

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

HABIB ABDUL GANIYU,)	
Petitioner,)	
)	
v.)	CIV-25-1443-G
)	
KRISTI NOEM, et al.,)	
Respondents.)	

**RESPONSE IN OPPOSITION TO
THE PETITION FOR WRIT OF HABEAS CORPUS**

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**RESPONSE IN OPPOSITION TO
THE PETITION FOR WRIT FOR HABEAS CORPUS**

Respondents United States Attorney General Pamela Bondi, United States Secretary of the Department of Homeland Security (DHS) Kristi Noem, Acting Director of the United States Immigration and Customs Enforcement (ICE) Todd Lyons, ICE Chicago Office Director of Enforcement and Removal, Sam Olsen, and Director of the Executive Office for Immigration Review Daren Margolin (collectively, “Respondents”¹), pursuant to the Court’s Order (Doc. 7), respond to the Petition for Writ of Habeas Corpus (Doc. 1), and respectfully submit that the Court should deny the Petition and enter an order of dismissal.

INTRODUCTION

Petitioner is a noncitizen challenging DHS’ decision to detain him pursuant to 8 U.S.C. § 1225(b)(2)(A), rather than 8 U.S.C. § 1226(a). The practical difference between the two sections is that noncitizens detained under § 1226(a) *may* be eligible for a bond hearing at the *discretion* of DHS, but noncitizens detained under § 1225(b)(2)(A) may not be released on bond. Petitioner contends that he should be regarded as detained pursuant to § 1226 and provided a bond determination. He also asserts that any ongoing detention without a bond determination is a due process violation.

Thus, this case largely turns on the plain language of the Immigration and

¹ Respondent Steve Kelley, Warden of the Kay County Detention Center, is not a federal official and this response is therefore not filed on her behalf. It is respectfully submitted that Warden Kelley’s interests in this litigation are contractually derivative of the federal respondents’ interests and that a separate response from Warden Kelley is not necessary to resolve the Petition or effectuate relief.

Nationality Act (“INA”). 8 U.S.C. § 1225(b)(2)(A) provides that:

[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.

Importantly, the factual predicate for the application of the statute is not in dispute. The Petition does *not* assert that Petitioner is somehow not “seeking admission.” That omission is no accident given the ongoing removal proceedings and Petitioner’s Application for Asylum, Withholding of Removal and Relief Under the Convention Against Torture. *See* Exhibit 1, Asylum Application.

Instead, Petitioner lodges a structural challenge. First, Petitioner argues that recent enforcement of § 1225(b)(2)(A) is a change in policy by the new administration. And while that contention is true, it is hardly a reason to resist the plain language of the statute. Petitioner contends that § 1226 should apply to him as he is an individual already in the country. Doc. 1, Petition at ¶ 27. It should be noted that various district courts have ruled against the government largely based on the change in enforcement and associated interpretations of statutory structure premised on that change to conclude that § 1225 only applies to “arriving aliens,” despite the notable *absence* of that phrase in § 1225(b)(2)(A).²

² Indeed, the Honorable Judge Jones has so held. *Escarcega v. Olson*, 2025 WL 3243438, at *1 n.2 (W.D. Okla. Nov. 20, 2025); *but see 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); *Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Oliveira v. Patterson*, 6:25-cv-01463-DCJ-DJA, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *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),

But those opinions do not account for the language and history of the INA.

Before 1996, the INA only contemplated inspection of noncitizens arriving at ports of entry. Other noncitizens, like Petitioner, who entered illegally were not subject to § 1225. But Congress changed that in 1996 with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) to place those who entered illegally on equal footing with those encountered at the border. Thus, § 1225(a)(1) now deems “alien[s] present in the United States” to be “applicants for admission.” Further, IIRIRA created two provisions outlining different processes for noncitizens encountered at the border and *those found within*. While § 1225(b)(1) addresses detention of those aliens “arriving in the United States” and provides for expedited removal, § 1225(b)(2) addresses “[i]nspection of *other* aliens” (i.e., including those *not* arriving) and provides for full removal proceedings making it clear that § 1225 includes those noncitizens already in the country and that those noncitizens receive full (not expedited) proceedings.

The additional detention authority under § 1226 does not change this understanding. While § 1225(b)(2)(A) allows detention when an immigration officer encounters noncitizens and makes determinations regarding their admissibility, § 1226(a) also provides for detention using a different means and order of operation; namely, the issuance of a warrant and then examination of the noncitizen. The two provisions should be read

report and recommendation adopted, No. 6:25-CV-00451, 2025 WL 3113644 (W.D. La. Nov. 6, 2025); *Rojas v. Olson*, Case 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. 25-CV-23250CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

together to provide flexibility and discretion for *different* means of examination and detention, applied to overlapping but not coexistent groups of noncitizens. A contrary ruling imperils intended flexibility, ignores the history of IIRIRA, and introduces statutory ambiguity by giving legal significance to a class of noncitizens *not* recognized in the INA; namely, those illegally present but not seeking admission.³

Moreover, Petitioner's request to construe his detention as pursuant to § 1226(a) rather than § 1225(b)(2)(A) is a challenge to how DHS commenced proceedings (not his mere detention), which is barred by the jurisdiction stripping provision of the INA. That is especially true given that § 1226 does not guarantee a bond determination.

Finally, Petitioner advances a conception of due process that precludes any detention of noncitizens without a bond determination. That expansive position has never been adopted by the Supreme Court, despite repeated invitations to do so. Moreover, in other contexts, the Court has only recognized an obligation to conduct bond determinations after periods of detention much longer than Petitioner has faced.

Accordingly, the Petition should be denied.

BACKGROUND

I. Legal Framework

³ Limiting § 1225 to “arriving aliens” will have serious implications for other immigration enforcement. Under § 1225, DHS has exercised its unreviewable authority to designate noncitizens that have entered illegally and been present in the country for up to two years (i.e., not “arriving”) for expedited removal. *See* 8 U.S.C. § 1225(b)(1)(A)(iii); Designating Aliens for Expedited Removal, 90 FR 8139 (Jan. 24, 2025). Petitioner's construction of § 1225 cannot be squared with that statutorily authorized initiative.

A. Applicants for Admission

In the INA, Congress established rules governing when certain aliens/noncitizens⁴ 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 noncitizens. 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 a noncitizen 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 any exception for applicants for admission who are just passively residing in the country. Rather, all aliens are subject to inspection.

Petitioner does not advance a meaningful argument as to why he is not an “applicant for admission.” And significantly, Petitioner does not claim he is not “seeking admission.” Nor can he as he has sought asylum and withholding of removal.

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

⁴ This response “uses the term ‘noncitizen’ as equivalent to the statutory term ‘alien.’” *Nasrallah v. Barr*, 590 U.S. 573, 578 n.2 (2020).

Applicants for admission may primarily be placed in removal proceedings one of two ways, either through expedited removal under § 1225(b)(1), or through regular removal proceedings under § 1225(b)(2).

Section 1225(b)(1), titled “Inspection of aliens arriving in the United States ...,” 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).⁵ *Id.* § 1225(b)(1)(A)(i). The second category includes those noncitizens 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)(i), (iii)(II). Noncitizens within 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).⁶

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))

⁵ Section 1182(a)(6)(c) and (a)(7) address inadmissibility based on misrepresentation or the lack of valid entry documents.

⁶ 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).

(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” 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; *see id.* § 1101(a)(13)(B).

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

While § 1225 applies to applicants for admission, § 1226 applies more generally to *all* noncitizens (including for example, legal permanent residents, stowaways, and others who are *not* applicants for admission), even if the noncitizen has not yet encountered or been examined by immigration officers. Further, § 1226 is initiated by warrants issued by

the Secretary of DHS. 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 Secretary⁷ of DHS issues a warrant, regardless of whether there was prior interaction or examination by an immigration officer, a noncitizen 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. Following arrest, and subject to certain restrictions, the noncitizen may be examined and remain detained or may be released on bond or conditional parole. *Id.* By regulation, immigration officers can 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 immigration judge 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 noncitizens, § 1226(c)(1) pertains to the mandatory detention of noncitizens 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

⁷The 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).

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 noncitizens admitted 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* noncitizens, 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.

II. Petitioner’s Background: An Applicant Seeking Admission

Petitioner is a native and citizen of Ghana. Exhibit 2, Decl. of McNary at ¶ 3. Petitioner has been present in the United States since June 19, 2024. Petitioner at ¶ 12. On that date, Border Patrol Officers encountered Petitioner at or near Otay Mesa, California and determined that he was a National of Ghana and that he was present in the United States without being admitted or paroled by an immigration officer. Petitioner was placed into removal proceedings through issuance of a Notice to Appear and was charged as removable under § 212(a)(6)(A)(i). He was released on his own recognizance due to detention capacity. Exhibit 2 at ¶ 4; *see also* Exhibit 3, Notice to Appear.

On November 8, 2024, Petitioner filed an I-589 Application for Asylum and for Withholding of Removal. Exhibit 2 at ¶ 5; *see also* Exhibit 1. On October 27, 2025, Petitioner was encountered at the Chicago, Illinois District Office by ERO Officers, where he was arrested and detained. Exhibit 2 at ¶ 6. On November 13, 2025, he was booked into the Kay County Detention Center, where he remains detained under INA § 235. *Id.* at ¶ 7. Petitioner is scheduled for a bond hearing on December 9, 2025, and an individual hearing on January 6, 2025. Both hearings are set in the EOIR Otero Immigration Court. *Id.* at ¶ 8; *see also* Exhibit 4, Redetermination Hearing Notice and Exhibit 5, Individual Hearing Notice.⁸

In short, Petitioner has been seeking—and continues to seek—admission into the United States. If Petitioner’s application for asylum and withholding of removal is successful, Petitioner’s status would be a legal resident and he would have a form of legal admission. 8 U.S.C. § 1229b(b) (“The Attorney General may cancel removal of, and adjust to the status of an alien **lawfully admitted** for permanent residence, an alien who is inadmissible or deportable from the United States if the alien ...”); 8 U.S.C.A. § 1101(a)(20) (“The term “**lawfully admitted** for permanent residence” means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws” (emphasis added)); *Djong v.*

⁸ Noncitizens, like Petitioner, who are placed in removal proceedings under 8 U.S.C. § 1229a are entitled to retain counsel, receive notice of the charges of removability, have a hearing, and present a defense, cross-examine witnesses, and compel production of documents and witnesses. See 8 U.S.C. § 1229a(b)(1); 8 U.S.C. § 1229a(b)(4)(A); 8 C.F.R. § 1240.10(a).

Mayorkas, No. 24-CV-00475-CNS, 2024 WL 5089985, at *4 n.5 (D. Colo. Dec. 12, 2024) (“The INA allows immigration judges to adjust the status of certain noncitizens to lawful permanent resident during a removal proceeding to avoid removal.”). Thus, Petitioner is seeking admission.

III. Petitioner’s Claims

Petitioner asserts two counts. Count I alleges a statutory violation of the INA and challenges DHS’s commencement of proceedings pursuant to § 1225(b)(2)(A). Count II alleges a broader due process violation stemming from Petitioner’s ongoing detention without a bond determination.⁹

ARGUMENT

The Petition should be denied. Count I challenges DHS’s decision to detain Petitioner under § 1225(b)(2)(A) and therefore runs headlong into the INA’s jurisdiction channeling and stripping provisions, depriving this Court of jurisdiction. Further, Petitioner’s statutory assertions misread the INA and cannot account for the statutory definition of “applicants for admission.” Count II’s claim of a due process violation is premature and without basis.

I. Petitioner’s Statutory Argument Is Jurisdictionally Barred and Misreads the INA

A. Petitioner’s Statutory Claim (Count I) Is Barred by the INA’s Jurisdiction Channeling and Stripping Provisions

This Court cannot consider Petitioner’s challenge to DHS’s commencement of

⁹ But as has been noted, Petitioner is scheduled for a bond hearing on December 9, 2025. Thus, his claims are premature.

proceedings pursuant to § 1225(b)(2)(A) rather than § 1226(a). As explained below, the INA channels challenges arising from actions taken to remove an alien to the appropriate court of appeals.

Congress has provided noncitizens with a vehicle to challenge the statutory provision that DHS relies on to detain and remove noncitizens. 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 immediate filing of a notice to appear 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—but not 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, 1203 (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 sections 1252(a)(5) and (b)(9)—provided aliens (like Petitioner) with a vehicle to challenge the basis on which ICE seeks to detain and remove them in the court of appeals; but Congress also—in sections 1252(b)(9) and (g)—deprived district courts of jurisdiction to review an alien’s challenge to DHS’s decision about the basis of removal proceedings.

Petitioner will no doubt try to sidestep the jurisdictional bar by claiming that he is not challenging the decision to *commence* proceedings, but merely his ongoing detention. While Petitioner’s due process claim (Count II) arguably only challenges his ongoing detention, Count I expressly challenges the basis of the *commencement* of proceedings against him and is barred. Boiled down to its essence, Count I contends that DHS should have used its arrest powers under § 1226. But that is foreclosed by § 1226 itself. *See* 8 U.S.C. § 1226(e) (“The Attorney General’s discretionary judgment regarding the application of this section shall not be subject to review.”).

Further, upon examination and detention, DHS filed charges. *See* Exhibit 3. Thus,

the immigration officer's examination of Petitioner directly and immediately effected *commencement* of the proceedings and therefore triggers the jurisdictional bar. *See Namgyal Tsering v. U.S. Immigr. & Customs Enf't*, 403 F. Appx 339, 343 (10th Cir. 2010) (“We agree with the Fifth Circuit that claims that clearly are included within the definition of arising from are those claims connected *directly and immediately* with a decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” (cleaned up)).

Petitioner's functional request for relief underscores this point. He asks the Court to *reconstrue Executive actions* into something they are not (§ 1226 instead of § 1225), undermining prosecutorial discretion. Yet, “§ 1252g 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.”).

Thus, as opposed to the challenge to detention in Count II, Count I challenges the application of § 1225, which only collaterally affects the potential for release on bond. *Axel S.Q.D.C.*, 2025 WL 2617973, at *3 (“Petitioner precisely challenges Respondents' decision to detain him. Although he contends that § 1252(b)(9) does not bar his claims because he is challenging his ongoing detention, not the initial decision to detain him, this difference does not alter the Court's conclusion.”).

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

challenge.

B. Petitioner’s Statutory Argument Misconstrues the INA and the “Applicant for Admission” Deeming Provision

The plain language of § 1225(b)(2)(A) straightforwardly applies in this case. To escape that conclusion, some courts have suggested ambiguity based on the title and/or structure of the provision and past practice, and others read a limitation of “arriving noncitizen” into the language of § 1225(b)(2)(A) that is conspicuously absent from the actual text. As noted below, each of those contentions is in error.

Before addressing those points, however, it should be noted that Petitioner does not meaningfully explain his arguments in the Petition. The Petition consists of recitations of DHS’s historical enforcement practices and explanations of the recent changes. But beyond generally arguing that § 1226, not § 1225(b)(2), applies to people like Petitioner (Petition at ¶ 27), the Petition does *not* set forth the basis of that argument. Indeed, the Petition merely quotes generalized language from *Jennings*, which is addressed below.

While the Respondents attempt to respond to anticipated arguments, when seeking relief, it is incumbent upon Petitioner to plainly state all the reasons for the relief he seeks. Indeed, “[t]he habeas rule instructs the petitioner to ‘specify all the grounds for relief available to [him]’ and to ‘state the facts supporting each ground.’” *Mayle v. Felix*, 545 U.S. 644, 649 (2005). Rule 1 and basic fairness demand nothing less. Accordingly, Respondents request that the Court preclude or not entertain arguments not explicitly included—or merely referenced without elaboration—in the Petition.

1. Petitioner Is an Applicant for Admission, Seeking Admission

Petitioner does not explain why he is not an applicant for admission or contest the immigration officer's assessment that he is not clearly and beyond a reasonable doubt not entitled to admission. And Petitioner cannot establish that he has and is applying for admission. Put differently, other than broad structural arguments, Petitioner does not explain why the section does not apply. Respectfully, the Court should not supply the missing analysis.

2. Section 1225(b)(2)(A) Does Not Contain an "Arriving" Limitation

Congress used the phrase "arriving alien" throughout Section 1225. *See, e.g.* 8 U.S.C. §§ 1225(a)(2), (b)(1), (c)(1), (d)(2). The phrase distinguishes a noncitizen presently or recently "arriving" in the United States from other "applicants for admission" who, like Petitioner, have been in the United States without being admitted. But Congress *did not* use the word "arriving" to limit the scope of § 1225(b)(2)(A)'s mandatory-detention provision. Had Congress intended to limit § 1225(b)(2)(A)'s scope to "arriving" noncitizens, it would have used that phrase like it did in § 1225(b)(1), a mere one subsection prior. But Congress did not and that omission must be given effect. *Cabanas*, 2025 WL 3171331, at *5 ("The 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."). But Congress did not and that election to selectively use "arriving" must be given effect. *Russello v. United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (cleaned up)); *Sosa v.*

Alvarez-Machain, 542 U.S. 692, 711 n.9 (2004) (concluding that “[t]he Government’s request that we read [a specific] phrase into [a statutory] exception, when it is clear that Congress knew how to specify [those words] when it wanted to, runs afoul of the usual rule that when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended.”).

Despite the lack of an “arriving” limitation, Petitioner asserts in conclusory form that § 1225 should not apply to him as he was already in the country. Petition ¶ 27. But that sweeping statement *cannot account for* the definition of an applicant for admission that includes those found in the country and § (b)(2)(A)’s lack of the “arriving” modifier.

The Title of § 1225 underscores this point. The title reads: “Inspection by immigration officers, *expedited removal of inadmissible arriving aliens*, **referral for hearing.**” The first underlined portion is a reference to subpart (a)’s inspection obligations. The second italicized portion refers to the expedited proceedings of (b)(1) for “arriving aliens.” Importantly, however, the third part of bolded text is a reference to the full removal proceedings under (b)(2)(A) for noncitizens present in the country. That is because “arriving aliens” are subject to *expedited* removals and do not get hearings pursuant to § 1229a. In contrast, noncitizens present in the country are provided full removal hearings under (b)(2)(A) (“detained for a proceeding under section 1229a”). *See Sandoval*, 2025 WL 3048926, at *4 (“However, aliens subject to removal under § 1225(b)(2) are not subject to expedited removal but, rather, removal proceedings in the ordinary course pursuant to § 1229a.”). No other portion of § 1225 provides for hearings. Thus, the title is consistent with the Respondents’ reading—and *inconsistent* with Petitioner’s

interpretation.

Likewise, the subpart titles of §§ 1225(b)(1) and (b)(2) are consistent. The title of (b)(1) is “Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled.” In contrast, (b)(2) has *no* reference to arriving aliens. It reads “Inspection of other aliens.” Again, the use of “arriving” in some parts of § 1225 and not others must be given effect. Petitioner’s interpretation renders the references to “arriving” superfluous.

3. *Petitioner’s Interpretation Undermines the Purpose of the IIRIRA*

Petitioner’s interpretation effectively repeals a statutory fix Congress enacted with IIRIRA. Specifically, prior to the 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.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020). 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.*; *see also* H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“This subsection is intended to replace certain aspects of the current ‘entry doctrine,’ under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry.”).

Petitioner’s argument would undo that fix and incentivize noncompliance with immigration laws by providing more protection to those that bypass border inspections and

evade detection to reside within the United States—a result at odds with the intent of Congress when amending § 1225 of the INA. *See Chavez*, 2025 WL 2730228, at *4 (rejecting Petitioner’s reading because it would repeal the IIRIRA statutory fix); *Sandoval*, 2025 WL 3048926, at *6 n.7 (“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.”); *Oliveira*, 2025 WL 3095972, at *6 (holding that application of § 1225(b)(2)(A) to those residing in the “country comports with the legislative history of [IIRIRA]”).

Indeed, that intent is revealed through a review of the commentary implementing regulations. That commentary reads: “*Despite being applicants for admission*, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis added). Thus, the italicized portion acknowledges the plain language of the statute that noncitizens in the country *are* “applicants for admission” under § 1225, but announces the *discretionary* choice to use § 1226 for detentions and thus permit bond hearings. A new administration has deviated from that prior choice, as it is permitted to do. Thus, Petitioner and several courts conflate enforcement discretion with statutory interpretation, which then leads to concern about ambiguity that does not exist. *Rojas*, 2025 WL 3033967 at *9 (“In the end, the Court concludes that it must follow the most natural reading of the statutory text. Prior administrations’ generous interpretations of these laws,

while relevant to understanding that text, do not and cannot rewrite it. As explained above, Respondents' reading is more consistent with the plain terms of Section 1225(b)."); *Cabanas*, 2025 WL 3171331 *6 ("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.").

4. *Claims of Passive Residency Do Not Alter Whether a Noncitizen Is an Applicant for Admission Subject to Detention*

Petitioner may argue in reply (it is not found in the Petition) that he is no longer "seeking admission." Essentially, Petitioner may (but has not yet) argue that passive residency is not "seeking admission." Although some courts have adopted that reasoning, those opinions fail to give effect to the plain language of the statute, defy canons of statutory interpretation, and are wrongfully decided. Indeed, the Supreme Court has treated § 1225(b)(2)(A) as applying to "*all applicants for admission* not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287 (emphasis added); *see also Sandoval*, 2025 WL 3048926, at *5 n.5 ("The fact that Petitioner may have lacked the subjective intent to ever apply for admission does not prevent her from being categorized as an "applicant for admission" under § 1225. For this Court to hold otherwise would clearly contravene the plain statutory language and Congress's intent.").

"As always, we start with the statutory text." *Garland v. Cargill*, 602 U.S. 406, 415 (2024). Statutory language "is known by the company it keeps." *Dubin v. United States*, 599 U.S. 110, 124 (2023) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). In the context presented, "seeking admission" and "applying for admission" are plainly

synonymous. Congress has linked these two variations of the same phrase in Section 1225(a)(3), which requires all aliens “who are applicants for admission or otherwise seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013); *Cabanas*, at *5 (“There is no material disjunction—by the terms of the statute or the English language—between the concept of ‘applying’ for something and ‘seeking’ something. That Petitioner has resided in the United States without valid permission for years thus doesn’t render § 1225(b)(2)(A) inapplicable.” (cleaned up)).

As a matter of law, by being “present in the country” without being “admitted,” Petitioner *is deemed* an “applicant for admission.” *Olalde*, at *3 (“[T]he statute *defines* [petitioner] as seeking admission ... 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. He is thus seeking admission.”); *Sandoval*, 2025 WL 3048926, at *5 n.5 (“The fact that Petitioner may have lacked the subjective intent to ever apply for admission does not prevent her from being categorized as an “applicant for admission” under § 1225. For this Court to hold otherwise would clearly contravene the plain statutory language and Congress’s intent.”); *Oliveira*, 2025 WL 3095972, at *5 n.4 (same); *Vargas Lope*, at *9 (“just because [petitioner] illegally remained in this country for years does not mean that he is suddenly not an ‘applicant for admission’ under § 1225(b)(2)”).

Moreover, it bears repeating that Petitioner (with the assistance of counsel) has *not* asserted or argued that he is somehow not “seeking admission.” Moreover, Petitioner has *not* offered to voluntarily depart, *see* 8 U.S.C. § 1229(c) (Voluntary Departure).

5. *Petitioner’s Passing Citation to Jennings Is Misplaced*

Petitioner notes that *Jennings* observed that § 1226 governs “when an individual is ‘already in the country.’” Petition at ¶ 27 (citing *Jennings*, 583 U.S. at 289). From that quote, Petitioner appears to argue that § 1225 is inapplicable to people like Petitioner.

In *Jennings*, the Supreme Court addressed whether aliens were entitled to periodic bond hearings during detentions under §§ 1225 and 1226 that became prolonged. 583 U.S. at 291-92. In doing so, the Court suggested that § “1225(b) applies *primarily* to aliens seeking entry into the United States,” *id.* at 297 (emphasis added), and that § 1226(a) is the “default rule” for aliens “inside the United States,” *id.* at 288. But *Jennings* goes on to confirm that § 1225(b)(2) should apply to aliens who entered without inspection. Specifically, the *Jennings* Court described § 1225(b)(2) as a “catchall provision that applies to *all applicants for admission* not covered by § 1225(b)(1).” *Id.* at 287 (emphasis added). And the Court did *not* limit § 1225(b) to those just arriving in the United States. In short, *Jennings*’ general description of the statutory framework does not support Petitioner’s sweeping reading and the Court was not addressing the statutory question at issue here.

* * *

In summary, the Court is without jurisdiction over DHS’ election to *commence* proceeding under § 1225(b)(2)(A). Further, the plain text of § 1225(b)(2)(A) applies to Petitioner as an applicant for admission. Petitioner does not meaningfully advance contrary

arguments and those hinted at require reading requirements into the statute that are not there or finding superfluity where it does not exist. Accordingly, relief under Count I of the Petition should be denied.

II. Petitioner’s Constitutional Due Process Argument (Count II) Is Premature and Without Basis

At the time the Petition was filed, Petitioner had only been in custody for 35 days. The only case or argument Petitioner asserts in support of his due process argument (Count II) is a general quote from *Zadvydas* regarding freedom from imprisonment. Petition at ¶ 30 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). Nothing more is proffered.

That lone assertion is woefully insufficient to warrant consideration of relief. *United States v. Clay*, 148 F.4th 1181, 1201 (10th Cir. 2025) (“It is well-settled that arguments inadequately briefed in the opening brief are waived.” (quotation omitted)). Indeed, the only case cited, *Zadvydas*, stands for the proposition that detention is presumptively permitted for six months. Petitioner’s one month and twelve days of detention falls far short. And in *Zadvydas*, the petitioner was facing the prospect of indefinite detention. That is also not the case here. As noted above, while 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.

If Petitioner contends that his detention violates constitutional standards, he must do more than state it in conclusory fashion. The Respondents and the Court should not be left to guess the basis for Petitioners' claim or only discover it upon reading the reply brief. *Clay*, 148 F4th at 1201 (“We also will not consider issues raised for the first time in a reply brief or issues raised in a cursory fashion in the opening brief and then developed in a reply” (cleaned up)).

Granting the Petition under the premise that all detention must be subject to bond hearings would require a reading of the Due Process Clause that the Supreme Court has never endorsed and in fact has repeatedly avoided. *See Jennings*, 583 U.S. at 297 (“nothing in the statutory text imposes any limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings”). This Court should decline to take such a drastic step without meaningful briefing. *See Mathews v. Diaz*, 426 U.S. 67, 81 (1976) (“Any rule of constitutional law that would inhibit the flexibility of the political branches of government to respond to changing world conditions should be adopted only with the greatest caution.”); *Demore v. Kim*, 538 U.S. 510, 522 (2003) (“And, since *Mathews*, this Court has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.”).

Should the Court nonetheless entertain some version of Petitioner's argument, it should be denied.

To assess the merits of Petitioner's constitutional claims, it is necessary to determine first what due process rights Petitioner possesses. As noted above, federal statute *mandates* Petitioner's detention. 8 U.S.C. § 1225(b)(2)(A). And the Supreme Court has held,

nowhere in the statutory rubric did Congress mention a bond hearing or state a maximum period of time within which an alien could be held in such mandatory detention without providing a bond hearing. *See Jennings*, 583 U.S. at 297. Petitioner has not been admitted to the U.S., and for any alien who has not been admitted into the country pursuant to law, the INA provides the only process due under the Constitution. *United States v. Thuraissigiam*, 591 U.S. 103, 138-40 (2020); *see also Demore*, 538 U.S. at 523 (“It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings. At the same time, however, this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process.” (cleaned up)).

Indeed, the Supreme Court has described “our century-old rule regarding the due process rights of an alien seeking initial entry” as “rest[ing] on fundamental propositions” that:

[T]he 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.”

Thuraissigiam, 591 U.S. at 139 (cleaned up); *see also U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) (“Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.”). Those holdings cannot be squared with Petitioner’s apparent claim that no detention of noncitizens without a bond determination is ever permissible under the Due Process Clause.¹⁰

¹⁰ Again, if Petitioner is advancing a more nuanced position, it is not stated.

CONCLUSION

The Respondents respectfully request that the Court deny the Petition and dismiss the case.

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Respectfully submitted,
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