

INTRODUCTION

The Petitioner provides the following Reply to the Respondents' Response filed with this Court on December 1, 2025. Petitioner again asserts that his present detention in the ERO Camp East Montana detention center is unlawful and requests that this Court take actions appropriate to protect his right to Due Process pursuant to the Fifth Amendment of the U.S. Constitution, among other claims discussed in his initial Petition, incorporated herein by reference. **ECF No. 1.**

Petitioner continues to assert that his detention is unconstitutional. Although the Respondents contend that an order from this Court releasing him from custody "produces no net gain to Petitioner," Petitioner asserts that his freedom from unlawful confinement after more than three weeks of mandatory detention so that he can be reunited with his family would certainly be considered to be a "gain" for him. *See ECF No. 4, p 2.*

For the reasons discussed *infra*, Petitioner contends that the Respondents' arguments in favor of the colossal expansion of the use of mandatory detention pursuant to 8 U.S.C. 1225(b)(2) should not be found persuasive to this Court. The Respondents' position that *all* non-citizens found in the U.S. who have not been inspected and admitted are subject to mandatory detention under § 1225 defies the plain language of the Immigration and Nationality Act, the intent of Congress, years of judicial precedent, and years of practical application by the agencies involved.

The Respondents contend that the Petitioner is subject to § 1225 because he is an applicant for admission who is "seeking admission," and as such his detention is governed by the provisions of § 1225(b). As mentioned in Petitioner's opening Petition, this interpretation has been widely rejected by the Courts for multiple reasons. One of the most salient reasons for this

near universal rejection of the government’s interpretation is that in order to mandatorily detain non-citizens like Petitioner who have been present in the U.S. for years would be to ignore the fact that the phrase “seeking admission” implies current action. *See Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025)

(acknowledging that seeking admission “implies action—something that is currently occurring, and in this instance, would most logically occur at the border upon inspection”). Again, under normal rules of statutory construction, in order to apply this construction to every applicant for admission, as the Respondents’ would urge, there would be no reason for the action phrase of actively “seeking admission” to be included in the provision, thus rendering the statutory language superfluous.

Respondents' detailed analysis of the Fifth Circuit’s holding in *Martinez v. Mukasey*, 519 F.3d 532 (5th Cir. 2008) is curious, as Petitioner has not claimed that he has been “admitted” to the U.S. **ECF 4 at p. 5-7**. Petitioner challenges DHS's expanded view of the definition of "applicant for admission" as a means of mandatorily detaining him as an unconstitutional reading of the provision, which denies him Due Process. The Fifth Circuit’s discussion of the term “admission” in *Martinez* in the context of a returning former Lawful Permanent Resident with an aggravated felony conviction is not directly relevant to the issues before this court in the present case, as *Martinez* addresses many complex issues related to provisions of the INA that could only be viewed as tenuously related to Petitioner’s present plea for relief to this Court. If anything, *Martinez* cuts in favor of the Petitioner, in that Petitioner cannot be viewed as an “applicant for admission” under the Respondents’ extension of the definition. *Martinez* discussed the definition of “admission,” as found in 8 U.S.C. §1101(a)(13)(A), which defines admission as “the lawful entry of the alien into the United States after inspection and authorization by an

immigration officer.” According to that definition, Petitioner was not seeking “admission” at the time of his apprehension because he was not seeking entry to the U.S., and much less “lawful entry...after inspection and authorization,” at that time. The Court in *Martinez* stated “Under the statutory definition, ‘admission’ is the lawful entry of an alien after inspection, something quite different, obviously, from post-entry adjustment of status.” *Martinez*, at 544. Thus, Respondents’ interpretation “would render the phrase ‘seeking admission’ in [Section] 1225(b)(2)(A) mere surplusage.” See *Lopez Benitez v. Francis*, No. 25 CIV. 5937, 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025).

The Respondents further contend that Congress intended to mandate detention of all applicants for admission, and they cite to holdings in *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020), and *U.S. v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir 2024) for their contention. However, neither of the cited cases directly supports the Respondents’ assertion. In fact, *Gambino-Ruiz* actually undercuts Respondents’ argument. In that case, the Ninth Circuit considered again the statute as it relates to non-citizens subject to expedited removal, and deals almost exclusively with the application of the statutory scheme under § 1225(b)(1)(A)(iii). Indeed, the Court in *Gambino-Ruiz* spends a considerable amount of text discussing the temporal component related to when an “application for admission” takes place. In discussing the *Torres* holding, the Court stated, “Concluding that an “applicant for admission” is not an unbounded class, we said that “inadmissibility must be measured at the point in time that an immigrant actually submits an application for entry into the United States.” *Id.*; see also *id.* at 925(“[T]his phrase refers to the moment of applying for entry at the border.”). *Gambino Ruiz*, at p. 989. The Court continues this analysis further, “In sum, we conclude that *Torres* stands for the propositions that “an immigrant submits an ‘application for admission’ at a distinct point in time” and “stretching the phrase ‘at

the time of application for admission’ to refer to a period of years would push the statutory text beyond its breaking point.” *Id.* at 926. “We can easily distinguish between Gambino-Ruiz, who was properly designated because he was detained near the border shortly after he crossed it, and Torres, who was placed in removal proceedings some thirteen years after she lawfully entered CNMI.” *Id.* at 990. Although the Petitioner does not believe that *Gambino-Ruiz* is directly relevant to the present case, the Respondents did bring to light that the Ninth Circuit made an important distinction in that case regarding the application of § 1225 to persons who had recently entered the U.S. and persons who had been present for years in the U.S., like Petitioner, indicating the importance of the temporal component of §1225.

It is also important to note that the majority of the text of § 1225 concerns arriving aliens, and the application of the provisions that pertain to arriving aliens are not relevant to the case before this Court because it has never been asserted that Petitioner is subject to expedited removal or that his case is in any way governed by §1225(b)(1)(A). As such, the Respondents’ reliance on cases that have adjudicated claims related to arriving aliens, which the Respondents do throughout their Response, is misguided.

Respondents are further incorrect in their contention that their interpretation of §1225 does not render the amendments related to the Laken Riley Act as superfluous. *See Laken Riley Act*, PL 119-1 (2025). Indeed, the entire section of the Respondents Response on this topic seems to support Petitioner’s argument rather than undercut it. In support of their position, the Respondents quote Justice Antonin Scalia who wrote that “Sometimes drafters *do* repeat themselves and *do* include words that add nothing of substance, either out of a flawed sense of style or to engage in the ill-conceived but lamentably common belt-and-suspenders approach.” ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF*

LEGAL TEXTS (2012), 176–77 (emphasis added). **ECF 4, p 9**. However, Congress’ recent passage of the Laken Riley Act added an entire section to the mandatory detention provision of 8 U.S.C. 1226(c) that distinctly references persons who are present in the U.S. without having been inspected or admitted. 8 U.S.C. 1226(c)(1)(E). Given the paucity of amendments to the INA over the recent years and the seeming difficulty moving legislative amendments through Congress, it strains belief to conclude that the Laken Riley Act was the result of “words that add nothing of substance” and was included in the INA out of a drafter’s “flawed sense of style” or “belt-and-suspenders approach,” as posited by the Respondents. Rather, the logical reading of the LRA’s amendments is that Congress was already aware of §1225 and did not consider the mandatory detention to apply to non-citizens already present in the U.S., thus leading to the specific new provisions in § 1226(c)(1)(E) that pertain to non-citizens who are present in the U.S. without inspection and admission.

The Respondents go on to cite *Matter of Yajure-Hurtado*, particularly noting that, “where these provisions impact one another, they cannot be read in a vacuum” *Yajure Hurtado* at 227, **ECF 4 p. 9**. The Petitioner could not agree more, but would contend that the impact of the two provisions on each other indicates that § 1226 applies to non-citizens present in the U.S. and § 1225 applies to non-citizens detained upon entry to the U.S. who are at that time found to be seeking admission.

The jurisdictional arguments raised by the Respondents similarly do not withstand scrutiny. The Respondents contend that several jurisdictional provisions deprive this court of its authority to adjudicate Petitioner’s Habeas Corpus petition. Respondents first argue that Section 1225(b)(4) requires that Petitioner’s challenge “be raised before an immigration judge in removal proceedings.” **ECF 4 p 10**. That provision states:

The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 1229a of this title.

8 U.S.C. § 1225(b)(4).

It is unclear how Respondents conclude from this that “judicial review [for Petitioner] is available only through the court of appeals following a final administrative order of removal.” **ECF 4 p. 10-11.** Respondents themselves argue that Petitioner is an “applicant for admission.” **ECF 4 p. 4** (“Petitioner cannot plausibly argue that he is not an applicant for admission”). In Petitioner’s case, there has not been a “decision . . . favorable to the admission” of Petitioner. *See* § 1225(b)(4). Thus, Section 1225(b)(4) should not be found to apply to Petitioner’s case.

The Respondents also assert in passing that § 1252(g) also deprives this Court of jurisdiction. Section 1252(g) “applies only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, *adjudicate* cases, or *execute* removal orders.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). It “does not bar courts from reviewing an alien detention order, because such an order, while intimately related to efforts to deport, is not itself a decision to execute removal orders and thus does not implicate [S]ection 1252(g).” *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *3 (W.D. Tex. Oct. 2, 2025) (cleaned up) (quoting *Cardoso v. Reno*, 216 F.3d 512, 516–17 (5th Cir. 2000)). In the present case, Petitioner “does not challenge a decision to commence removal proceedings, adjudicate a case against him, or execute a removal order. . . . [H]e challenges the decision to detain him.” *Guevara v. Swearingen*, No. 25 C 12549, 2025 WL 3158151, at *2 (N.D. Ill. Nov. 12, 2025).

Furthermore, the Supreme Court foreclosed the Respondents’ argument regarding §1242(b)(9) in the Court’s discussion of the provision in *Jennings*, finding that the “arising

from” language in the provision should be construed narrowly, stating that “an expansive interpretation of “arising from” would make “claims of prolonged detention effectively unreviewable.” *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018).

Respondents rely throughout their Response on *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 140 S.Ct. 1959 (2020). Again, *Thuraissigiam* cannot provide meaningful authority for this Court to consider given that *Thuraissigiam* concerns an arriving alien who had never entered the U.S. The Supreme Court has long found that the requisite amount of “process” necessary to comport with the Due Process clause can differ depending on whether the non-citizen has never entered the United States or has already been present within the U.S. “While aliens who have established connections in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for an alien's lawful entry into this country and that, as a result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause” *Thuraissigiam* at 1963-1964. Clearly the Petitioner in his time since entry to the U.S. decades ago has established connections and is not at “the threshold of initial entry.” The reasoning in *Thuraissigiam* is not relevant to the present case precisely because there is no question that Petitioner should be afforded the full protections of the Due Process clause given his lengthy residence in this country and his considerable ties to it.

The Respondents are correct in their assertion that Petitioner is not technically raising a constitutional claim related to *prolonged* detention. **ECF 4 p 12**. Rather, he is raising the claim that his detention without any opportunity for release violates his due process and statutory rights. Nevertheless, he does take issue with the Respondents’ assertion that his detention has been for “only a brief period.” Petitioner has been detained since about November 7, 2025, which at the time of this Reply is a detention of more than 23 days. Though what constitutes a “brief period” is certainly debatable, Petitioner would urge the court to consider the words of the Court in *Zadvydas* that, “Freedom from imprisonment lies at the heart of the liberty protected by

the Due Process Clause. Government detention violates the Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards or a special justification outweighs the individual's liberty interest.” *Zadvydas v. Davis*, 533 U.S. 678, 679, 121 S.Ct. 2491, 2493 (2001).

For the reasons stated above, in conjunction with his original Petition for Habeas Corpus, Petitioner again pleads for relief as outlined in his Petition.

Respectfully submitted,

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