

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

HARPREET SINGH

PETITIONER

v.

CIVIL ACTION NO. 4:25-cv-00133-DJH (*e-filed*)

MIKE LEWIS, Jailer, Hopkins County Jail; 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, on behalf of Respondent 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 Harpreet Singh'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. *See* 8 U.S.C. §§ 1252(b)(9), (g). If the Court retains jurisdiction over the petition, the Court should deny the petition, because Singh 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

**Singh 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 Singh is a citizen and national of India who, on July 29, 2023, was arrested by Border Patrol near Lukeville, Arizona, “at a place other than a designated port of entry and without being inspected by an Immigration Officer.”² Ex. A at p. 2 (I-213 Encounter Record). He informed that he was single without children, that his parents were both citizens of India, and that he was fearful of returning to India.³ Ex. A at p. 2. He was served with a Notice to Appear (“NTA”) on July 31, 2023, and then released from immigration custody into the United States on his own recognizance with an immigration court date in 2027. *Id.*; Ex. B (copy of NTA). On or about November 24, 2023, Singh filed an application for asylum. Ex. C at p. 1 (copy of Form I-26, “Additional Charges of Inadmissibility/Deportability” dated September 29, 2025).

On July 1, 2025, Indianapolis police arrested Singh and charged him with operating a vehicle while intoxicated. *Id.* His state law criminal case is reportedly still pending. Ex. A at p. 2. On July 2, 2025, Petitioner was turned over to ICE in response to an immigration detainer presented to the Marion County Sherriff Department. *Id.* He

² The Petition alleges that Singh entered the United States on May 5, 2023, but this claim is refuted by Singh’s signed application for asylum that confirms he entered the United States on July 29, 2023. The application further informs that Singh left his home country of India on April 12, 2023, as he traveled to and through numerous countries to get to Mexico before unlawfully entering the United States.

³ On his application for asylum, Singh lists a wife and two children who reside in Asia. A copy of Singh’s application for asylum can be filed under seal if the Court would like to review.

was charged with a violation of 8 U.S.C. § 1182(a)(7)(A)(i)(I) of the Immigration and Nationality Act (“INA”), which informs that “an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by the [INA], and a valid unexpired passport or other suitable travel document, or document of identity and nationality as required under regulations issued by the Attorney General under section 211(a) of the [INA]” and placed into removal proceedings under 8 U.S.C. § 1229a. Ex. C at p. 2. He is being detained at Hopkins County Jail without bond. *Id.* at p. 1; Ex. A at p. 3.

Petitioner initiated the current action on November 3, 2025 [DN 1]. In his petition for a writ of habeas corpus under 28 U.S.C. § 2241, Singh 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”). Specifically, Singh contends he is detained unlawfully in violation of his constitutional due process rights and an incorrect interpretation of immigration law and seeks for this Court to release him and direct an immigration judge to conduct a bond hearing. Pet. at PageID#2, 13-15. He claims that because he was deemed inadmissible at the border and then was released into the United States before being 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#7. 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.* at PageID#9-15. Finally, Singh contends his due process rights have been violated. *Id.* at PageID#13-14.

LEGAL FRAMEWORK

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

“[T]he party invoking federal jurisdiction has the burden to prove that jurisdiction.” *Glob. Tech., Inc. v. Yubei (XinXiang) Power Steering Sys. Co.*, 807 F.3d 806, 810 (6th Cir. 2015). Relevant here, Congress utilized two separate provisions of the INA, 8 U.S.C. §§ 1252(b)(9), (g), to direct district courts from entertaining certain habeas challenges. 8 U.S.C. § 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.” This 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)). The decision to detain is a “specification of the decision to ‘commence proceedings’ which . . . § 1252(g) covers.” *Reno*, 525 U.S. at 485 n.9.

8 U.S.C. § 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) also specifies 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 8 U.S.C. § 1252(a)(5) (applying the same jurisdictional bar to “judicial review of an order of removal”). While § 1252(b)(9) may not bar claims challenging the conditions or scope of detention of aliens in removal proceedings,⁴ it does bar claims “challenging the decision to detain them in the first place.” *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (plurality opinion); see also *id.* at 293 (discussing claims not barred by § 1252(b)(9)).⁵ Habeas petitions challenging the decision to detain in the first place require a court to answer “legal questions” that arise from “an action taken to remove an alien,” so such a claim would “fall within the scope

⁴ This is not relevant here, as Singh does not challenge the conditions of his detention or scope of that detention during his removal proceedings. [*See generally* Pet. at DN 1.]

⁵ See also *Jennings*, 583 U.S. 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 – indeed, this Court has described detention during removal proceedings as an ‘aspect of the deportation process.’ . . . 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.”) (alterations and citation omitted) (quoting *Reno*, 525 U.S. at 482-83; *Demore v. Kim*, 538 U.S. 510, 523 (2003); and 8 U.S.C. § 1252(b)(9)).

of § 1252(b)(9)." *Id.* at 295 n.3 (plurality opinion).

II. Alternatively, Singh 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 shows he is in custody "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *see also Dickerson v. United States*, 530 U.S. 428, 439, n. 3 (2000) ("Habeas corpus proceedings are available only for claims that a person 'is in custody in violation of the Constitution or laws or treaties of the United States,'" (quoting 28 U.S.C. § 2254(a)); *see also Caver v. Straub*, 349 F.3d 340, 351 (6th Cir. 2003) ("[I]n a habeas proceeding the petitioner 'has the burden of establishing his right to federal habeas relief and of proving all facts necessary to show a constitutional violation.'" (quoting *Romine v. Head*, 253 F.3d 1349, 1357 (11th Cir. 2001))).

As an applicant for admission, Singh'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." 583 U.S. at 287. 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. The first of the two categories is found at 8 U.S.C. § 1225(b)(1), establishing the expedited removal process, including both the detention and removal of “aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.* Such aliens “are normally ordered removed ‘without further hearing or review’” absent “either an intention to apply for asylum . . . or a fear of persecution” resulting in “an asylum interview.” *Id.* (quoting 8 U.S.C. § 1225(b)(1)).

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.” *Id.* at 288 (cleaned up). Further, they “‘shall be detained 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.” *Id.* at 288 (quoting 8 U.S.C. § 1225(b)(2)(A)). Section 1225(b)(1) and (b)(2) “unequivocally mandate that aliens falling within their scope ‘shall’ be detained.” *Jennings*, 583 U.S. at 300.

ARGUMENT

I. The Court Should Dismiss This Habeas Petition under Fed. R. Civ. P. 12(b)(1) Because the Court Lacks Jurisdiction.

Singh's petition asks this Court to review ICE's decision to detain him pursuant to § 1225(b)(2). The Court lacks jurisdiction to consider Singh'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). Singh's challenges ICE's decision to detain him, under 8 U.S.C. § 1225(b)(2), as part of the adjudication of his removal proceedings, under 8 U.S.C. § 1229a. The detention is "connected directly and immediately" with the adjudication of Singh'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.”) (alterations omitted).

It is true that 8 U.S.C. § 1252(g) does not cover “all claims” arising from decisions to commence proceedings, adjudicate cases, or execute removal orders. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482, 487 (1999) (explaining the scope of § 1252(g) and holding that it deprived the court of jurisdiction because the

claims arose from the commencement of proceedings); *see also 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 Samayoa. *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 § 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 § 1252(g) to revoke the Court’s jurisdiction to review the Agency’s decision to detain Samayoa, as it was “arising from” the Agency’s decision to commence his removal proceedings.

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, Singh 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#14.

Such a holding would require the Court to make the factual determination that Singh 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., 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

⁶ Singh does not contest this factual basis. In any event, the record basis to justify Petitioner’s 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. C. 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. C at p. 1 (referencing Section 212(a)(7)(A)(i)(I) of the INA), and Ex. C at p. 1 (referencing 212(a)(6)(A)(i)).

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

Singh is “challenging the decision to detain [him]” as part of his formal removal proceedings. 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 Singh’s habeas petition for lack of jurisdiction, as it challenges decisions arising from the Agency’s action to adjudicate 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 Singh is Lawfully Detained Under 8 U.S.C. § 1225(b)(2).

The Court should hold that Singh 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

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

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, 14. *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. The issue in *Hurtado* is on point and the reason Petitioner desires to discourage the Court from following the Board of Immigration Appeals' decision. Moreover, contrary to Petitioner's claim, *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 Singh, he is not afforded a bond hearing, as a matter of law.

(2)] shall be detained’’)). 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 statutory text of §§ 1225 and 1226. Cf. Pet. at PageID#4, 13.¹⁰

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 “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 see also *Rojas v. Olson*, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025) (explaining that “seeking admission” “is best read as simply another way of referring to aliens who are applicants for admission’’). 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

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.”).

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. The BIA explained how 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)." *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221.

Moreover, the Laken Riley Act, Pub. L. No. 119-1, January 29, 2025, 139 Stat. 3 (2025), does nothing to contradict this interpretation.¹¹ 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, . . .

¹¹ "[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.

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 possible, to every clause and word of a statute, rather than to emasculate an entire section.’”¹² *Id.* (quoting *United States v. Menasche*, 348 U.S. 528, 538-39 (1955)).

Singh does not contest his removability for being present in the United States without being admitted or paroled.¹³ *See generally* Pet. at DN 1. He effectively concedes

¹² 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).

¹³ Singh, 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. The facts in this case demonstrate that Singh *is* seeking admission in that he has

he is an applicant for admission: 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). 8 U.S.C.

§ 1101(a)(13)(A) defines “[a]dmission” as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” Read in tandem with the statute’s plain terms, as the Court must do,¹⁴ the INA makes clear that all unadmitted aliens are “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. Indeed, 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). It therefore follows that an “applicant for admission” and a person “seeking admission” are one and the same. To interpret those as distinct terms and not synonyms renders § 1225(b)(2) internally contradictory.

submitted an application for asylum. *See Rojas*, 2025 WL 3033967 at *8.

¹⁴ 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 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.”).

Petitioner is an applicant for admission. Section § 1225(b)(2) states that an “applicant for admission” must be detained unless he — i.e., the “alien seeking admission” — can prove beyond a doubt that he is entitled to be admitted. Petitioner’s interpretation of § 1225(b)(2) makes the statute incomprehensible. 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).

Here, we know that Singh is presently seeking admission by his signed application for asylum. 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 Singh is currently actively seeking lawful admission. Ex. B; *see also Rojas*, 2025 WL 3033967 at *8 (“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 some district courts have taken issue with ICE’s interpretation of 8 U.S.C. § 1225 [Pet. at PageID#12], 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)). 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; see also *Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Pipa-Aquise v. Bondi*, 2025 WL 2490657, at *2 (E.D. Va. Aug. 5, 2025); *Pena v. Hyde*, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025); *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). *But see, e.g., Barrera*, 2025 WL 2690565.

Within the past couple of weeks, 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); and *Kum v. Ross*, 2025 WL 3113646 (W.D.La. October 22, 2025). The Eastern District of Wisconsin offered a detailed critique of Singh's arguments in *Rojas*, 2025 WL 3033967, a case in which the parties' arguments and circumstances are similar to those present here. Addressing the text of 8 U.S.C. §§ 1225 and 1226, the court held that the Petitioner "meets the definition of

'applicant for admission' in Section 1225(a)(1)," because he was "an alien 'present' in the United States and he has not been 'admitted.'" *Id.* at *8. "Under the plain terms of Section 1225(a)(1), he is 'deemed' an applicant for admission for purposes of Chapter 12 of Title 8, which governs Immigration and Nationality. Of all the statutory terms at issue, this is perhaps the most straightforward." *Id.* The *Rojas* court "attempted to review the statute as a whole, including all parts of the INA to which the parties refer," and concluded it could not "find a statutory basis to exclude Cirrus Rojas from the definition of 'applicant for admission' in Section 1225(a)(1)." *Id.* The *Rojas* court similarly rejected the Petitioner's claim that "additional language in Section 1225(b)(2) that refers to aliens who are 'seeking admission' . . . was intended to apply only to those aliens who arrive and are being detained at the border." *Id.* The *Rojas* Court noted that while "Section 1225(b)(2) . . . refers to aliens 'seeking admission,' . . . this language is best read as simply another way of referring to aliens who are applicants for admission." *Id.*

The *Rojas* court dismissed argument that the Laken Riley Act had relevance, noting that "legislation passed in 2025 has little bearing on the meaning of legislation enacted in 1996," "nothing in the Laken Riley Act suggests any Congressional thoughts concerning the issues presented in this case", and that "[t]hese newly added provisions do not indicate anything with respect to either party's proposed interpretation of Sections 1225 or 1226." *Id.* at 9. The *Rojas* court likewise dismissed the Petitioner's invocation of past agency practice, noting that "the Court concludes that it must follow the most natural reading of the statutory text" and "there is no estoppel against the

federal government.” *Id.* The *Rojas* court also rejected the notion “that language in his arrest warrant citing Section 1226 entitles him to discretionary detention under Section 1226,” noting “[t]his language is best read not as an invocation of Section 1226 or an admission that that provision applies to Cirrus Rojas. Rather, it describes the agents to whom the warrant is directed and identifies two sources for their arrest authority.” *Id.* Addressing “the number of other district courts that have adopted [the petitioner’s] position,” the *Rojas* court noted that “[b]eyond numbers, neither party directs the Court to compelling analyses from any of these decisions.” *Id.*

As Petitioner is properly detained under 8 U.S.C. § 1225(b)(2), Singh 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 (citations omitted). The *Rojas* court also provided useful analysis on this point, noting that aliens like Petitioner have limited liberty interests, and the United States has

“a powerful interest in maintaining the detention in order to ensure that removal actually occurs.” 2025 WL 3033967, at *13-14. Further, there was little chance of erroneous deprivation of any rights because the petitioner was admittedly subject to removal, like Petitioner is here. *Id.* at *13.

Singh does not allege – nor can he – 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 has applied for asylum, 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.

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

Petitioner incorrectly asserts that he is detained pursuant to § 1226, even though he is an applicant for admission under the INA. 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#15. 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 may be . . . 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 his 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 on bond. *See Guerra*, 24 I.&N. Dec. 37, 40 (BIA 2006);¹⁵ *see also* 8 C.F.R. § 1003.19(d). 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).

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). Section 1226 release under bond occurs only when the detained noncitizen moves for 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

¹⁵ 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.

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 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.

CONCLUSION

For the reasons stated herein, the Court should deny the petition for a writ of habeas corpus. A proposed order is hereto attached.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 10, 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