IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

ZHI FENG HE, Petitioner,	)	
v.	)	Case No. CIV-25-1435-G
PAMELA BONDI, ET AL., Respondents.	)	

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

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NOW COME Respondents Attorney General Pamela Bondi, Secretary of Homeland Security Krisit Noem, Acting Director of U.S. Immigration and Customs Enforcement (ICE) Todd M. Lyons, Acting Executive Associate Director for Enforcement and Removal Operations (ERO) Marcos Charles, ERO Field Office Director Mark Siegel, ICE, and the U.S. Department of Homeland Security (DHS) (collectively, the "Federal Respondents"), who, pursuant to the Court's Order [Doc. 7] directing them to answer or otherwise respond to Petitioner Zhi Feng He's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 [Doc. 1], deny each allegation of the Petition except as may be admitted specifically herein, and submit that the Court should deny the requested relief and should enter an order of dismissal. Further responding, the Federal Respondents submit the following:

I. Introduction:

Petitioner Zhi Feng He was placed in immigration custody in September 2025. He asserts that he is detained at the Cimarron Correctional Facility in Cushing, Oklahoma, pursuant to 8 U.S.C. § 1225. He petitions for a writ of habeas corpus under 28 U.S.C. § 2241, seeking his immediate release or, in the alternative, an individualized bond hearing before an Immigration Judge (IJ) pursuant to 8 U.S.C. § 1226(a). Petition [Doc. 1] at 7; *see also id.* at 2 (praying for "immediate release from ICE custody or at a minimum conduct a custody determination hearing under 8 U.S.C. Section 1226(a)").

Mr. He contends that 8 U.S.C. § 1225(b)(2)(A) does not govern his detention but that he falls within § 1226(a)'s catch-all provision for the removal of non-citizens. *Id.* at 2. The practical difference between the two statutes is that an alien detained pursuant to §

1226(a) may be eligible for a bond hearing and release at the discretion of DHS, but bond hearings are not available for those who are detained pursuant to § 1225(b)(2)(A).

The Federal Respondents have not violated the law, Mr. He has not suffered a deprivation of due process, and he is not entitled to habeas corpus relief. The Court should deny his Petition [Doc. 1] and should enter an order of dismissal

II. Background:

Mr. He is a native and citizen of China who entered the United States illegally in December 2022. Petition [Doc. 1] at 4. He was not admitted or paroled after inspection by an immigration officer, and later that month he was placed in removal proceedings. He was charged under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA) (codified at 8 U.S.C. § 1182(a)(6)(A)(i)) as an alien present in the United States 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. Att. 1 at 1. Mr. He applied for asylum, and shortly thereafter DHS released him on his own recognizance. Att. 2; *see also* Petition [Doc. 1] at 4 ("Approximately after one week of detention and a claim[] of asylum, I was released and given work authorization.").

In early September 2025, a law enforcement officer encountered Mr. He, determined that he is in the United States without authorization, and took him to the Logan County Jail in Guthrie, Oklahoma. On September 16, 2025, Mr. He was transported to the ICE-ERO Oklahoma City Resident Office for administrative processing, then transferred to the Cimarron Correctional Facility, where he is detained under the authority of 8 U.S.C. § 1225. Petition [Doc. 1] at 4; Att. 3.

On December 1, 2025, Immigration Judge (IJ) Ivan Gardzelewski determined that Mr. He is inadmissible under INA § 212(a)(6)(A)(i). The IJ denied his requests for asylum and withholding of removal and ordered him removed to China. Att. 4 at 1, 3. Mr. He was represented by counsel, and he reserved the right to appeal the IJ's decision. His appeal is due December 31, 2025. *Id* at 1, 4.

III. Law and Argument:

A. Petitioner Seeks an Extraordinary Remedy.

"Habeas is at its core a remedy for unlawful executive detention," and the typical remedy for such detention is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008). Habeas corpus review may be sought by an immigration detainee who claims that 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 Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). The writ of habeas corpus, "while essential to our political system, is a drastic remedy." *Basri v. Barr*, 469 F. Supp. 3d 1063, 1066 (D. Colo. 2020).[1] "Habeas is an exceptional writ reserved for errors which result from fundamental defects that result in a complete miscarriage of justice or an omission inconsistent with the rudimentary demands for fair procedure." *Nguyen v. Noem*, No. 6:25-CV-057-H, 2025 WL 2737803, at *6 (N.D. Tex. Aug. 10, 2025) (citing *Hill v. United States*, 368 U.S. 424, 428 (1962), and *United States v. Reyna*, 358 F.3d 344,

[1] *See also Shinn v. Ramirez*, 596 U.S. 366, 377 (2022) ("The writ of habeas corpus is an extraordinary remedy that guards only against extreme malfunctions in the state criminal justice systems.") (internal quotation marks and citation omitted); *Gomez-Arias v. U.S. Immigr. & Customs Enf't*, No. 20-CV-00857-MV-KK, 2020 WL 6384209, at *2 (D.N.M. Oct. 30, 2020) ("As release from custody is an extreme remedy, Congress has circumscribed its use by the courts.").

349 (5th Cir. 2004)).

B. The INA Framework.

1. Applicants for Admission

In the INA, Congress established rules governing when certain aliens may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of "applicants for admission" — a subset of aliens. Section 1225 defines an "applicant for admission" as any "alien present in the United States who has not been admitted *or* who arrives in the United States." 8 U.S.C. § 1225(a)(1) (emphasis added). The INA defines "admission" and "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *Id.* § 1101(a)(13)(A). In other words, an applicant for admission is an alien who (1) is present in the United States and did not lawfully enter the country *or* (2) is arriving in the United States.

Pursuant to § 1225(a)(3), *all* applicants for admission are subject to inspection by immigration officers to determine if they are admissible. Section 1225(a)(3) does not make an exception for an alien "who has been present in the US for years," as Mr. He describes himself. Petition [Doc. 1] at 6. Rather, all aliens are subject to inspection, and Mr. He does not present a meaningful argument as to why he is not an "applicant for admission."

2. Removal Proceedings with Mandatory Detention: 8 U.S.C. § 1225

Applicants for admission typically are placed in removal proceedings in one of two ways. They either are put in expedited removal under 8 U.S.C. § 1225(b)(1) or in regular removal proceedings under 8 U.S.C. § 1225(b)(2).

Section 1225(b)(1) addresses the inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled. It describes the two categories of applicants for admission that are subject to expedited removal proceedings. The first category includes those aliens who are arriving and inadmissible under 8 U.S.C. § 1182(a)(6)(C) or (a)(7).[2] *Id.*, § 1225(b)(1)(A)(i). The second category includes those aliens who have "not been admitted or paroled into the United States," who have not "affirmatively shown, to the satisfaction of an immigration officer, that [they have] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," and who also are inadmissible under Section 1182(a)(6)(C) or (a)(7). *Id.* § 1225(b)(1)(A)(ii), (iii)(II). Aliens in the two categories described in § 1225(b)(1) are subject to expedited removal, *see* 8 C.F.R. § 235.3(b), and "shall be detained" until removed (or until the end of asylum or credible fear proceedings). 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV).[3]

Section 1225(b)(2), titled "Inspection of other aliens," "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)[.]" *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (citing 8 U.S.C. §§ 1225(b)(2)(A), (B)) (emphasis added). Under § 1225(b)(2)(A), all other applicants for admission who an immigration officer determines are "not clearly and beyond a doubt entitled to be admitted"

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[2] Section 1182(a)(6)(C) and (a)(7) address inadmissibility based on misrepresentation or the lack of valid entry documents.

[3] Depending on the circumstances, an alien who is ordered removed under Section 1225(b)(1)(A)(i) but who is not removed within 90 days of the removal order, *may* be released under an order of supervision. 8 U.S.C. § 1231(a)(3).

shall be detained for removal proceedings under 8 U.S.C. § 1229a. Thus, § 1225(b)(2)(A) generally provides for detention during full removal proceedings for aliens who are applicants for admission, but who do not fall within one of the two categories described in § 1225(b)(1) (*i.e.*, arriving aliens and other aliens subject to expedited removal). Section 1225 does not provide a bond hearing for aliens detained under that provision.

Although detention pursuant to § 1225(b) is mandatory, it is not indefinite. On the contrary, "§§ 1225(b)(1) and (b)(2) … provide for detention for a specified period of time." *Jennings*, 583 U.S. at 299. Specifically, "detention must continue … until removal proceedings have concluded." *Id.* (internal citation omitted). But "[o]nce those proceedings end, detention under § 1225(b) must end as well." *Id.* at 297. Further, DHS "may 'for urgent humanitarian reasons or significant public benefit' temporarily parole aliens detained under §§ 1225(b)(1) and (b)(2)." *Id.* at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)); *see* 8 C.F.R. §§ 212.5 (implementing regulations), 235.1(h)(2). "[P]arole of such alien[s] *shall not* be regarded as an admission of the alien[s]." 8 U.S.C. § 1182(d)(5)(A); *see id.* § 1101(a)(13)(B).

3. Warrants for Arrest Pending Deportation: 8 U.S.C. § 1226

Whereas § 1225 applies to applicants for admission, § 1226 applies more generally to all aliens (including, for example, legal permanent residents, stowaways, and others who are not applicants for admission), even if the alien has not yet encountered or been examined by immigration officers. Furthermore, § 1226 is initiated by warrants issued by the Secretary of Homeland Security. Thus, § 1226 provides procedures for detention and removal of a broader class of noncitizens and uses a different means to do so.

Section 1226(a) provides that if the Secretary of Homeland Security[4] issues a warrant, whether or not there was prior interaction with or examination by an immigration officer, an alien may be arrested and detained "pending a decision on whether the alien is to be removed from the United States." The section is a means of effectuating detention prior to any examination by an immigration officer. After an arrest, and subject to certain restrictions, the alien may be examined and remain detained or may be released on bond or conditional parole. *Id.* By regulation, immigration officers are authorized to release such an alien if he demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If not released by an immigration officer, the alien can request a custody redetermination by an IJ before a final order of removal is issued. *See id.*, §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

Within that broader category of all aliens, § 1226(c)(1) pertains to the mandatory detention of aliens who have had certain interactions with the criminal justice system. *See* 8 U.S.C. 1226(c) ("The Attorney General shall take into custody *any* alien who . . .") (emphasis added)). To this end, lawful permanent residents (*i.e.*, those who *have been admitted* to the United States and are *not* applicants for admission) may be subject to this mandatory detention provision. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(A)(i); *Nielsen v. Preap*, 586 U.S. 392 (2019) (lawful permanent resident detained pursuant to § 1226). It also reaches other noncitizens who are not applicants for admission, such as aliens admitted

[4] The INA's statutory references to the Attorney General are "a legal artifact," and the term "Attorney General" should be read to mean the "Secretary of Homeland Security." *Awe v. Napolitano*, 494 Fed. Appx. 860, 862 n. 3 (10th Cir. 2012).

erroneously but who are nevertheless deportable for being inadmissible at the time of admission. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(C)(i).

In summary, § 1225 only applies to applicants for admission and requires examination by an immigration officer, while § 1226 more generally applies to all aliens, even if not yet encountered or examined by immigration officers, and is initiated by warrants, even prior to inspection. While there is some overlap between the provisions, it is consistent with the broad purposes of the INA, the different means and remedies necessary to effectuate them, and the discretion afforded the Executive to do so.

C. Petitioner's Claims.

Mr. He asserts that his "detention is not governed by Section 1225(b)(2) because I am not an alien 'seeking admission into the country.'" Petition [Doc. 1] at 6. He presents two grounds for habeas relief. Ground One asserts that detention without a bond hearing violates the INA and the Fifth Amendment right to due process. Ground Two asserts that Section 1225(b)(2) does not govern his detention because he arrived in the United States in December 2022 and has since lived and worked in the United States. *Id.* at 2.

1. Mr. He's statutory claims, Ground One's claim that his detention "violates INA" and Ground Two's claim that § 1225(b)(2)(A) does not govern his detention, are barred by the INA's channeling and jurisdiction-stripping provisions.

This Court may not consider Mr. He's challenge to the proceedings brought pursuant to § 1225(b)(2)(A) rather than § 1226(a). The INA channels challenges arising from actions taken to remove an alien to the appropriate court of appeals.

Congress has provided aliens with a vehicle to challenge the statutory provision that

DHS relies on to detain and remove aliens. Specifically, the INA provides that claims related to removal orders are to be presented to the appropriate court of appeals through a petition for review. 8 U.S.C. § 1252(a)(5). Review of a final order includes 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." *Id.*, § 1252(b)(9) (emphasis added). The decision to effectively begin those proceedings via § 1225(b)(2)(A) and the filing of a Notice to Appear (NTA) is integral to the removal proceedings and a question of law that can be reviewed by the appropriate court of appeals as part of any appeal of a final order of removal. It is not reviewable by this Court. *See Acxel S.Q.D.C. v. Bondi*, 2025 WL 2617973, at *3 (D. Minn. Sept. 9, 2025) ("1252(b)(9) consolidates all questions of law and fact, including constitutional and statutory challenges, arising from removal proceedings into one petition for review—the review of a final removal order before a circuit court of appeals." (cleaned up)).

In addition to the channeling provision, Congress also limited what types of claims district courts can review. Specifically, 8 U.S.C. § 1252(g) states that, except as otherwise provided in Section 1252, courts lack jurisdiction to consider "any cause or claim by or on behalf of any alien arising from the decision or action by [DHS] to *commence* proceedings, *adjudicate* cases, or *execute* removal orders against any alien under this chapter." (emphasis added). The bar on considering the commencement of proceedings includes a bar on considering challenges to the *basis on which* DHS chooses to commence removal proceedings. *See Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1201 (11th Cir.

2016) ("By its plain terms, [§ 1252(g)] bars [courts] from questioning ICE's discretionary decisions to commence removal—and thus necessarily prevents [courts] from considering whether the agency should have used a different statutory procedure to initiate the removal process.").

Accordingly, Congress, in 8 U.S.C. § 1252(a)(5) and (b)(9), provided aliens like Mr. He a means to seek judicial review, but "a petition for review filed with an appropriate court of appeals" is meant to be the "sole and exclusive means" for that review. 8 U.S.C. § 1252(a)(5). "Judicial 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 under this section." 8 U.S.C. § 1252(b)(9). District courts do not have jurisdiction to review an alien's challenge to DHS's decision about the basis of removal proceedings.

Mr. He's description of his claim underscores this point. He asks the Court to reconstrue an Executive action into something it is not; namely, to recast his detention under § 1252(b) as detention under § 1226(a). *See* Petition [Doc. 1] at 2 (Ground Two). However, § 1252(g) "'was directed against ... attempts to impose judicial constraints upon prosecutorial discretion.'" *Veloz-Luvevano v. Lynch*, 799 F.3d 1308, 1315 (10th Cir. 2015) (quoting *Reno v. Am.–Arab Anti–Discrimination Comm.*, 525 U.S. 471, 485 n. 9 (1999)); *see also* 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review.").

Accordingly, this Court is without jurisdiction to hear Petitioner's statutory

challenges in Grounds One and Two of his Petition [Doc. 1].

2. Mr. He does not establish that § 1226(a) governs his detention, whereas the statutory text of § 1225(b) does apply.

The question Petitioner presents is whether § 1226(a) or § 1225(b)(2) governs his detention. Petition [Doc. 1] at 2 (Ground Two). "The preeminent canon of statutory interpretation" requires a court "to 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.'" *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) (quoting *Connecticut Nat. Bank v. Germain,* 503 U.S. 249, 253-254 (1992)). The inquiry "begins with the statutory text, and ends there as well if the text is unambiguous." *Id.*

"There is no need to consult extratextual sources when the meaning of a statute's terms is clear," nor may extratextual sources overcome a statute's terms. *McGirt v. Oklahoma*, 591 U.S. 894, 916 (2020). The only role such materials may play is to help clear up, not create, any ambiguity about a statute's meaning. *Id.*

Section 1225 governs the inspection, detention, and removal of aliens seeking admission. Section 1225(a)(1) defines which aliens are "applicants for admission," stating:

> *An alien present in the United States who has not been admitted* or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) *shall be deemed for purposes of this chapter an applicant for admission.*

8 U.S.C. § 1225(a)(1) (emphasis added).

Section 1225(b) then prescribes detention requirements, stating:

> [*I*]*n 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* for a proceeding under section 1229a of this title.

8 U.S.C. § 1225(b)(2)(A) (emphasis added).[5]

Section 1226(a), the provision that Petitioner urges the Court to apply, states:

> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General--
> (1) may continue to detain the arrested alien; and
> (2) may release the alien on--
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
> (B) conditional parole; but
> (3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

8 U.S.C. § 1226(a).

With any question of statutory interpretation, the Court must "begin with the text" by examining the "plain text of the statute." *United States v. Gonzales*, 456 F.3d 1178, 1181 (10th Cir. 2006); *United States v. Ortiz*, 427 F.3d 1278, 1282 (10th Cir. 2005). "When confronted with clear and unambiguous statutory language, our duty is simply to enforce the statute that Congress has drafted." *Ortiz*, 427 F.3d at 1282.

"'When a statute includes an explicit definition, we must follow that definition,'

[5] The statute begins with the clause, "Subject to subparagraphs (B) and (C)". 8 U.S.C. § 1225(b)(2)(A). The exceptions in subparagraph (B) are for crewmen and stowaways. *Id.*, § 1225(b)(2)(B). Subparagraph (C) provides for aliens who arrive on land from a foreign territory contiguous to the United States and states that "the Attorney General may return the alien to that territory pending a proceeding under section 1229a of this title." *Id.*, 1225(b)(2)(C).

even if it varies from a term's ordinary meaning." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (quoting *Burgess v. United States,* 553 U.S. 124, 130 (2008)). Here, the statutory definition in § 1225(a)(1) of *applicant for admission* is broad. "An alien present in the United States who has not been admitted … shall be deemed for purposes of this chapter," *i.e.*, Title 8, U.S. Code, Chapter 12 (Immigration and Nationality), "an applicant for admission." 8 U.S.C. § 1225(a)(1).

Petitioner fits squarely within that definition. He is an alien present in the United States who has not been admitted, so, by definition, under the plain statutory text, he is an applicant for admission. As an alien who is an applicant for admission, he shall be detained. 8 U.S.C. § 1225(b)(2)(A).

That he has resided in the United States for about three years does not render § 1225(b)(2)(A) inapplicable. An interpretation of § 1225(b) to apply it only to people arriving at ports of entry or who recently entered the United States would read into the statute limiting language that Congress did not write into the statute. "The statute explicitly includes more than just arriving aliens in the definition of 'applicant[s] for admission,'" and because Petitioner "is an alien, present in the United States, who has not been admitted, the law defines him to be an applicant for admission." *Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025). "[U]nder the plain text of § 1225(a)(1), any alien physically present in the United States who has not been admitted is an 'applicant for admission,' regardless of how long they have been in the country or whether they intended to apply or enter properly." *Silva Oliveira v. Patterson*, No. 6:25-CV-01463, 2025 WL 3095972, at *3 (W.D. La. Nov. 4, 2025).

The Federal Respondents are aware of this Court's decision in *Escarcega v. Olson*, No. CIV-25-1129-J, 2025 WL 3243438 (W.D. Okla. Nov. 20, 2025). In *Escarcega*, the Court found that § 1226(a), not § 1225(b)(2)(A), controlled the detention of a petitioner who had lived in the United States continuously for twenty years after entering the United States illegally. The Court ordered the respondents in *Escarcega* to provide the petitioner a prompt bond hearing under § 1226(a) or otherwise release him.

The Federal Respondents acknowledge that the Court might apply *Escarcega* to grant Mr. He some or all of the relief he seeks, but the Federal Respondents respectfully submit that to do so would constitute error. The Federal Respondents' position is supported by well-reasoned opinions from other district courts. *See, e.g.*, *Valencia v. Chestnut*, No. 1:25-CV-01550 WBS JDP, 2025 WL 3205133, at *3 (E.D. Cal. Nov. 17, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Cabanas v. Bondi,* No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Mejia Olalde*, 2025 WL 3131942; *Silva Oliveira*, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Barrios Sandoval v. Acuna*, Case No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646 (W.D. La. Oct. 22, 2025), *report and recommendation adopted,* 2025 WL 3113644 (W.D. La. Nov. 6, 2025); *Cirrus Rojas v. Olson*, No. 25-CV-1437-BHL, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Vargas Lopez v. Trump*, No. 25-CV-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

Petitioner also relies on the prior practice of federal immigration authorities, taking

issue with DHS's "new interpretation and policy" to detain aliens pursuant to § 1225(b)(2) rather than § 1226(a). Petition [Doc. 1] at 3. Longstanding practice may inform a court's determination of the law, but it cannot supplant the proper reading of statutory text. The plain meaning of the statute prevails. *Mejia Olalde*, 2025 WL 3131942, at *5.

The detainee in *Mejia Olalde*, a citizen of Mexico, had lived in the United States for almost 40 years but was never lawfully admitted. Like Mr. He, he petitioned for a writ of habeas corpus, asking for either his immediate release or an individualized bond hearing. *Id.* at *1. The court concluded that § 1225(b)(2), not § 1226(a), governed his detention, so he was not entitled to a bond hearing. And because he was lawfully detained under § 1225(b)(2), the court denied his request for release. *Id.* at *5.

Similarly, the petitioner in *Cirrus Rojas* was a citizen of Mexico who had lived in the United States without authorization for 7 years. ICE officials determined that he was an applicant for admission under § 1225 and therefore ineligible for bond, which represented "a change from longstanding immigration practice." 2025 WL 3033967, at *1. In his petition, he argued that his arrest and detention were governed by § 1226 and that ICE's invocation of § 1225 was "incorrect and a deviation from decades of established practice in the immigration courts." *Id.* at *2.

Cirrus Rojas acknowledged that a majority of courts had agreed with the petitioner's construction, but no appellate court had reached the issue, "and the statutory text is more consistent with Respondents' position." *Id.* at *5. Denying his petition, the court found:

> Cirrus Rojas meets the definition of "applicant for admission" in Section 1225(a)(1). He is an alien "present" in the United States and he has not been "admitted." 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. at *8.

There was no statutory basis to exclude the petitioner from the definition of "applicant for admission" in § 1225(a)(1). *Id.* The court observed that perhaps the petitioner's most persuasive argument was that for years officials had treated similarly situated aliens as eligible for bond under § 1226(a), but in the end the court had to follow the most natural reading of the text. "Prior administrations' generous interpretations of these laws, while relevant to understanding that text, do not and cannot rewrite it," and the respondents' reading was more consistent with the statutory text. *Id.* at *9. The petitioner's argument was akin to estoppel, seeking to preclude ICE from adopting a new, different interpretation based on its past practice, "[b]ut there is no estoppel against the federal government." *Id.* The court was bound to apply the statute as written. *Id.*

Petitioner cites *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018), for the proposition that § 1225(b) applies to "recently arrived non citizens or those apprehended at a border or port of entry," as distinguished from aliens already in the United States pending the outcome of removal proceedings. Petition [Doc. 1] at 2, 7. The Supreme Court in *Jennings* did not state that § 1225(b) applies *only* to aliens seeking entry into the United States. Instead, the *Jennings* Court noted that "§ 1225(b) applies *primarily* to aliens seeking entry into the United States," 583 U.S. at 297 (emphasis added), a different proposition.

> Thus, the *Jennings* Court did not restrict the application of § 1225(b) only to aliens who are seeking entry into the United States or aliens who are near the border. 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.

Silva Oliveira, 2025 WL 3095972, at *6.

Mr. He is an alien who is statutorily deemed an "applicant for admission" who "shall be detained." 8 U.S.C. § 1225(a)(1), (b)(2)(A). The Federal Respondents have not violated the INA.

3. Mr. He's due process claim is premature.

ICE is afforded a 90-day period within which to remove an alien from the United States following the entry of a final order of removal. 8 U.S.C. § 1231(a)(1). During the removal period, ICE "shall detain the alien." *Id.*, § 1231(a)(2). Upon conclusion of the removal period, ICE may either release the alien subject to an order of supervision as directed by 8 U.S.C. § 1231(a)(3) or continue the detention under § 1231(a)(6).

Mr. He has been detained since September. Petition [Doc. 1] at 4. Although he does not assert a claim under *Zadvydas*, the case stands for the proposition that immigration detainees may bring statutory and constitutional habeas corpus challenges to their detention. 533 U.S. at 687-88. *Zadvydas* also stands for the propositions that after a final order of removal is entered, an alien ordered removed is held in custody during a 90-day removal period, and if the alien is not removed in those 90 days, there is a post-removal-period during which the alien may continue to be detained or may be released on supervision. There is a presumptively reasonable 6-month period of post-removal-order detention, and even the 6-month presumption "does not mean that every alien not removed must be released after six months." *Id.* at 701. The alien "may be held in confinement

until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

A § 2241 petition is premature if it is brought before the alien has been in six months of post-removal-order detention. Furthermore, there is no viable due process claim under either substantive or procedural due process for such detention. *Al-Shewaily v. Mukasey*, No. CIV-07-0946-HE, 2007 WL 4480773, at *6 (W.D. Okla. Dec. 18, 2007); *see also Quang Minh Lien v. Sessions*, No. 18-CV-2146-WJM-SKC, 2018 WL 4853339, at *2 (D. Colo. Oct. 5, 2018) (noting the dismissal of an earlier habeas corpus action brought by the petitioner "as unripe because he had not been detained for six months").

When Mr. He filed suit on December 1, 2025, he acknowledged that "a December 1 hearing" was scheduled before an IJ. Petition [Doc. 1] at 4. On December 1, an IJ ordered Mr. He removed to China. Att. 4 at 3. Mr. He has a passport issued by the People's Republic of China that does not expire until August 2029. Att. 2, blocks 20-22. He is now in the 90-day statutory removal period, and his habeas corpus petition is premature.

IV. Prayer for Relief:

WHEREFORE, the Federal Respondents respectfully pray for an order of this Honorable Court denying the Petition for Writ of Habeas Corpus [Doc. 1] and dismissing the action.

Respectfully submitted this 16th day of December, 2025.

ROBERT J. TROESTER
United States Attorney

/s/ R. D. Evans, Jr.

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Certificate of Service

I hereby certify that on the 15th day of December, 2025, I electronically transmitted the foregoing document to the Clerk of Court using the Electronic Case Filing (ECF) System for filing, and I further certify that on the 15th day of December, 2025, I served the foregoing document via U.S. Mail on the following, who is not a registered participant of the Court's ECF System:

Zhi Feng He
A-Number [redacted]
Cimarron Correctional Facility
3200 S Kings Hwy
Cushing, OK 74023

/s/ R. D. Evans, Jr.
R. D. EVANS, JR.
Assistant United States Attorney

Index of Attachments

Attachment 1: *In the matter of Zhifeng He*, DHS File No. [redacted] Notice to Appear (December 31, 2022)

Attachment 2: DHS Form I-589, Application for Asylum and Withholding of Removal, I/C/O Zhifeng He, Alien Registration No. [redacted]

Attachment 3: ICE Form I-830E, Notice to EOIR: Alien Address I/C/O Zhifeng He, Alien Registration No. [redacted] (September 16, 2025)

Attachment 4: *In the matter of Zhifeng He*, A-Number: [redacted] Order of the Immigration Judge (December 1, 2025)