

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

RANBEER SINGH

PETITIONER

v.

CIVIL ACTION NO. 4:25-cv-00153-DJH

MIKE LEWIS, Hopkins County Jailer;
SAMUEL OLSON, Immigration and
Customs Enforcement and Removal Operations
Chicago Field Office Director;
TODD M. LYONS, Acting Director,
Immigration and Customs Enforcement;
KRISTI NOEM, Secretary of the United States
Department of Homeland Security; and
PAM BONDI, Attorney General of the United States

RESPONDENTS

**RESPONDENTS' MOTION TO DISMISS
AND RESPONSE TO ORDER TO SHOW CAUSE**

Federal Respondents, Samuel Olson, Todd M. Lyons, Kristi Noem, and Pam Bondi,¹ respond to the Court's order to show cause and request that the Court dismiss Singh's petition for lack of jurisdiction or, in the alternative, deny his petition because he is an "applicant for admission" properly detained under 8 U.S.C. § 1225.

INTRODUCTION

Singh 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")

¹ This response is filed on behalf of Federal Respondents Olson, Lyons, Noem, and Bondi. 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. The Court should disregard Singh's claim that the jailer is the proper respondent, as it is based on a Seventh Circuit precedent that is inapplicable in this case due to *Roman*. (Doc. 1, PageID.5, n.1.).

while the Agency² pursues administrative removal proceedings against him. Singh 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 Singh's claims under 8 U.S.C. § 1252(b)(9). But even if the Court possessed jurisdiction, because Singh 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.

There is no dispute that Singh 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."

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

§ 1225(a)(1). Singh is present in the United States, and he has not been admitted. He is an “applicant for admission.” Despite the clear statutory text, Singh claims he is entitled to a bond hearing and potential release—notwithstanding 8 U.S.C. § 1225’s prohibition.

8 U.S.C. § 1226, which Singh claims he is detained under, applies to numerous aliens *not* subject to § 1225(b)(2)(A), including all *admitted* aliens who are now removable—such as aliens in the United States who were lawfully admitted but then overstayed their visas. For those aliens, § 1226 continues to govern detention. Although the Government has previously operated under a different and more forgiving application 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 inverted 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 backward outcome, especially when Congress has legislated to preclude that counterintuitive outcome.

Singh cites district court opinions favoring a different interpretation and application of 8 U.S.C. § 1225(b)(2). (Doc. 1, PageID.3-4, 8, 9.).³ More recently, other courts have noted that some cases favoring Singh’s interpretation of § 1225(b)(2) “appear to defer substantially to each other”, lacked “compelling analyses”, “are not precedential”, are “limited”, and were “decided on an expedited basis and in a short time frame”. *Olalde v. Noem*, 2025 WL 3131942, at *1 (E.D. Mo. Nov. 10, 2025); *Rojas v. Olson*, 2025 WL 3033967, at *5, 9-10 (E.D. Wis. Oct. 30, 2025). “[N]o appellate court has yet reached the issue, and the statutory text is more consistent

³ One such case (*Pizarro Reyes v. Raycraft*, 25-1982) is before the Sixth Circuit on appeal. The government has requested expedited consideration of the appeal, but the Sixth Circuit has not resolved that motion.

with Respondents' position." *Rojas*, 2025 WL 3033967 at *5. "What governs this case is the text of the statute, not what other district courts have concluded." *Olalde*, 2025 WL 3131942 at *1. Nevertheless, other district courts analyzing the text of § 1225(b)(2) have found that it applies to aliens such as Singh. *See Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL 3199872, at *8 (C.D. Cal. Nov. 12, 2025); *Alonzo v. Noem*, No. 1:25-CV-01519 WBS SCR, 2025 WL 3208284, at *6 (E.D. Cal. Nov. 17, 2025); *Valencia v. Chestnut*, No. 1:25-CV-01550 WBS JDP, 2025 WL 3205133, at *4 (E.D. Cal. Nov. 17, 2025); *Chavez v. Noem*, --- F.Supp.3d --, 2025 WL 2730228, at 4–5 (S.D. Cal. Sept. 24, 2025); *Oliveira v. Patterson*, No. 6:25-CV-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at *6, n.7 (W.D. La. Oct. 31, 2025); *Pena v. Hyde*, 2025 WL 2108913, No. 25-11983-NMG (D. Mass. July 28, 2025); *Vargas Lopez v. Trump*, -- F. Supp. 3d --, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Garibay-Robledo v. Noem*, No. 3:25-CV-2461-L-BN, 2025 WL 2638672, at *1 (N.D. Tex. Sept. 12, 2025); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Pipa-Aquise v. Bondi*, 2025 WL 2490657, at 2 (E.D. Va. Aug. 5, 2025). In one of those cases, "after additional research and analysis", a judge who previously held that § 1226 applied in these situations later determined that to be an erroneous conclusion, and held that § 1225(b)(2) instead applied. *Ramos*, 2025 WL 3199872 at *4. As those courts have held, analysis and application of statutory text compels the conclusion that aliens such as Singh are subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Singh is Removable as an Inadmissible Alien Present in the United States Without Being Admitted or Paroled and as an Alien Without Valid Entry Documents.

Singh is a citizen of India who entered the United States without inspection. (Doc. 1, PageID.1, 5, 6.). Singh was arrested on November 17, 2025, in conjunction with an Indiana

State Police investigation of his trucking company falsifying driver logs; Singh's CDL had been revoked ten days earlier. (Exh. 1, I-213 at 2; Doc. 1, PageID.2.). Singh had an outstanding Notice to Appear, and was subject to an arrest warrant issued that day. (Doc. 1, PageID.2, 6; Exh. 2, Warrant for Arrest of Alien.). ICE then processed Singh and transferred him to a facility in this district. (Doc. 1, PageID. 2.). Singh is present in the United States without having been admitted or paroled, violating 8 U.S.C. § 1182(a)(6)(A)(i) and subjecting him to removal. (Doc. 1, PageID.1, 6; Exh. 2 at 3.).

LEGAL FRAMEWORK

I. 8 U.S.C. § 1252(b)(9) and (g) Limit the Court's Jurisdiction to Review Certain Immigration Decisions and Actions.

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

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

8 U.S.C. § 1252(g) (“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”) bars review of an alien’s claim that represents 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). 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”). The decision to detain Singh, through processing him after his arrest, arose from the commencement of his removal proceedings, which began once Singh’s Notice to Appear was issued. His detention, therefore, is “connected directly and immediately” with the commencement of his 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 ICE’s decision to detain Singh.

II. Alternatively, Singh 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 Singh shows he is “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

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).

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), quoting *Romine v. Head*, 253 F.3d 1349, 1357 (11th Cir. 2001): “in 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.’”

As an applicant for admission, 8 U.S.C. § 1225(b) governs Singh’s detention. The Supreme Court addressed this in *Jennings*: “the Government must determine whether an alien seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 281. An alien—such as Singh—“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). “Applicant for admission” is 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.” 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”.

As an “applicant for admission,” Singh 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) “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).

A. The text of 8 U.S.C. § 1225(b)(2) applies to Singh, who is an applicant for admission and therefore subject to mandatory detention.

Singh’s argument to the Court is that 8 U.S.C. § 1225(b) does not apply to him. (Doc. 1, PageID.1, 2, 3-4, 8-10.). Examination of the statutory text and the Supreme Court’s examination of that text in *Jennings v. Rodriguez* demonstrates that Singh is lawfully detained under 8 U.S.C. § 1252(b)(2).

Singh has no grounds on which to contest his removability for being present in the United States without being admitted or paroled. He entered the United States without inspection. (Doc. 1, PageID.1, 6.). Thus, he is by statute an applicant for admission, and 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, 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.

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. Singh’s interpretation of § 1225(b)(2), which argues those are 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”). Though this might at first glance 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, Singh is an “applicant for admission”—i.e., an alien seeking admission—and, consequently, he is detained under § 1225(b)(2)(A).

Singh argues against this by avoiding the relevant statutory definitions. (Doc. 1, PageID.1, 2, 3-4, 8-10.). Singh’s proffered application of §§ 1225 and 1226 would create “an ‘anomaly’ ... ‘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*, -- 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)). Congress intending such an anomaly is implausible, given the text and purposes of those two sections; the anomaly Singh advances would “undermine the intent of Congress in enacting the IIRIRA.” *Sandoval*, 2025 WL 3048926 at *6, n.7.

Examination of the statutory text demonstrates that Singh is an applicant for admission, and as such, is subject to mandatory detention under 8 U.S.C. § 1225(b). In the statute’s plain terms, 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.

Other courts recognize this application of § 1225(b)'s text. One example comes from the Eastern District of Missouri: "Under § 1225(a)(1), '[a]n alien present in the United States who has not been admitted or who arrives in the United States...shall be deemed for purposes of this chapter an applicant for admission.'" *Olalde*, 2025 WL 3131942 at *3 (finding that if a petitioner "is an 'alien'", "is 'present in the United States'", "'has not been admitted' ... because he did not 'lawful[ly] ent[er] the country after inspection and authorization by an immigration officer'", he "is 'an applicant for admission,'" and "is not eligible for a bond hearing.")). The *Olalde* court addressed and rejected an alien petitioner's arguments "that § 1225(b)(2)(A) applies to a person who is 'seeking admission'", that "some district courts have read 'seeking admission' to imply some 'action' beyond continuous presence in the country when an individual has been in the country for several years", "that 'an immigrant submits an application for admission at a distinct point in time and stretching the phrase...to refer to a period of years would push the statutory text beyond its breaking point.'", and "that § 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or point of entry, where they are examined by an immigration officer." *Id.*

In one case, a court acknowledged its prior agreement with Petitioner's interpretation of §§ 1225 and 1226, but reversed course and agreed with the United States' proffered application of § 1225, noting in part "the longstanding 'entry fiction' doctrine." *Ramos*, 2025 WL 3199872 at 4, 7. "Under that doctrine, an alien who is physically present but has not been lawfully admitted into the country is 'legally considered to be detained at the border and hence as never having effected entry into this country.'" *Id.* at 7, quoting *Alvarez-Garcia v. Ashcroft*, 378 F.3d 1094, 1097 (9th Cir. 2004). "[T]hough she currently stands on United States soil, she is 'still in theory of law at the boundary line and ha[s] gained no foothold in the United States'". *Id.*,

quoting *Kaplan v. Tod*, 267 U.S. 228, 230 (1925). “A contrary rule creates difficult and improper line drawing exercises for courts and is inconsistent with the entry fiction doctrine.” *Id.* “For example, if § 1225(a) is interpreted as applying only to aliens at the border (despite no support in the text for that limitation), then where does the statute’s application end? One mile from the border? Twenty-five miles? And how quickly must the alien be apprehended before the statute no longer applies? Within one hour? One day? One week?” *Id.* The *Ramos* court noted that *DHS v. Thuraissigiam*, 591 U.S. 103, 139 “reject[ed] the rule that alien has entered the country simply because he has set foot on U.S. soil, because the rule ‘would undermine “the sovereign prerogative” of governing admission to this country’”. *Id.* at 8.

The Eastern District of Wisconsin issued a detailed critique of the claim that § 1225(b)(2) does not apply to aliens such as Singh. Addressing the text of 8 U.S.C. §§ 1225 and 1226, that court held that an alien such as Singh “meets the definition of ‘applicant for admission’ in § 1225(a)(1),” because he is “an alien ‘present’ in the United States and he has not been ‘admitted.’” *Rojas*, 2025 WL 3033967 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.*; *Sandoval*, 2025 WL 3048926 at *3-4.

“Such 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)].” *Chavez*, --- F.Supp.3d ----, 2025 WL 2730228, at *4. The *Chavez* court also explained why application of § 1225(b)(2) to aliens such as Singh comported with the entirety of the INA: “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.’” *Id.*, quoting *Torres*, 976 F.3d at 928. “The addition of § 1225(a)(1) ‘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.”’” *Id.*, quoting *Torres*, 976 F.3d at 928. “As the Ninth Circuit did recently in *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024), we thus also ‘refuse to interpret the INA in a way that would in effect repeal that statutory fix’ intended by Congress in enacting IIRIRA.” *Id.*

Singh cites other district courts that have interpreted §§ 1225 and 1226 in the manner he prefers. (Doc. 1, PageID.3-4.). But “the overwhelming majority of district courts sometimes get the law very wrong.” *Olalde*, 2025 WL 3131942 at *1, citing *Trump v. CASA, Inc.*, 606 U.S. 831, 840 (2025) (declaring universal injunctions beyond the equitable authority of federal district courts despite widespread use of that injunction) and noting that “some of the court decisions” Singh cites “appear to defer substantially to each other.” And “many of these district court cases were decided before—or soon after—the BIA issued its opinion in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).” *Sandoval*, 2025 WL 3048926, at *6. (*Matter of Yajure Hurtado*

and the question of *Skidmore* deference to its holding are discussed later in this filing.)

B. Scrutiny of common arguments against application of § 1225(b)(2).

1. The Laken Riley Act does not disturb § 1225(b)(2)’s application to Singh, and does not render §§ 1225 and 1226 superfluous.

The Laken Riley Act, Pub. L. No. 119-1, January 29, 2025, 139 Stat. 3 (2025), does nothing to alter § 1225(b)(2)’s application to Singh. (See Doc. 1, PageID.8-9.). “The Laken Riley Act added another exception to the Attorney General’s power to allow bond under § 1226. Specifically, the Act restricts the Attorney General from releasing ‘any alien’ who is ‘inadmissible’ under certain provisions and ‘is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of certain crimes.’” *Id.*, quoting 8 U.S.C. § 1226(c)(1)(E). The “Laken Riley Act may apply to situations where § 1225 might not.” *Id.* “For example, an individual who has been admitted through fraud might not be an ‘applicant for admission’ under § 1225.” *Id.*, citing 8 U.S.C. § 1182(a)(6)(C)(i) (“Any alien who, by fraud...has procured...a visa, other documentation, or admission into the United States...is inadmissible.”) (emphasis in original). “But the Laken Riley Act may require that person to be detained even if § 1225 would not apply.” *Id.*

A different alien who exemplifies that the Laken Riley Act does not result in superfluidity is the “alien in *Jennings*, Alejandro Rodriguez.” *Sandoval*, 2025 WL 3048926, at *5. “Rodriguez was a Mexican citizen who had been a lawful permanent resident since 1987.” *Id.*, citing *Jennings*, 583 U.S. at 289. “Rodriguez was convicted of a drug offense in 2004, and the Government detained him under § 1226 and sought his removal.” *Id.*, citing *Jennings* at 289–90. “Rodriguez was not an inadmissible alien nor an ‘applicant for admission;’ rather, he was an admitted alien.” *Id.* “Thus, Rodriguez’s case discussed in *Jennings* is a paradigmatic example of an admitted alien who is not an ‘applicant for admission’ but who subsequently

became subject to removal under § 1226(a).” *Id.*

The Eastern District of Wisconsin, faced with another unlawfully entered alien seeking to evade application of § 1225(b)(2), employed similar reasoning: “legislation 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.” *Rojas*, 2025 WL 3033967 at *9. “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.” *Id.* “These newly added provisions do not indicate anything with respect to either party’s proposed interpretation of Sections 1225 or 1226.” *Id.*

Even if one accords overlap to §§ 1225 and 1226, “it is perfectly possible to interpret the provisions as merely overlapping, and Congress often takes a ‘belt and suspenders approach’ to legislation.” *Olalde*, 2025 WL 3131942 at *4, quoting *Atl. Richfield Co. v. Christian*, 590 U.S. 1, 14 n.5 (2020). “Section 1226(c) regulates not only what the Attorney General must do (take aliens into custody), but also when the Attorney General must do so.” *Id.*, citing 8 U.S.C. § 1226(c)(1), (c)(3). “By contrast, § 1225 does not specify a timeline for when an alien is to be taken into custody.” *Id.* citing 8 U.S.C. § 1225(b)(2)(A) (providing only, in the passive voice, that the alien “shall be detained”). “The Court’s interpretation of § 1225 thus does not render the Laken Riley Act superfluous.” *Id.*, citing *Jennings*, 583 U.S. at 305 and *Scalia & Garner*, *Reading Law* at 176 (describing the surplusage canon as “courts avoid a reading that renders some words *altogether redundant*”) (emphasis in original).

The *Olalde* court also noted that “while the canon against superfluity ‘applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times,’ it is ‘pretty weak when applied to acts of Congress enacted at widely separated

times””. *Id.*, quoting *Bilski v. Kappos*, 561 U.S. 593, 608 (2010) and *Abdullah v. Am. Airlines, Inc.*, 181 F.3d 363, 373 (3d Cir. 1999) and citing *Freytag v. C.I.R.*, 501 U.S. 868, 877 (1991). “The Laken Riley Act was passed this year— decades after the other relevant provisions—so the canon against superfluity does not apply strongly here.” *Id.*

Moreover, “amendment to § 1226 by the recent Laken Riley Act doesn’t imply that § 1225(b)(2)(A) should be read contrary to its clear terms.” *Cabanas*, 2025 WL 3171331 at *6. “This amendment was enacted in January 2025 and requires mandatory detention for aliens who are inadmissible and have been arrested for, charged with, or convicted of certain crimes.” *Id.*, citing 8 U.S.C. § 1226(c)(1)(E)(i)–(ii). The *Cabanas* court addressed and debunked the holding of several district courts that the Laken Riley Act supported finding superfluidity between §§ 1225 and 1226: “many of the authorities cited ... in part conclude that, if Congress intended for § 1225(b)(2)(A) to govern all inadmissible aliens, then this recent amendment is superfluous to the extent that it prescribes mandatory detention within § 1226 as to only certain criminal inadmissible aliens ... Such conclusion isn’t warranted.” *Id.* “It’s undisputed that prior Administrations for decades applied § 1226(a) to individuals like Petitioner, thus declining to exercise the full extent of executive authority available under the INA.” *Id.* “As noted, Congress enacted the Laken Riley Act in January 2025, well prior to DHS under the present Administration issuing guidance clarifying that ‘section 235 of the [INA], rather than section 236’—that is, § 1225, rather than § 1226—‘is the applicable immigration detention authority for all applicants for admission.’” *Id.*, citing ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission, AILA Document No 25071607, American Immigration Lawyers Association (July 8, 2025). “‘When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.’” *Id.*, quoting *Peavy v.*

WFAA-TV, Inc., 221 F3d 158, 169 (5th Cir 2000). “Here, at the time of enactment, the Laken Riley Act did have such effect, given that it required mandatory detention for criminal, inadmissible aliens who had not been subject to it—under either § 1225 or § 1226—by longstanding practice of prior Administrations.” *Id.* “But this means only that Congress determined to narrow aspects of the discretion available to any Administration prioritizing removal proceedings toward § 1226. It doesn’t follow that the Laken Riley Act undercuts the more fulsome, executive authority that Congress provided to exist independently under the text of § 1225(b)(2)(A).” *Id.*

“Simply put, amendment by the recent Laken Riley Act to § 1226 isn’t superfluous. Beyond that, and regardless, the Supreme Court holds, ‘Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text.’”

Cabanas, 2025 WL 3171331 at *6, quoting *Barton v Burr*, 590 U.S. 222, 239 (2020). “[T]he canons of statutory construction should only be used to resolve remaining ambiguity, not to inject it where it does not exist.” *Id.*, quoting *Garibay-Robledo*, 2025 WL 2638672 at *1.

2. Prior agency practice does not impact § 1225(b)(2)’s application.

Singh suggests that “decades of settled immigration practice and procedure” weigh against applying § 1225(b)(2) to him. (Doc. 1, PageID.3, 8-9.). *Rojas* addressed “immigration officials’ history of treating unadmitted aliens like [Petitioner] as eligible for bond under Section 1226(a)”, citing that “the Supreme Court has largely ended judicial deference to agency interpretations of acts of Congress” in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 432–33 (2024), and noting the absence of “any historical materials explaining or justifying immigration officials’ prior approach or interpretation of Sections 1225 or 1226” or “a documented prior rationale”. *Rojas*, 2025 WL 3033967 at *9. The *Rojas* court ultimately

dismissed the notion that prior agency practice should guide its application of Sections 1225 and 1226, noting that the court “must follow the most natural reading of the statutory text”, “[p]rior administrations’ generous interpretations of these laws, while relevant to understanding that text, do not and cannot rewrite it”, and “there is no estoppel against the federal government” while concluding that “[t]he Court must apply the statute as it is written.” *Id.*, citing *Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 420 (1990) and *Gutierrez v. Gonzales*, 458 F.3d 688, 691 (7th Cir. 2006).

Similarly, the *Olalde* court noted “the longstanding practice of the Board of Immigration Appeals”, which “acknowledged ‘for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection.’” *Olalde*, 2025 WL 3131942 at *5, citing *Matter of Yajure Hurtado*, 29 I&N at 225, n.6. Though “‘the longstanding practice of the government...can inform a court’s determination of what the law is’”, “a ‘long-established practice’ does not justify a rule that denied statutory text its fairest reading.” *Id.*, quoting *Loper Bright*, 603 U.S. at 386, and *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015). The *Olalde* court noted that “the ‘weight’ of an administrative agency’s judgment depends ‘upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade.’”, and that the petitioner in that case “nowhere cite[d] a thorough, reasoned analysis from administrators explaining why aliens covered by § 1225(b)(2) are eligible to receive bond hearings.” *Id.*, quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). “Indeed, a 1997 interim rule from the Department of Justice merely asserts: ‘Despite being applicants for admission, aliens who are present without having been admitted or paroled...will be eligible for bond.’” *Id.*, citing 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). “The interim rulemaking offered

no interpretation of the statute to justify that nontextual policy, so the Court accords it little to no weight. The plain meaning prevails.” *Id.*

3. There is no “arriving alien” distinction that precludes application of § 1225(b)(2).

Two courts recently addressed the title of § 1225 and its inclusion of the term “arriving aliens”, explaining in detail why they reached a very different conclusion than cases cited by Singh such as *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sep. 9, 2025). “The three subjects referenced in [the title of § 1225] are separated by semi-colons, and § 1225(b)(2) addresses the third subject (‘referral for hearing’), not the second subject (‘expedited removal’). Another provision of § 1225 requires inspection of ‘[a]ll aliens...who are applicants for admission or *otherwise* seeking admission.’” *Olalde*, 2025 WL 3131942 at *3, quoting § 1225 (emphasis in original). “This text reinforces the reading that all ‘applicants for admission’ are ‘seeking admission’ because it recognizes that there are ‘other[]’ ways to seek admission besides being an ‘applicant[] for admission.’” *Id.* “Also, the Immigration and Nationality Act does not define ‘admission’ merely as ‘entry.’ Rather ‘admission’ means ‘the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.’” *Id.*, quoting 8 U.S.C. § 1101(a)(13)(A). “An alien can have physically entered the country many years before and still be an applicant for lawful entry, seeking legal ‘admission.’” *Id.*, citing *Matter of Lemus*, 25 I&N Dec. 734, 743 n.6 (BIA 2012).

“Further, the rest of § 1225 establishes that Congress knows how to limit the scope of the text geographically and temporally when it wants to. For example, § 1225(b)(1)(A)(i) applies to an alien ‘who is arriving in the United States.’ Here, in contrast, § 1225(b)(2) has no similar language limiting applicability only to aliens who are in the process of ‘arriving.’” *Id.* at *4. “Likewise, § 1225(b)(1)(A)(iii) applies to an alien who cannot show he has been physically in

the United States ‘continuously for the 2-year period immediately prior.’ Yet the very next paragraph (§ 1225(b)(2), the provision applicable here) includes no time limit.” *Id.* “If Congress meant to say that an alien no longer is ‘seeking admission’ after some amount of time in the United States, Congress knew how to do so.” *Id.* “[The Petitioner] asks the Court to insert ‘some arbitrary time limit devised by courts’ that is not in the text of the statute.” *Id.*, quoting *Jennings*, 583 U.S. at 304.

Another court noted that “there isn’t a separate concept applicable to an ‘arriving alien’ as distinct from an ‘applicant for admission.’” *Cabanas*, 2025 WL 3171331 at *5. Rejecting the notion that “an arriving alien is an applicant who is doing something, such as seeking admission under § 1225(b)(2)(A)”, that court noted that “[t]he problem with the argument, however, is that Congress could have said that § 1225(b) applied only to arriving aliens if that’s what was meant. But it didn’t, even as three other closely related subsections did.” *Id.* “Congress chose not to use ‘arriving alien’ in § 1225(b)(2)(A). As such, it simply cannot be said to be limited to aliens arriving at the border.” *Id.*

B. The Court should rule consistently with *Matter of Yajure Hurtado*, a specifically relevant Board of Immigration Appeals decision that merits *Skidmore* deference.

The statutory text and the Supreme Court’s decision in *Jennings* control the determination of this action; in addition, the Court can and should rule consistently with the BIA’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025) in holding that 8 U.S.C. § 1225(b)(2) properly applies to Singh, and the Court further may accord *Skidmore* deference to that BIA determination.

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, Inc.*, 150 F.4th 751, 763, n. 4 (6th Cir. 2025) (explaining that *Skidmore* deference survived the Supreme Court’s decision in *Loper Bright*, 603 U.S. at 402). 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*, 2025 WL 3033967 at *8 (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 288.

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. As the Western District of Louisiana put it,

For this Court to conclude that an alien who has unlawfully entered the United States and managed to remain in the country for a sufficient period of time is entitled to a bond hearing, while those who seek lawful entry and submit themselves for inspection are not, not only conflicts with the unambiguous language of the governing statutes, but would also seemingly undermine the intent of Congress in enacting the IIRIRA. This Court thus “refuse[s] to interpret the INA in a way that would in effect repeal [Congress’s] statutory fix.”

Sandoval, 2025 WL 3048926 at *6, n. 7, quoting *Gambino-Ruiz*, 91 F.4th at 990.

III. Singh Is and Has Been Afforded All Due Process to which He Is Entitled.

Singh raises due process generally. (Doc. 1, PageID.2, 4, 10-11.). As he 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), Singh does not have due process rights beyond those provided in 8 U.S.C. § 1225. *See Thuraissigiam*, 591 U.S. at 140 (“[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 in Singh’s circumstances have

limited liberty interests, while 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 is little chance of erroneous deprivation of any rights for aliens admittedly subject to removal, as Singh is. *Id.* at *13.

Singh’s petition makes no allegation that he was not given notice of the charges against him, given access to counsel, or will have an opportunity to be heard by an immigration judge. Accordingly, his petition presents no basis on which to find that his detention violates any procedural due process rights.

IV. This Court Should Not Release Singh Prior to the Immigration Judge Entertaining a Bond Hearing.

Singh incorrectly asserts that he is detained pursuant to § 1226, even though he is an applicant for admission under the INA. Nevertheless, Singh requests that this Court find he should be detained under § 1226, but then requests that the Court immediately release him. (Doc. 1, PageID.9.). That is contrary to statute. His request denies the process mandated by the detention statute he claims is 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 alien, 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 an alien

should remain detained during the pendency of his removal proceedings, the alien 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);⁵ *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 an alien 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 alien 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 alien should be detained under § 1226, rather than § 1225(b)(2), is not a finding for release, but rather a finding that the alien should be detained, unless he moves the immigration court for a bond and is so granted.

CONCLUSION

Because the Court lacks jurisdiction, the Court should dismiss the instant petition. Alternatively, the Court should deny the petition, because Singh is lawfully detained under 8 U.S.C. § 1225(b)(2) and the Agency has afforded him all due process to which he is entitled.

⁵ The BIA has identified a non-exhaustive list of factors the immigration judge may consider. *Guerra*, 24 I. & N. Dec. at 40.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 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/ Jason Snyder
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