

I. Introduction

The term “seeking admission” found in 8 U.S.C. § 1225(b)(2)(A) has a meaning which is distinct from the term “applicant for admission.” Providing “seeking admission” its appropriate meaning according to the correct reading of the statute gives all the terms and subsections in 8 U.S.C. § 1225 and 8 U.S.C. § 1226 statutory significance and does not render any parts redundant.

The correct interpretation is premised by the simple truth already recognized in *Jennings*: the mandatory detention scheme in 8 U.S.C. § 1225(b) applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible;” “once inside the United States...Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal.” *Jennings v. Rodriguez*, 583 U.S. 281, 287-88 (2018). And this correct interpretation can be further understood if it is also recognized that the Supreme Court in *Jennings* never premised its interpretation of these sections merely on whether an alien was admitted or not admitted into the United States (i.e. whether they were an applicant for admission or not), but rather whether the alien was at the border seeking entry or not. *Id.* at 286, 89 (“the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering... U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country...[and] certain aliens already in the country...”). In other words, section 1225(b) deals with applicants for admission encountered and detained at the border or shortly thereafter (at a port-of-entry as an arriving alien or at another place other than a port-of-entry as an alien present in the United States without being admitted) and section 1226 deals with all other aliens already inside the United States.

II. Arguments in Reply to the Response of Respondents

A. Petitioner is not properly detained under 8 U.S.C. § 1225(b)(2) but rather he is properly detained under 8 U.S.C. § 1226(a).

Along with the arguments put forward in his original petition and memorandum of law, Petitioner sets forth the following additional arguments as to why he is not properly detained under 8 U.S.C. § 1225(b)(2).

According to 8 U.S.C. § 1225(b)(2)(A), “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained....” There are two instances in Petitioner’s case where Respondents detained him and where they could have determined that he was subject to mandatory detention under 1225(b)(2)(A): (1) at his initial entry on June 25, 2021 at the border, or (2) when Respondents encountered him on October 30, 2025 in Dallas, TX. And upon examination of the undisputed facts and the correct interpretation of the law, it is clear to see that Petitioner is not subject to 1225(b)(2)(A) in both instances.

1. Petitioner’s detention at the border

Regarding his detention at the border, the governing rules regarding inspecting and examining applicants for admission upon arriving or entering at the border provide insight. At the border, an examining immigration officer may determine that the alien is not entitled to admission. If an examining immigration officer determines that the alien is inadmissible because they lack a valid entry document, or because their entry document was procured through fraud or willful misrepresentation, then the immigration official may place the alien in “expedited removal” proceedings under § 235(b)(1). *See* 8 U.S.C. § 1225(b)(1)(A)(i); 8 U.S.C. §§ 1182(a)(7), (a)(6)(C). If an examining immigration officer determines that an alien has a valid, non-fraudulent entry document but is inadmissible for some other reason, then section 1225(b)(2) directs the immigration officer to detain the alien for full removal proceedings. *See* 8 U.S.C. §

1225(b)(2)(A); 8 U.S.C. § 1225(a)(5); 8 C.F.R. § 235.1(f)(1). Respondents do not contend that Petitioner should be detained under section 1225(b)(1) expedited removal proceedings. So, there has to be evidence that he was detained pursuant to section 1225(b)(2)(A). But there is no such evidence.

On the contrary, there is only evidence that the examining immigration officer determined that Petitioner was being detained and released pursuant to section 1226(a) through the issuance to Petitioner of the Form I-220A, Order of Release on Recognizance. *See* Dkt. No. 1-3, Exhibits at 3. The Form I-220A, which is used by DHS to release an individual on their recognizance, explicitly states: “In accordance with section 236 of the Immigration and Nationality Act [8 U.S.C. § 1226] and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance....” *Id.* Indeed, when a person is released on recognizance, even at the border, DHS necessarily makes a determination that the person is placed under the detention and release scheme of § 1226(a), not § 1225(b). If the examining immigration officer had determined that Petitioner was subject to section 1225(b)(2)(A), then they only could have released him through a grant of parole. *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018) (recognizing that release on parole as the sole means for release from detention under 1225(b) implies that there are no other circumstances under which aliens detained under that section may be released). But there is no evidence of parole in the record. 8 C.F.R. § 235.1(h)(2) (“Any alien paroled into the United States... shall be issued a completely executed Form I-94, endorsed with the parole stamp.”). Many courts have agreed with this reasoning. *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) (concluding that a noncitizen originally detained under § 1225(b) but released on conditional parole under § 1226 and later rearrested on a § 1226 warrant was entitled to bond hearing under § 1226 and its implementing regulations); *see also Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v.*

Hyde, 2025 WL 2084238 (D. Mass. July 24, 2025). Therefore, Petitioner was not subject to detention under section 1225(b)(2) during his encounter at the border, but rather under section 1226(a).

2. Petitioner's detention in Dallas, TX

Regarding his detention at his appointment in Dallas, TX four years after his entry into the United States, Petitioner's basic contention is as follows: an applicant for admission that is present unlawfully in the United States for many years after being allowed to enter is not seeking admission as set forth under 8 U.S.C. § 1225(b)(2)(A).

The Petitioner does not dispute that he is an applicant for admission. But the analysis of whether he is an applicant for admission is not the only requirement to conclude that he should be detained under 1225(b)(2)(A). Otherwise, the other terms, such as "seeking admission," would be meaningless. Indeed, if Congress intended for the analysis to stop at whether a person was an "applicant for admission," it could have simply written 1225(b)(2)(A) in a different manner. And Congress did indeed write another statute in a different way to show that the analysis would stop there if that were Congress's intent. Regarding burdens of proof in removal proceedings, section 8 U.S.C. § 1229a(c)(2)(A) is similar to section 1225(b)(2)(A) but it states: "the alien has the burden of establishing, if the alien is an applicant for admission, that the alien is clearly and beyond doubt entitled to be admitted." Congress did not place the term "seeking admission" after the term "alien" in this subsection of 1229a and so Congress knew how to include or exclude such a term from the statutes. Because Congress did place the term "seeking admission" into section 1225(b)(2)(A), then it intended to give it meaning which can be derived by reading the statute plainly. Respondents' fundamental error is that they equivocate "applicant for admission" and "seeking admission," or that "applicant for admission" means "seeking admission" and vice versa.

An important consideration for the statutory interpretation analysis of these two terms is that an applicant for admission is statutorily defined as an alien “present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). Rather significantly, an applicant for admission is not defined as an “alien seeking admission,” and should not be later redefined that way by a court. Because, although courts generally construe statutory terms according to their ordinary meaning, when a statute includes an explicit definition, a court must follow that definition, even if it varies from a term’s ordinary meaning. *Digit. Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (quoting *Burgess v. United States*, 553 U.S. 124, 130 (2008)). Therefore, an applicant for admission cannot be interpreted to mean an alien who seeks admission (and vice versa) even if one possible ordinary English usage for an applicant for admission is one who requests or seeks admission. The term “seeking admission” must have its own statutory meaning and implications.

In *Covarrubias v. Vergara*, the district court, using interpretive tools like the presumption of consistent usage and the principle that words are to be given the meaning that proper grammar and usage would assign them, contends that “applicant for admission” and “seeking admission” must have different meanings and that the latter is “a present-tense, or current, ongoing action, and varies materially from the passive state of being an applicant [for admission].” *Covarrubias v. Vergara*, 2025 U.S. Dist. LEXIS 206523, 2025 WL 2950097, at *7-8 (S.D. Tex. Oct. 8, 2025). And like in the *Covarrubias* case, Petitioner in this case was not actively seeking admission, “as that phrase is commonly used and understood,” when he was detained by Respondents in Dallas, TX after having entered and resided in the United States for years. *Id.* at *8. Petitioner “cannot be described as ‘seeking admission’ because he was not currently and actively seeking to be admitted to the United States when he was apprehended.” *Id.*

Since he was allowed to enter the United States, on the contrary, Petitioner has been actively seeking to remain, apply for relief from removal and avoid removal as demonstrated by

his application for asylum. *See* Dkt. No. 1-3, Exhibits at 10: Under the removal proceedings statute, an immigration judge decides “whether an alien is *removable* from the United States.” 8 U.S.C. § 1229a(c)(1). But the removal process does not end there. An alien can still apply for “relief or protection from removal.” 8 U.S.C. § 1229a(c)(4). An alien can request asylum in order to remain in the United States if they are present in the United States, even if present after an unlawful entry. *See* 8 U.S.C. § 1158(a) (“Any alien who is physically present in the United States...irrespective of such alien’s status, may apply for asylum...”). Furthermore, a grant of asylum is not a lawful admission, and even though it is not a lawful admission, a grant of asylum allows an alien to remain in the United States lawfully and to not be subject to removal. *Matter of V-X-*, 26 I. & N. Dec. 146, 149 (BIA 2013); *see also* 8 U.S.C. § 1158(c)(1)(A) (“In the case of an alien granted asylum... the Attorney General shall not remove or return the alien to the alien’s country of nationality...”). Logically, contrary to what Respondents assert, because a grant of asylum is not a lawful admission, an alien who applies for asylum in removal proceedings cannot be seeking admission. This is the same reason why Respondents’ reliance on *P. B. v. Bergami, et. al.* does not support their argument, because the district court in that case incorrectly relied on the erroneous premise that a grant of asylum is an admission into the United States. 2025 U.S. Dist. LEXIS 258535, *9 (N.D. Tex. Dec. 15, 2025).

So the removal proceedings statute clearly shows that the removal process does not exist so that an alien can seek admission, but rather to decide the issue of removability and relief from removal. As stated above, whether an alien is seeking admission or not is not an issue in the removal process. *See* 8 U.S.C. § 1229a(c)(2)(A) (omitting the term “seeking admission” when placing the burden of proof on the applicant for admission). Thus, because he is not seeking admission, he does not fit within the categories in Section 1225(b), and must fit within Section 1226(a), the default provision for noncitizens ‘already present’ in the country and arrested by

ICE who do not fit within Section 1225(b).” *Covarrubias* at *8-9 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018)).

Recent amendments to § 1226 reinforce that it applies to Petitioner’s case and that he is therefore eligible for a bond hearing before an Immigration Judge. The Laken Riley Act (LRA) added language to § 1226 that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). By including such individuals under § 1226(c), Congress reaffirmed that § 1226 covers persons charged under § 1182(a)(6)(A) or (a)(7). “When Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Additionally, “[t]he Supreme Court has explained that its reluctance to treat statutory terms as surplusage ‘increases when Congress amends a statute, as we ordinarily presume that when Congress does so, ‘it intends its amendment to have real and substantial effect.’” *Covarrubias*, at *9-10 (citing *Bufkin v. Collins*, 604 U.S. 369, 386 (2025) and *Van Buren v. United States*, 593 U.S. 374, 393 (2021)). Based on Respondents’ interpretation, “noncitizens to whom the Laken Riley Act would apply would already be subject to mandatory detention under Section 1225, rendering Congress’s new amendment redundant.” *Id.* at *10. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

Petitioner’s plain reading of the statutes, as shown above, is the best reading because it gives all terms in the subsections their proper place and does not leave any redundancies in sections 1225(b) or 1226; Petitioner’s interpretation does not rewrite or eviscerate any portions of the statutes or inject ambiguity, but rather brings both sections into a harmonious whole. It is

only Respondents' proposed reading of sections 1225(b)(2)(A) and 1226 that results in all sorts of redundancies and eviscerations in the statutes.

B. U.S.C. §§ 1252(b)(9) and (g) do not preclude review of Petitioner's claims

Regarding whether section 1252(b)(9), the Supreme Court in *Jennings* has addressed this issue and stated: “[t]his provision does not deprive us of jurisdiction. We are required in this case to decide ‘questions of law,’ specifically, whether... certain statutory provisions require detention without a bond hearing.” Furthermore, the Supreme Court in *Jennings* also addressed the application of section 1252(g). It stated:

In past cases, when confronted with capacious phrases like “arising from,” we have eschewed “uncritical literalism” leading to results that “no sensible person could have intended.” *Gobeille v. Liberty Mut. Ins. Co.*, 577 U. S. 312, 319, 136 S. Ct. 936, 943, 194 L. Ed. 2d 20, 30 (2016) (interpreting phrase “relate to” in the Employee Retirement Income Security Act of 1974’s pre-emption provision)...In *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U. S. 471, 482, 119 S. Ct. 936, 142 L. Ed. 2d 940 (1999), we took this approach in construing the very phrase that appears in §1252(b)(9). A neighboring provision of the Immigration and Nationality Act refers to “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) (emphasis added). We did not interpret this language to sweep in any claim that can technically be said to “arise from” the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves. *American-Arab Anti-Discrimination Comm.*, supra, at 482-483, 119 S. Ct. 936, 142 L. Ed. 2d 940.

Jennings v. Rodriguez, 583 U.S. 281, 293-94 (2018). Petitioner’s case also deals with whether certain statutory provisions require detention without a bond hearing like the case in *Jennings*, so section 1252(b)(9) does not preclude his claims. And his claims also do not challenge the decision of Respondents to commence proceedings against him or adjudicate his case. He does challenge Respondents’ decision to issue or file a Notice to Appear and thus commence his removal proceedings, or Respondents’ efforts to adjudicate his removal case by holding immigration court hearings. His challenge lies strictly on whether certain statutory provisions

require detention without a bond hearing, and this challenge is not one of “those three specific actions themselves.” *Id.*; see also *United States v. Baltazar-Sebastian*, 990 F.3d 939, 944 (5th Cir. 2021) (holding section 1252(g) did not strip jurisdiction from a district court when it issued an order which prohibited the immigration agency from retaking custody of a defendant alien and thereby setting aside a decision regarding the alien’s detention).

III. Conclusion

For the reasons explained above, Petitioner’s writ of habeas corpus requires his immediate release from custody or, in the alternative that he be provided a bond hearing under § 1226(a) in which DHS bears the burden of establishing the necessity of Petitioner’s continued detention.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

On December 28, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

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