

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

JORGE LUIS BECERRA PEREZ,)	
Petitioner,)	
)	
v.)	CIV-25-1560-JD
)	
SCARLET GRANT, 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 OF HABEAS CORPUS**

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 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.

However, this Court has already rejected the Petition's contentions in *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025). Respondents respectfully contend this case should be decided likewise.

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.

¹ Respondent Scarlet Grant, Warden of the Cimarron Correctional Center, is not a federal official and this response is therefore not filed on her behalf.

Importantly, Petitioner cannot dispute that he is an “applicant for admission.” Instead, 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. And while that contention is true, it is hardly a reason to resist the plain language of the statute. Petitioner also notes that several district courts see it differently and have ruled that § 1225 only applies to “arriving aliens,” despite the notable *absence* of that phrase in § 1225(b)(2)(A).²

² This Court is currently split. Two judges have adopted the Respondents’ position, *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025); *Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344 (W.D. Okla. Jan. 6, 2026), while other members of the Court have disagreed. *See, e.g., Cortez v. Holt*, No. CIV-25-1176-SLP, 2026 WL 147435, at *1 (W.D. Okla. Jan. 20, 2026); *Rojas v. Noem*, No. CIV-25-1236-HE, 2026 WL 94641 (W.D. Okla. Jan. 13, 2026); *Valdez v. Holt*, No. CIV-25-1250-R, 2025 WL 3709021 (W.D. Okla. Dec. 22, 2025); *Colin v. Holt*, No. CIV-25-1189-D, 2025 WL 3645176 (W.D. Okla. Dec. 16, 2025); *Escarcega v. Olson*, No. CIV-25-1129-J, 2025 WL 3243438 (W.D. Okla. Nov. 20, 2025).

Outside this Court, several district courts initially adopted the Petitioner’s position. However, “[a] growing number of courts have gone the other way.” *Coronado v. DHS*, 1:25-CV-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025); *see also Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025); *Hernandez Cruz v. Noem*, No. 8:25-CV-02566-SB-MAA, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025); *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-23250CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

But those decisions cannot 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”). 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 of the INA. That is especially true given that § 1226 does not guarantee a bond determination.³

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 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/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

³ Respondents recognize that this Court rejected these jurisdictional arguments in *Montoya* and advance them here to preserve appellate argument should it be necessary.

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).

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. 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 Section 1182(a)(6)(c) or (a)(7). *Id.* § 1225(b)(1)(A)(i), (iii)(II).

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

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)) (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

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).

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 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 subject to this mandatory detention provision. *See* 8 U.S.C. §§ 1227(a)(1)(A);

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 F. App’x. 860, 862 n. 3 (10th Cir. 2012).

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 1999 without being inspected or admitted. Petition at ¶42. ICE encountered Petitioner in December of 2025 in Tulsa. He was examined by immigration officers, taken into custody, and placed in removal proceedings. *Id.* at ¶44. He is currently at the Cimarron Correctional Detention Center. *Id.* at ¶ 43.⁸

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).

Significantly, Petitioner previously filed a 42B Application for Cancellation of Removal. Exhibit 1 (first page of motion redacted). If 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. 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 *has* and *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.

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 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 an 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 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. 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. 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. *Axcel 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.

I. 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.”); *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. *Montoya*, 2025 WL 3733302, at *2 (“The statute gives no temporal or geographic limitations on the status of being an applicant for admission.”).

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.

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* Petition ¶ 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 suggests 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. But Petitioner 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. *Sosa*, 2026 WL 36344, at *5 (“Any overlap between the two provisions is thus better understand as a belt-and-suspenders approach to an immigration crisis.”).

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 § 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).

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. *Montoya*, 2025 WL 3733302, at *12 (The LRA does not “allow the Court to impute the term ‘arriving’ to each subsection of § 1225.”).

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 assertion is also 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 argues. 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*, 2025 WL 3482630, at *4 (“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. *Montoya*, 2025 WL 3733302, at *12 (The LRA does not “allow the Court to impute the term ‘arriving’ to each subsection of § 1225.”).

Finally, Petitioner’s reliance on the LRA suffers from a basic chronology problem. The Laken Riley Act 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 Laken Riley Act. 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 and therefore waived) that he is not “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)). 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. *Montoya*, 2025 WL 3733302, at *9 (“So, all ‘applicants for admission’ are ‘seeking admission.’ The former is sufficient (but not necessary) for the latter, and the latter is necessary (but not sufficient) for the former.”); *Sosa*, 2026 WL 36344, at *4 (“And once deemed an ‘applicant for admission,’ an alien is necessarily ‘seeking admission.’ Thus, Congress’s use of ‘seeking admission’ is perfectly consistent with its unambiguous definition of ‘applicant for admission,’ which sweeps in *all* aliens present in the United States but not yet admitted.”). 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 Section 1225(b)(2)(A). *Montoya*, 2025 WL 3733302, at *7 (“Here, § 1225(a)(3) explains how the contested phrases relate. Specifically, ‘applicants for admission or otherwise seeking admission’ creates a formal logical relationship between the two concepts.”).

“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.*; *see also Montoya*, 2025 WL 3733302, at *8-9 (“‘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. So, all ‘applicants for admission are ‘seeking admission.’”).

The everyday meaning of the statutory terms also supports 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.” *Montoya*, 2025 WL 3733302, at

*2 (“The statute does not create a third ‘non-seeking applicant’ category, and the ‘applicant for admission’ category explicitly includes both arriving and present unadmitted aliens.”). “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, Section 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.” 8 U.S.C. § 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. But it did not do so. To the contrary, Section 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,” or is surplus language. 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 Section 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 Section 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)”⁹).

⁹ 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). *Montoya*, 2025 WL 3733302, at *2 (“How does a court determine when an unadmitted alien is no longer an ‘applicant for admission’ or ‘seeking admission?’ Is two years of unadmitted residence long enough? Three? How far must an alien travel from the border? 50 miles? 100? If an alien has been in the interior a short time but resides far away from the border, can the distance make up for a short duration? Or, if an alien lives close to the border but resides in the country for decades, can the time period make up for the short distance?”); *Coronado*, 2025 WL 3628229, at *9 (noting that Petitioner’s reading does not square with examining officer’s articulated obligations and stating “one would also assume that Congress would have provided some directives as to

Moreover, Petitioner has *not* offered to voluntarily depart, *see* 8 U.S.C. § 1229(c) (Voluntary Departure). To the contrary, Petitioner is **seeking a form of admission** by trying to stay in the country. *Montoya*, 2025 WL 3733302, at *10 (“This in turn lends the straightforward inference that ‘applicants for admission’ apply for admission until taking the actions prescribed under § 1225(a)(4) [voluntary departure].”). Further, as noted above, Petitioner has sought and is seeking cancellation of removal, which is seeking a form of admission.

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.” Petition ¶ 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.

the contours of that subset, *e.g.*, factors to consider in deciding whether a given ‘applicant for admission’ (an expressly defined term) is also ‘seeking admission.’ But Congress did not do so.”). 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).

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.

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

The Supreme Court concluded in *Demore v. Kim*, 538 U.S. 510 (2003), that mandatory detention pending removal proceedings does not violate due process. The detainee in *Demore* challenged his detention without an individualized bond hearing under § 1226(c). That provision, much like § 1225(b)(2)(A), mandates detention in certain circumstances throughout the pendency of removal proceedings. *Id.* at 527–28. The *Demore* detainee argued that constituted indefinite detention and violates the Due Process Clause. But the *Demore* Court rejected that premise. Section 1226(c) has a definitive endpoint—the end of the removal proceedings—and thus a noncitizen is not subject to indefinite detention. *Id.* at 529.

Petitioner relies on *Zadvydas v. Davis*, 533 U.S. 678 (2001). But the petitioner there was facing the prospect of indefinite detention and the Court still held that detention up to six months was presumptively reasonable. Petitioner, here, was detained less than a month when the Petition was filed. Further, like § 1225(c), detention pursuant to § 1225(b) 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. In short, the Petition is premature and without basis.

Thus, 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 312 (remanding for consideration of constitutional arguments). This Court should decline to take such a drastic step. *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.”).

That is especially true given Petitioner’s lack of meaningful explanation and briefing. If Petitioner contends that his detention violates constitutional standards, he must do more than state it in conclusory fashion. *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)); *Montoya*, 2025 WL 3733302, at *13 (“The Court agrees that Petitioner’s ‘[t]hreadbare recital[] of the elements of a cause of action, supported by mere conclusory statements’ fails to satisfy his pleading standard.”). The Respondents and the Court should not be left to guess the basis for Petitioner’s claim or only discover it upon reading the reply brief. *Montoya*, 2025 WL 3733302, at *13 (rejecting the exact argument made in the Petition as insufficient to raise a constitutional claim).

Should the Court nonetheless address Petitioner’s constitutional claim, it is necessary to first determine what due process rights Petitioner possesses. As noted above, the federal statute *mandates* Petitioner’s detention. 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 noncitizen who has not been admitted into the country, 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)). Those holdings cannot be squared with Petitioner’s broad and undifferentiated constitutional claim.

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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