in 1996, Congress again acknowledged that aliens present in the United States have more substantial due process rights than new arrivals. See H.R. Rep. 104-469, p.1, at 163–66 (recognizing "that an alien present in the U.S. has a constitutional liberty interest to remain in the U.S., and that this liberty interest is most significant in the case of a lawful permanent resident alien").

Following the amendment, federal regulations explained, "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." Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997); *See also Carcamo v. Noem,* No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263, at *4 (M.D. Fla. Nov. 7, 2025).

The structure of sections 1225 and 1226, as well as their legislative history — which each support Petitioner's interpretation. "Whereas [section] 1225 governs removal proceedings for

'arriving aliens,' [section] 1226(a) serves as a catchall." *Pizarro Reyes v. Raycraft,* No. 25-cv-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025) (alterations added). As the Supreme Court noted in Jennings, section 1226 "creates a default rule" that "applies to aliens already present in the United States." *Jennings,* 583 U.S. at 303. The inclusion of a "catchall" provision in section 1226, particularly following the more specific provision in section 1225, is "likely no coincidence, but rather a way for Congress to capture noncitizens who fall outside of the specified categories." *Pizarro Reyes,* 2025 WL 2609425, at *5.

Additionally, a recent amendment to section 1226 would be rendered meaningless under Respondents' interpretation of section 1225. *See Rosado, supra,* 2025 WL 2337099, at *9. In January 2025, the Laken Riley Act Pub. L. No. 119-1, section 2, 139 statute 3, 3 (2025)) added section 1226(c)(1)(E), which "mandates detention for noncitizens who (i) "are inadmissible under [section] 1182(a)(6)(A) (noncitizens present in the United States without being admitted or paroled, like Petitioner), [section] 1182(a)(6)(C) ([obtaining a visa, documents, or admission through] misrepresentation [or fraud]), or [section] 1182(a)(7) (lacking valid documentation)" and (ii) "have been arrested for, charged with, or convicted of certain crimes." If Respondents' interpretation of section 1225 is correct — that the mandatory detention provision in section 1225(b)(2)(A) applies to all noncitizens present in the United States who have not been admitted — then Congress would have had no reason to enact section 1226(c)(1)(E). *See Lepe v. Andrews,* No. 25-cv-01163, 2025 WL 2716910, at *6 (E.D. Cal. Sept. 23, 2025) (citations omitted).

C. THE PETITIONER'S READING COMPORTS WITH *JENNINGS.*

The Supreme Court discussed the differences between Sections 1225 and 1226 in *Jennings. Jennings v. Rodriguez*, 583 U.S. 281 (2018).It explained that Section 1225 "authorizes the Government to detain certain aliens seeking admission into the country[,]" while Section 1226

"authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings[.]" *Jennings,* 583 U.S. at 289.

It is no accident that noncitizens in the country are treated differently than those seeking entry. As the Supreme Court observed, "our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission...and those who are within the United States after an entry, irrespective of its legality. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.' " *Leng May Ma v. Barber,* 357 U.S. 185, 187 (1958) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953)); see also *Zadvydas v. Davis,* 533 U.S. 678, 693 (2001) ("But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.").

Respondents rely on *Jennings* to support their interpretation of § 1225(b)(2). Although that decision did involve the same provisions of the INA that the Court must interpret here, the issue presented in Jennings was different, and therefore, the Supreme Court did not interpret the precise language of the relevant statutes involved here. The issue before the Supreme Court in *Jennings* was whether the INA implicitly requires periodic bond hearings for certain alien detainees. *Id.* at 296-97. The Supreme Court did not have to decide whether an alien arrested in the United States, after having been in the country illegally for several years, qualified as "an applicant for admission" who is "seeking admission" and thus was subject to mandatory detention under § 1225(b)(2) or whether the alien was entitled to a bond hearing under § 1226(a).

In addition to not being on point and thus not binding precedent for this case, *Jennings* is not even analogous and thus does not constitute persuasive authority. Respondents pick certain

isolated phrases from *Jennings'* general background description of the INA detention framework to bolster their position that every alien arrested in the United States regardless of their lack of criminal history and the absence of any evidence that they would be a flight risk or a danger to the community is now subject to mandatory detention without the opportunity for a bond hearing, notwithstanding the clear language of § 1226(a).

D. THE PETITIONER CAN INCORPORATE A CLAIM UNDER THE APA IN THIS HABEAS

There is no legal foundation for the respondents' claim that the petitioner cannot incorporate an APA claim into his petition because the respondents' new interpretation flies in the face of the plain language and historical understanding of the INA discussed above. It also nullifies Congress's recent amendment of the INA through the Laken Riley Act, codified at 8 U.S.C. § 1226(c)(1)(E). The amendment mandates detention of noncitizens who meet certain criminal and inadmissibility criteria. If mere inadmissibility already made detention of a resident noncitizen mandatory under Section 1225, the Laken Riley Act would have no effect. Thus the respondents' position violates the APA.

Since DHS's change in policy, courts in this and around the country have rejected its new interpretation of the INA. This Court should agree with the growing consensus. It is undisputed that the petitioner has been in this country since 2014. His detention is thus governed by Section 1226(a). As an alien detained under Section 1226(a), the petitioner has a right to a bond hearing. *See Jennings,* 583 U.S. at 306 ("Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention.") (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

Courts in a nearby district have also acknowledge the right to bring an APA claim into a Habeas claim. *Carcamo v. Noem,* No. 2:25-CV-00922-SPC-NPM, 2025 WL 3119263, at *4–6

(M.D. Fla. Nov. 7, 2025) ("If Respondents do not provide Vesquez Carcamo with a bond hearing as ordered, he can renew his Fifth Amendment and APA claims in a subsequent complaint.").

Thus, the petitioner respectfully requests that this Honorable Court grant his Petition for Writ of Habeas Corpus and either release him or order a bond hearing.

Dated this December 1, 2025

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CERTIFICATE OF SERVICE

I, Bonnie Smerdon, certify that on December 1, 2025, I electronically filed the above REPLY TO RESPONDENTS' RETURN IN OPPOSITION TO THE VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF with the Clerk of the Court of the Southern District of Florida using the CM-ECF system and copies of the foregoing document will be served on all counsel of record via transmission of a Notice of Filing generated by the CM/ECF system. Moreover, I have sent a proposed order via email to the Judge's clerk with the Respondent Noticing Attorneys copied.

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