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

AHMED GUMA ELTAYEB HUSSIEN, Petitioner,	)	
v.	)	Case No. CIV-26-00004-JD
WARDEN OF CIMARRON CORRECTIONAL FACILITY, ET AL., Respondents.	)	

RESPONSE IN OPPOSITION TO VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COME Respondents Acting Director of United States Immigration and Customs Enforcement (ICE) Todd Lyons, Secretary of Homeland Security Kristi Noem, and United States Attorney General Pamela Bondi (collectively, the "Federal Respondents"),[1] who, for response to the Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief ("Petition") [Doc. 1] and the Court's Order [Doc. 9] directing a response, respectfully submit that the Court should deny the Petition and enter an order of dismissal. Further responding, the Federal Respondents submit the following:

Brief in Opposition

1. The Court already has determined issues presented by the Petition in the Federal Respondents' favor.

Petitioner Ahmed Guma Eltayeb Hussien seeks habeas corpus relief, asserting that

[1] Respondent Warden of Cimarron Correctional Facility is not a federal official and this response is therefore not filed on the Warden's behalf.

the Department of Homeland Security (DHS) is holding him under 8 U.S.C. § 1225 which, he claims, is "the wrong statutory authority." Petition [Doc. 1] at 2, ¶ 8. He claims that his "circumstances place him under 8 U.S.C. § 1226, not § 1225, meaning he is entitled to an individualized custody redetermination during his removal proceedings." *Id.*, ¶ 9.

This Court in *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025) determined the issues presented by Mr. Hussien's Petition [Doc. 1] in favor of the Federal Respondents. Like the petitioner in *Montoya*, Mr. Hussien is an "applicant for admission" under the plain language of § 1225(a)(1) because he is present in the United States and is inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection. *Montoya*, 2025 WL 3733302, at *7; *compare with* Petition [Doc. 1] at 1, ¶ 2 (Petitioner "entered the U.S. without inspection on or about June 10, 2024."), and at 6, ¶ 30 ("Petitioner entered the United States in 2024 without inspection by crossing the U.S.–Mexico border."). Section 1225(a)(1) defines which aliens are "applicants for admission," stating in pertinent part that an "alien present in the United States who has not been admitted or who arrives in the United States ... *shall be deemed for purposes of this chapter an applicant for admission.*" 8 U.S.C. § 1225(a)(1) (emphasis added).

As an "applicant for admission," Mr. Hussien is "seeking admission." *See Montoya*, 2025 WL 3733302, at *9 ("[A]ll 'applicants for admission' are 'seeking admission.' .... Petitioner is seeking admission."). Section 1225 unambiguously deems an "applicant for admission" as one who is "seeking admission." *Id.* at *12.

"Section 1225(b)(2)(A) ... provides that 'in 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 removal proceedings, without bond." *Id.* at *1.

Petitioner is properly detained under 8 U.S.C. § 1225. He is not entitled to a bond hearing.

2. Statutory analysis demonstrates that Petitioner is an applicant for admission.

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

3. Petitioner is subject to mandatory detention and is not entitled to a bond hearing.

Applicants for admission are placed in removal proceedings through: (1) expedited removal under § 1225(b)(1); or (2) regular removal proceedings under § 1225(b)(2).

Section 1225(b)(1) describes two categories of applicants for admission who are subject to expedited removal proceedings. The first category includes those aliens who are

arriving and inadmissible under 8 U.S.C. § 1182(a)(6)(c) or (a)(7).[2] *Id.* § 1225(b)(1)(A)(i). The second category includes those aliens who have "not been admitted or paroled into the United States," who have not "affirmatively shown, to the satisfaction of an immigration officer, that [they have] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," and who also are inadmissible under Section 1182(a)(6)(c) or (a)(7). *Id.* § 1225(b)(1)(A)(i), (iii)(II). Aliens 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).[3]

Section 1225(b)(2) "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

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

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

under that provision.

4. The Executive Branch determines whether to employ § 1226.

While § 1225 applies to applicants for admission, § 1226 applies more generally to *all* aliens (including for example, legal permanent residents, stowaways, and others who are *not* applicants for admission), even if the alien has not yet encountered or been examined by immigration officers. 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 aliens and uses a different means to do so.

Section 1226(a) provides that if the Secretary of Homeland Security[4] 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 alien 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.

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

Within that broader category of all aliens, § 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* aliens, even if not yet encountered or examined by immigration officers and is initiated by warrants—even prior to inspection. While there is some overlap between the provisions, that is consistent with the broad purposes of the INA, the different means and remedies necessary to effectuate those purposes, and the discretion afforded the Executive to do so.

5. The facts demonstrate that Petitioner is an applicant for admission.

Mr. Hussien is an applicant for admission. He entered the United States without admission or inspection. Petition [Doc. 1] at 1, ¶ 2; at 4, ¶ 25; at 6, ¶ 30. DHS initiated removal proceedings against him by filing a Notice to Appear (NTA) on December 25, 2023, charging him as removable under INA § 212(a)(6)(A)(i) for being present in the United States without admission or parole, or for arriving at a time or place not designated

by the Attorney General. Att. 1. [5]

On March 29, 2024, Petitioner filed a Form I-589, Application for Asylum and Withholding of Removal. Att. 2; *see also* Petition [Doc. 1] at 5, ¶ 25 (Petitioner "has applied for asylum … and that application is in progress."); *id.* at 6, ¶ 36 ("Petitioner … has applied for asylum, and that application is currently in progress.").

Petitioner states that he was taken into ICE custody on December 9, 2025, and that he is in custody at the Cimarron Correctional Facility in Cushing, Oklahoma. Petition [Doc. 1] at 2, ¶¶ 6-7. He is detained pursuant to 8 U.S.C. § 1225. *Id.*, ¶ 9. He is presently in removal proceedings in the immigration court system. Att. 3.

An alien who has filed an application for asylum "is seeking admission into the United States" and is "seeking authorization to remain in the country." *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451, at *4 (E.D. Wis. Dec. 8, 2025). One who has filed an application for asylum "is therefore an 'alien seeking admission' into the United States subject to § 1225(b)(2)(A)." *Id.*; *see also Rojas v. Olson*, No. 25-CV-1437-BHL, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025) ("The record confirms that Cirrus Rojas is now in fact seeking admission to the United States. His petition acknowledges that he has an application for asylum pending in the immigration court and he is thus presently

[5] Petitioner claims that he entered the United States "without inspection on June 10, 2024," Petition [Doc. 1] at 1, ¶ 2, some six months *after* removal proceedings were initiated against him. DHS records indicate that Mr. Hussien arrived in the United States "on or about December 24, 2023." Att. 1 at 1. The NTA's Certificate of Service bears the date December 25, 2023, and reflects that Mr. Hussien signed for receipt of the NTA. *Id.* at 2. On his I-589 Application, Mr. Hussien stated that he left Sudan on August 5, 2023, and entered the United States on December 24, 2023. Att. 2, blocks 19.a and 19.c.

seeking authorization to remain in this country.").

6. Count I is barred by the jurisdiction-channeling and -stripping provisions.

Petitioner's Count I is a statutory claim, asserting that his detention is governed by § 1226, not § 1225, and that he therefore is entitled to a bond hearing. Petition [Doc. 1] at 10. This Court may not properly consider Petitioner's challenge to the proceedings under § 1225 because the INA channels to federal courts of appeals challenges arising from actions taken to remove an alien from the United States.

Congress has provided aliens 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 begin removal proceedings and the filing of a Notice to Appear (*see* Att. 1) may be reviewed by the appropriate court of appeals as part of any appeal of a final order of removal; that decision is not subject to review by this Court. *See Acxel S.Q.D.C. v. Bondi*, 2025 WL 2617973, at *3 (D. Minn. Sept. 9, 2025) ("1252(b)(9) consolidates all questions of law and fact, including constitutional and statutory challenges, arising from removal proceedings into one petition for review—the review of a final removal order before a circuit court of appeals." (cleaned up)).

In addition to the channeling provision, Congress also limited what types of claims

district courts may 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 §§ 1252(a)(5) and (b)(9) established a process for aliens like Mr. Hussien to challenge the basis on which ICE seeks to detain and remove them. That process is in and reserved to the appropriate court of appeals. Furthermore, in §§ 1252(b)(9) and (g), Congress deprived district courts of jurisdiction to review an alien's challenge to the decision about the basis of removal proceedings. This Court lacks jurisdiction to hear Petitioner's statutory challenge to the removal proceedings.

7. The Court should deny Count II, Petitioner's due process claim.

The Supreme Court in *Demore v. Kim*, 538 U.S. 510 (2003), held that mandatory detention pending removal from the United States does not violate due process. Detention during deportation proceedings is "a constitutionally valid aspect of the deportation process." *Id.* at 523.

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 while removal proceedings are pending. *Id.* at 527-28. The detainee in *Demore* argued that such detention was indefinite and thus violated the Due Process Clause. The *Demore* Court rejected that premise. Under § 1226(c), detention has "a definite termination point," *i.e.*, when the "removal proceedings are completed[.]" *Id.* at 529. Thus, an alien in removal proceedings is not subject to indefinite detention.

Federal law mandates Mr. Hussien's detention, and nowhere in the statutory rubric did Congress provide for a bond hearing or set a maximum duration for an alien's mandatory detention without a bond hearing. *See Jennings*, 583 U.S. at 297. Mr. Hussien "entered the U.S. without inspection," Petition [Doc. 1] at 1, ¶ 2, but the power to admit or exclude an alien is a sovereign prerogative, and the Government therefore possesses the power to set the procedures to be followed in determining whether an alien should be admitted or excluded from the United States. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020).

Immigration detention "assur[es] the alien's presence at the moment of removal." *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). In this context, courts "must take appropriate account of the greater immigration-related expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive ... efforts to enforce" the INA, and "the Nation's need to 'speak with one voice' in immigration matters." *Id.* at 700.

In Count II, Petitioner does not plead any Supreme Court precedent or Tenth Circuit

caselaw that would support his due process claim. "In the absence of Supreme Court or Tenth Circuit guidance indicating that the policies set forth by Congress and implemented by DHS are unconstitutional," Mr. Hussien's due process claim "must fail." *Montoya*, 2025 WL 3733302, at *15.

Prayer for Relief

WHEREFORE, Respondents Pamela Bondi, Kristi Noem, and Todd Lyons respectfully pray for an order of this Honorable Court denying the habeas corpus petition and all claims and demands therein.

Respectfully submitted this 28th day of January, 2026.

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Index of Attachments

No.	Description:
1	*In the matter of Ahmed Guma Eltayeb Hussein* [sic], File No. A [redacted] Notice to Appear (December 25, 2023)
2	INA-589, Application for Asylum and for Withholding of Removal I/C/O Ahmed Guma Eltayeb Hussein [sic], Alien Registration Number A [redacted] page 1 (March 29, 2024)
3	*In re* [redacted] *Eltayeb Hussein* [sic], *Ahmed Guma*, Notice of Internet-Based Hearing (January 7, 2026)