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

FLORENTINO LEAL DAMIAN, Petitioner,	)	
v.	)	CIV-25-1561-J
KRISTI NOEM, et al., Respondents.	)	

RESPONSE IN OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS

January 21, 2026

Respectfully submitted,

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Respondents Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security; U.S. Department of Homeland Security; Pamela Bondi, in her official capacity as U.S. Attorney General; Executive Office for Immigration Review; and Joshua Johnson, Field Office Director of Removal and Enforcement Operations, ICE Dallas Field Office, Immigration and Customs Enforcement, in his official capacity (collectively, Respondents[1]), pursuant to the Court's Order (Doc. 6), respond to the Petition for Writ of Habeas Corpus ("Pet.") (Doc. 1), and respectfully submit that the Court should deny the Petition and enter an order of dismissal.

INTRODUCTION

Petitioner is a noncitizen challenging the Department of Homeland Security's ("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 bail determination violates due process.

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

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[1] Respondent Don Jones, Warden of Kay County Detention Center, is not a federal official and any response is therefore not filed on his behalf.

Petitioner lodges historical and structural challenges to the use of § 1225. Specifically, Petitioner argues that recent enforcement of § 1225(b)(2)(A) is a change in policy by the new administration that many courts, to include this one, have rejected. Pet. at ¶ 35. And while it is true that a change in policy has occurred, it is hardly a reason to resist the plain language of the statute.

Further, Respondents acknowledge the Court's opinion in *Escarcega v. Olson* cited by Petitioner,[2] s and understand that the same holding will likely be applied in this case. Nonetheless, Respondents respectfully contend that the *Escarcega* opinion is in error, and for purposes of preserving its position for appeal, submit this Response, which is supported by the well-reasoned opinions from several other district courts, as discussed below. Indeed, as explained in a recent decision issued by the Honorable United States District Judge Jodi W. Dishman, those decisions do not account for the plain language of § 1225, the overall statutory structure, and congressional intent behind its adoption as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).[3] Thus, contrary to Petitioner's assertion, courts have not "uniformly rejected" the new policy as "def[ying] the INA." Pet. at ¶ 36. Further, 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

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[2] *Escarcega v. Olson*, No. CIV-25-1129-J, 2025 WL 3243438 (W.D. Okla. Nov. 20, 2025). *See also Diaz v. Holt*, No. CIV-25-1179-J, 2025 WL 3296310 (W.D. Okla. Nov. 20 2025); *Garcia v. Holt*, No. CIV-25-1225-J, 2025 WL 3516071 (W.D. Okla. December 8, 2025).

[3] *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025).

of the INA. That is especially true given that § 1226 does not guarantee a bond determination.

Finally, Petitioner advances a concept 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 under different circumstances and after much longer detention than Petitioner has faced.

BACKGROUND

I. Legal Framework

A. Applicants for Admission

In the INA, Congress established rules governing when certain aliens/noncitizens[4] 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). 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.

[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).

Petitioner falls into the first group.

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

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 § 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]

[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 § 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).

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" 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.

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 Secretary[7] of DHS issues a warrant, regardless of whether there was prior interaction or examination by an immigration officer, a

[7] 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 F. App'x. 860, 862 n. 3 (10th Cir. 2012).

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 before 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). Otherwise, 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 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, that 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

Petitioner is an applicant for admission. Specifically, Petitioner alleges that he has been present in the United States since approximately 2023. Pet. at ¶ 42. ICE encountered Petitioner on November 5, 2025, and detained him. *Id.* ¶ 43. He is currently detained at the Kay County Detention Center. *Id.* ¶46. Significantly, Petitioner contends that he has resided in the United States continuously, that he is married to a United States citizen, and that he has three minor United States citizen children. *Id.* ¶ 45.

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.

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

Respondents acknowledge the Court's ruling on this jurisdictional issue in *Escarcega*, 2025 WL 3243438, at * 1, and understand that the same holding will likely be applied in this case. Respondents make the following arguments to preserve their position for appeal.

This Court cannot consider Petitioner's challenge to DHS's commencement of 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 (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—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 § 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 §§ 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 §§ 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 may 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. Thus, the immigration officer's examination of Petitioner directly and immediately effected *commencement* of the proceedings and triggers the jurisdictional bar. *See Namgyal Tsering v. U.S. Immigr. & Customs Enf't*, 403 F. App'x 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. *Acxel 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

Respondents again acknowledge the Court's opinion in *Escarcega*, 2025 WL 3243438, at *2-3, and understand that the same holding will likely be applied in this case. Nonetheless, Respondents respectfully contend that the *Escarcega* opinion is in error, and for purposes of preserving its position for appeal, submit the following arguments, which are supported by the well-reasoned opinions from several other district courts.[8]

[8] *See, e.g.*, *Montoya*, 2025 WL 3733302; *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), *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-2325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

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

Congress used the phrase "arriving alien" throughout §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."); *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 the statute's framework is premised on inspections at the border of people who are

'seeking admission' to the United States. But that sweeping position *cannot account for* the definition of an applicant for admission that includes those found in the country and § 1225(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 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.

2. Petitioner's Interpretation Undermines the Purpose of the IIRIRA

Petitioner's interpretation effectively repeals a statutory fix Congress enacted with IIRIRA in 1996. 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]").

Petitioner points to the commentary implementing regulations for IIRIRA to suggest that the Executive understood § 1225 to only apply to arriving aliens. Specifically, he cites (without quotation) to Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings, Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). *See* Pet. ¶ 28. But the commentary actually 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, contrary to Petitioner's assertion, 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).").

3. The Laken Riley Act Does Not Render § 1225(b)(2)(A) Superfluous

Petitioner may argue in reply (but does not directly argue in the Petition) that a recent amendment to the INA—the Laken Riley Act (LRA)—would be superfluous if the government's reading of § 1225(b)(2)(A) is accepted.[9] But this argument confuses a Venn diagram of overlapping enforcement schemes that facilitate prosecutorial discretion with perfectly congruent (and therefore superfluous) enforcement provisions that do not exist. Instead, in both 1996 and 2025, Congress wanted *more* enforcement of immigration restrictions and enacted complementary provisions to effectuate that purpose.[10]

Section 1226(a)'s general detention authority, which permits the issuance of warrants to detain all noncitizens for their removal proceedings, must be read alongside § 1225, which specifically addresses the detention of applicants for admission which is a subset of noncitizens subject to § 1226. And § 1226 does not displace the more specific provisions in § 1225 governing the detention of applicants for admission. It is well established that where "there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one." *Guidry v. Sheet Metal Workers Nat. Pension Fund*, 493 U.S. 365, 375 (1990) (citation omitted). Here, § 1225 is narrower in scope than

[9] Petitioner mentions the LRA and otherwise makes arguments based on various provisions on the INA discussed at Part I(B)(e). *See* Pet. at ¶¶ 27, 28-41.

[10] *See Cabanas*, 2025 WL 3171331 *6 ("[T]he 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. 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)").

§ 1226. It applies only to "applicants for admission," which includes noncitizens present in the United States who have not been admitted. *See* 8 U.S.C. § 1225(a)(1).

Petitioner contends that "[t]he text of § 1226 . . . explicitly applies to people charged as being inadmissible, including those who entered without inspection," referencing § 1226(c)(1)(E), and asserting that "[s]ubparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a)." Pet. at ¶ 38. To be sure, as amended by the LRA, § 1226(c)(1)(E) mandates detention for a group of noncitizens that includes a narrow subset of applicants for admission that may also be subject to § 1225(b)(2)(A) detention; namely, those who both entered without inspection and were arrested for, committed, or have admitted to committing one of a list of enumerated crimes. But § 1226(c)(1)(E) applies to *all* noncitizens who meet the criminal criteria and is thus broader.

Conversely, the mandatory detention provisions of § 1226(c)(1)(E) do not reach the rest of applicants for admission under § 1225(b)(2)(A) who do *not* meet the criminal criteria. Put simply, the two enforcement provisions have overlap much like a Venn diagram, but they are not perfectly overlapping so as to make a provision superfluous. *See Jennings* 583 U.S. at 305 (rejecting a claim of superfluity in the INA context by observing "[a]lthough the two provisions overlap in part, they are by no means congruent" and "apply to different categories of aliens in different ways"); *Am. Car Rental Ass'n v. Humphreys*, 2025 WL 1758898, at *5 (D. Colo. May 29, 2025) ("There is, to be sure, significant overlap between the two. But the canon against superfluity only requires what its name implies; it does not require that each provision have entirely distinct coverage—just that total

superfluity be avoided.").

As the Supreme Court has acknowledged, some overlap and redundancies "are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton v. Barr*, 590 U.S. 222, 239 (2020). "Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.*; *Rimini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019) ("Sometimes the better overall reading of the statute contains some redundancy."). Section 1225(b)(2)(A) allows detention upon encountering an immigration agent and § 1225(c) provides for detention by the issuance of a warrant. Two *different* routes to detention, in addition to two different (albeit with some overlap) groups of noncitizens affected. Moreover, if Petitioner's construction is correct, then one would expect to find a cross-reference to § 1225(a)(1) in § 1226(c)(1)(E)(i) or simply a reference to all "applicants for admission." That would be the direct manner accomplishing what Petitioner suggests. But the LRA has no such cross reference, demonstrating that the LRA amendment is not limited to "applicants for admission."

Petitioner's comparison is contradicted by the statute. The plain language of the LRA applies to *all* noncitizens who meet its criminal criteria, not just "applicants for admission." For example, § 1226(c)(1)(E)(i) applies to noncitizens inadmissible under "paragraph … (6)(C) … of section 1182(a)." In turn, the referenced paragraph (6)(C) of § 1182(a) addresses misrepresentation of material facts and applies *even if a noncitizen obtained admission* (meaning, not an "applicant for admission") by fraud or

misrepresentation. *See* 8 U.S.C. § 1182(a)(6)(C) ("Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible."). Put simply, even as amended by the LRA, § 1226 applies to *all* noncitizens and sweeps much broader than Petitioner suggests. It is plainly not limited to applicants for admission. *Sandoval*, 2025 WL 3048926, at *5 ("Petitioner's argument that § 1226 would be rendered superfluous under Respondents' interpretation of § 1225(b)(2) is unpersuasive. The statutory scheme of the INA does not render these two provisions mutually exclusive, and there are many other categories of aliens to whom § 1226(a) is applicable, but not § 1225(b)(2)"); *Hernandez Cruz v. Noem*, 2025 WL 3482630, at *4 (C.D. Cal. Dec. 2, 2025) ("But the fact that Congress added this provision as part of the Laken Riley Act in 2025 cannot be read to displace or supersede § 1225's requirement that all applicants for admission, including those who unlawfully came to the United States without inspection, be detained."); *Cabanas*, 2025 WL 3171331 *6 ("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." (cleaned up)).

Further, even if there is some overlap in the class of noncitizens between § 1225(b)(2)(A) and the LRA, the two provisions use different means, have different obligations, and invert the order of detention and examination. Those differences independently undercut any assertion of superfluity.

Finaly, the LRA passed on January 22, 2025, and was signed by the President on January 29, 2025. But as noted in the Petition, the more expanded use of § 1225 was not announced by ICE and DOJ until July of 2025 and *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 216 (BIA 2025) was decided later, in September of 2025. As such, Congress did not have the benefit of knowing the Executive's expanded use of § 1225 when it passed the LRA. It was legislating against the backdrop of a more restrained enforcement strategy of the prior administration. That is significant:

> When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect. 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. 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). Simply put, amendment by the recent Laken Riley Act to § 1226 isn't superfluous.

Cabanas, 2025 WL 3171331, at *6 (cleaned up); *see also Valencia*, 2025 WL 3205133, at *4 ("This argument reverses the order of events. The Laken Riley Act was passed before the new interpretation of Section 1225 was issued. The Laken Riley Act could not therefore 'perform the work' of the expansive reading of Section 1225, because that work had not yet been done.").

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 somehow now "seeking admission." Essentially, Petitioner may 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 cannons 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)). Section 1225(b)(2) requires the detention of an "applicant for admission, if the examining officer determines that [the] alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory text and context show that being an "applicant for admission" is a means of "seeking admission." In other words, every "applicant for admission" is inherently and necessarily "seeking admission," at least absent a choice to withdraw their applications for admission or seek voluntary departure. No additional affirmative step is necessary.

Section 1225(a)(3) confirms this by providing that all noncitizens "who are applicants for admission or *otherwise seeking admission* ... shall be inspected by immigration officers." (emphasis added). The word "'[o]therwise' means 'in a different way or manner . . . .'" *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project*,

Inc., 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *see also Att'y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) ("The phrase 'or otherwise' operates as a catchall: the specific item that precede it are *meant* to be subsumed by what comes after the phrase 'or otherwise.'" *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th Cir. 2019) (same); *see also* Black's Law Dictionary 1101 (6th ed. 1990) ("Otherwise. In a different manner; in another way, or in other ways"). Being an "applicant for admission" is thus a particular "way or manner" of seeking admission, such that any alien who is an "applicant for admission" *is* "seeking admission" for purposes of §1225(b)(2)(A).

"Seeking admission" is thus 'a term of art' that includes not only aliens who "entered the United States with visas or other entry documents before their presence became lawful" but also aliens who "entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of [INA §] 235(a)(1) . . . ." *Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 n.6 (BIA 2012) (emphases omitted). As a result, "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Id.* at 743. For example, an alien who previously unlawfully entered the United States and never is admitted, departs, and subsequently submits a literal application for admission to the United States—*e.g.*, obtaining travel documents, such as a visa, and presenting at a port of entry for inspection—is deemed to be "*again* seek[ing] admission" to the United States. *Id.* at 743-44 & n.6 (emphasis added) (quoting and

discussing 8 U.S.C. § 1182(a)(9)(B)(i)(I)-(II)). Mere presence without admission *is* seeking admission "by operation of law." *Id.*; *Montoya*, 2025 WL 3733302, at *8 (explaining, "If 'applicants for admission' are subject to inspection because they fall within the broader class of those 'seeking admission,' then the statute necessarily treats 'seeking admission' as a condition that attaches to anyone deemed an 'applicant for admission.' And because § 1225(a)(1) imposes that label on every 'alien present in the United States who has not been admitted,' the condition of 'seeking admission' is likewise imposed. 'Seeking' does not describe what the alien is voluntarily doing or the alien's mindset. The alien is 'seeking admission' in the same way the alien is 'an applicant for admission'—by congressional decree.").

The everyday meaning of the statutory terms also support this reading. One may "seek" something without "applying" for it—for example, one who is "seeking" happiness is not "applying" for it. But one *applying* for something necessarily is *seeking* it. *Accord Mejia Olalde*, 2025 WL 3131942, at *3 ("To 'seek' is a synonym of to 'apply' for."). *Compare* Webster's New World College Dictionary (4th ed.) at 69 ("apply" means "To make a formal request (*to* someone *for* something)"), *with id.* at 1298 ("seek" means "to request, ask for"). For example, a person who is "applying" for admission to a college or club is "seeking" admission to the college or club. *See* The American Heritage Dictionary of the English Language 63 (1980) ("American Heritage Dictionary") ("apply" means "[t]o request or *seek* employment, acceptance, or *admission*" (emphasis added)). Likewise, an alien who is "applying" for admission to the United States (*i.e.*, an "applicant for admission") necessarily is "seeking admission" to the United States. *Accord Rojas*, 2025

WL 3033967, at *8 ("seeking admission" is "best read as simply another way of referring to aliens who are applicants for admission").

All of this confirms that neither the duration of a noncitizen's unlawful presence in the United States nor his distance from the border when apprehended alters the legal reality that an "applicant for admission" is "seeking admission." "Congress knows how to limit the scope" of the INA "geographically and temporally when it wants to." *Mejia Olalde*, 2025 WL 3131942, at *4. For example, § 1225(b)(1) may apply to aliens "arriving in the United States" or who "ha[ve] been physically present in the United States continuously for [a] 2-year period." § 1225(b)(1). So, "[i]f 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." *Mejia Olalde*, 2025 WL 3131942, at *4. It did not. To the contrary, § 1225(a)(1)'s inclusion of *both* aliens "arriving" and those "present in the United States" confirms that *all* aliens who are not admitted are "applicants for admission," regardless of the length of their presence in the country.

None of this is to say, however, that "seeking admission" has no meaning beyond "applicant for admission." As § 1225(a)(3) shows, being an "applicant for admission" is only *one* "way or manner" of "seeking admission," not the exclusive way. For example, lawful permanent residents returning to the United States are not "applicants for admission," but they still may be deemed to be "seeking admission" in some circumstances. *See* 8 U.S.C. § 1101(a)(13)(C). But for purposes of § 1225(b)(2) and its regulation of "applicants for admission," the statute unambiguously provides that an alien who is an "applicant for admission" is "seeking admission," even if the alien is not engaged in some

separate, affirmative act to obtain admission. Stowaways, too, are not "applicants for admission" but are still subject to inspection for admissibility. *See* 8 U.S.C. §§ 1182(a)(6)(D); 1225(a)(2). Moreover, given the complexity of the statutory scheme and IIRIRA's changes, Congress's use of the phrase "or otherwise seeking admission" ensured that all aliens would be subject to § 1225(a)'s inspection requirement—including aliens who entered before IIRIRA's effective date.

Further, as a matter of law, by being "present in the country" without being "admitted," Petitioner *is* deemed an "applicant for admission." *Mejia 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 Lopez*, 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)").[11]

[11] Additionally, a contrary reading leads to the absurd result that immigration officers cannot immediately detain a noncitizen residing in the United States without determining if they were somehow *actively* seeking admission (a standard not identified or defined in the INA or implementing regulations). Instead, the proper standard for the immigration officer is that which is plainly stated in the INA; namely, whether the noncitizen is "entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A).

It bears repeating that Petitioner (with the assistance of counsel) does not assert in the Petition that he is 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 § 1225 applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." Pet. ¶ 40 (citing *Jennings*, 583 U.S. at 287). From that quote, Petitioner argues that "the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended." *Id.* at ¶ 41. However, Petitioner's initial quote picks up after—and therefore omits—the critical qualifying phrase "*generally begins*"—meaning the Court was not explaining *all* applications of § 1225. Rather, the border is where its application begins, not where it *ends*. Indeed, the quoted sentence cites to all of § 1225 generally, *not* § 1225(b)(2)(A) specifically.

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. Count I of the Petition is without merit.

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

Petitioner has been in custody for less than three months. Pet. at ¶ 43. 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. Pet. at ¶ 53 (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 detention falls far short. And in *Zadvydas*, the petitioner was facing the prospect of indefinite detention. That is also not the case. 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. 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 F.4th 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. § 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 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.[12]

CONCLUSION

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

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Respectfully submitted,

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[12] Again, if Petitioner is advancing a more nuanced position, it is not stated.