UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

REFUGIO IBARRA DEL VILLAR — PETITIONER

v. — CIVIL ACTION NO. 4:25-CV-00137-GNS

KRISTI NOEM, in her Official Capacity as Secretary, U.S. Department of Homeland Security; SAMUEL OLSON, in his Official Capacity as Field Office Director, Chicago Field Office, U.S. Immigration and Customs Enforcement; and MIKE LEWIS, in his Official Capacity as Hopkins County Jailer — RESPONDENTS

RESPONSE TO ORDER TO SHOW CAUSE AND MOTION TO DISMISS

Federal Respondents tender this response to the Court's Order to Show Cause.[1] For the reasons stated below Petitioner's writ of habeas corpus should be dismissed

INTRODUCTION

Petitioner was not lawfully admitted to the United States, and he has no lawful immigration status. He is currently detained by the U.S. Immigration and Customs Enforcement ("ICE") while the Agency[2] pursues administrative removal proceedings

[1] This response is filed on behalf of Federal Respondents, Kristi Noem and 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 names Mike Lewis, the Hopkins County Jailer, as a respondent.

[2] The Department of Homeland Security ("DHS") includes (1) Customs and Border Protection ("CBP"); (2) Immigration and Customs Enforcement ("ICE"); and (3) U.S. Citizenship and

against him. Petitioner challenges the Agency's decision to detain him under a statutory provision that does not entitle him to a bond hearing. The Court lacks jurisdiction over Petitioner's claims under 8 U.S.C. § 1252. But even if the Court possessed jurisdiction, because Petitioner has not been admitted to the United States, he is an applicant for admission and lawfully detained under 8 U.S.C. § 1225(b)(2)(A).

Before 1996, the federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings. Congress passed the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA") specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. Congress enacted 8 U.S.C. § 1225, which requires the detention of any alien "who is an applicant for admission," and it defined that term to encompass any "alien present in the United States who has not been admitted" following inspection by immigration authorities. 8 U.S.C. §§ 1225(a), (b)(2)(A). The statute makes no exception for how far into the country the alien traveled or how long the alien managed to evade detection. Unless the Secretary exercises the narrow and discretionary parole authority, mandatory detention is the rule for aliens who have never been lawfully admitted.

Immigration Services ("USCIS"). https://www.uscis.gov/sites/default/files/document/fact-sheets/INSHistory.pdf

There is no dispute that Petitioner is an "applicant for admission" under § 1225(a). That provision specifically provides that any "alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." § 1225(a)(1). Del Villar is present in the United States, and he has not been admitted because he entered the country without inspection. He is an "applicant for admission." Despite the clear statutory text, Petitioner claims he is entitled to a bond hearing and potential release—notwithstanding 8 U.S.C. § 1225's prohibition. Accommodating this request would be legal error.

8 U.S.C. § 1226, in contrast, applies to numerous aliens *not* subject to § 1225(b)(2)(A), including all *admitted* aliens who are now removable—such as noncitizens in the United States that were lawfully admitted but then overstayed their visas. For those aliens, § 1226 continues to govern detention. Moreover, the mere fact of partial overlap is insufficient to rewrite clear statutory text. Although the Government has previously operated under a different (and erroneous) understanding of the law, the Court must apply the language of 8 U.S.C. § 1225(b)(2)(A) as it is written. Anything else would be contrary to the plain statutory text and would reimpose the same twisted regime that IIRIRA was meant to eliminate—requiring the detention of aliens who present at a port of entry as the law requires but authorizing the release of those aliens who enter the United States in violation of law. The Court should not endorse such a backwards outcome, especially when Congress has spoken so clearly.

BACKGROUND

Petitioner, a native and citizen of Mexico, entered the United States at an unknown place at an unknown time. [Exhibit 1, Notice to Appear.]

On October 30, 2025, ICE officials issued a Warrant for Arrest for Petitioner determining that there was probable cause to believe that he was removable from the United States.[3] [Exhibit 2, Warrant for Arrest.] On October 31, 2025, ICE officials issued Petitioner a Notice to Appear in immigration court, the charging document that initiated his removal proceedings. [Exhibit 1, Notice to Appear.] Therein, Petitioner was charged, under 8 U.S.C. § 1182(a)(6)(A)(i), for being "present 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 8 U.S.C. § 1182(a)(7)(A)(i)(I), for not possessing "a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document, ...and a valid unexpired passport, or other suitable travel document, or document of identity and nationality." [Exhibit 1, Notice to Appear.]

[3] The references to the Immigration and Nationality Act ("INA") in the Warrant for Arrest merely provide the basis for the immigration officer's authorization to arrest and detain. In *Rojas v. Olson*, the court explained: The top of the DHS warrant form directs the warrant to the attention of "'[a]ny immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act [codified at 8 U.S.C. §§ 1226 and 1357] and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations.' (ECF No. 1-2.) This 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. This language does not state that Cirrus Rojas is subject to the discretionary detention provisions of Section 1226 or excepted from the provisions of Section 1225."2025 WL 3033967, at *9 (E.D. Wisc. Sept. 30, 2025).

Petitioner is detained at Hopkins County Detention Center. On November 5, 2025, Petitioner filed his writ of habeas corpus. [Doc. 1, PageID.1.] He has a hearing with the immigration court scheduled for November 12, 2025.

LEGAL FRAMEWORK

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

Congress included two separate provisions in the INA that prohibit the Court from entertaining Petitioner's habeas claim—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).[4]

II. Alternatively, Petitioner Bears the Burden of Proving his Detention is Unlawful Under 8 U.S.C. § 1225(b).

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)

[4] *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).

(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).

As an inadmissible alien, Petitioner'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 it Lacks Jurisdiction to Review it Under 8 U.S.C. §§ 1252(b)(9), (g).

The Court lacks jurisdiction to consider this 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 (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 U.S.C. § 1229a. The decision to detain arose from the commencement of his removal proceedings, which began once the Notice to Appear was issued on October 31, 2025. [Exhibit 1, Notice to Appear.] The detention, therefore, is "connected directly and immediately" with the commencement Petitioner'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." *Ozturk 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).

It is true that Section 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 Petitioner. *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 Petitioner, 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 Petitioner's 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, Petitioner asks the Court to interpret the INA to determine which legal authority authorizes his detention during his removal proceedings. [*See generally* Doc. 1.] As the Court has held, "the central question at issue in th[ese types of] matter[s] is which detention provision, Section 1225 or Section 1226, applies to [Petitioner]. This is a purely legal question of statutory interpretation . . . ." *Guerra v. Woosley*, 2025 WL 3046187, 2025 U.S. Dist. LEXIS 215005, at *5 (W.D. Ky. Oct. 31, 2025). Answering such a question which arose from the Agency's "action taken to remove an alien," and is, thus, precluded under 8 U.S.C. § 1252(b)(9). Further, Petitioner alleges that "his continued detention is ... an incorrect interpretation of immigration law." [Doc. 1, PageID#2, ¶10.] Yet, to determine such would require the Court to make the factual determination that Petitioner 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.[5] 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

[5] Petitioner 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 immigration officer that he was present without admission or parole. [**Exhibit. 1.**] This is the same assessment made to support commencing his removal proceedings through issuance of the Notice to Appear (and the subsequent decision to detain him). [*See* **Exhibit. 1** at 4 (noting that he was charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and § 1182(a)(7)(A)(i)(I)).]

unconstitutional for the government to detain aliens pending removal for a reason that allows the government to remove them." *Ozturk*, 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 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 Petitioner here, 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 583 U.S. 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*).

Petitioner 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 Petitioner'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 Petitioner is Lawfully Detained Under 8 U.S.C. § 1225(b)(2).

As a preliminary matter, the Court should hold that Petitioner is being detained under 8 U.S.C. § 1225(b)(2). Even if the Supreme Court's decision in *Jennings* did not control this determination,[6] 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 this statute properly applies to Petitioner.

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,*

[6] *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).").

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.

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

Petitioner does not contest his removability for being present in the United States without being admitted or paroled. 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). Read in tandem with the statute's plain terms, as the Court must do,[7] the INA makes clear that all unadmitted and uninspected 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.

[7] 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.").

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) (emphasis added). It therefore follows that an "applicant for admission" and a person "seeking admission" are one and the same. 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. To interpret those as distinct terms and not synonyms renders § 1225(b)(2) internally contradictory. 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). Thus, Petitioner is an "applicant for admission" who is seeking admission, and, consequently, he is detained under § 1225(b)(2)(A).

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)). 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 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). Recently, more district courts agreed that applicants for admission, like Petitioner, are detained under 8 U.S.C. § 1225. *Oliveira v. Patterson*, 2025 WL 3095972, at *6 (W.D. La. Nov. 4, 2025) ("Under the plain statutory language of § 1225(a)(1) that defines 'applicants for admission,' § 1225(b) also applies to those who are 'present in the United States who ha[ve] not been admitted.' 8 U.S.C. § 1225(a)(1). This is precisely Petitioner's status."); *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.

In *Rojas*, the Eastern District of Wisconsin offered a detailed critique of Petitioner's arguments. 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), he 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). The *Rojas* court also provided useful analysis on this point, noting that petitioners, similar to Petitioner herein, 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.

Petitioner 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, 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 that the Court immediately release him. [Doc. 1, PageID.19.] 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);[8] *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 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

[8] 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.

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

Because the Court lacks jurisdiction, the Court should dismiss the instant petition. Alternatively, the Court should deny the petition, because Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2) and the Agency has afforded him his due process rights.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

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