

TABLE OF CONTENTS

	Page
INTRODUCTION	1
BACKGROUND	2
I. Legal Framework	2
A. Applicants for Admission	2
B. Removal Proceedings with Mandatory Detention: 8 U.S.C. § 1225	3
C. Warrants for Arrest Pending Deportation: 8 U.S.C. § 1226	4
II. Petitioner’s Background.....	6
III. Petitioner’s Claims.....	7
ARGUMENT.....	7
I. Petitioner’s Statutory Argument Is Jurisdictionally Barred and Misreads the INA.	7
A. Petitioner’s Statutory Claim (Counts Two and Four) Is Barred by the INA’s Jurisdiction Channeling and Stripping Provisions.....	7
B. Petitioner is an “Applicant for Admission.”	10
II. Petitioner’s Constitutional Due Process Argument (Count Three) Is Premature and Without Basis	13
III. Petitioner’s Invocation of the APA, as well as Declaratory Judgment and the All Writs Act is Misplaced	15
CONCLUSION.....	17
CERTIFICATE OF SERVICE	18

TABLE OF CONTENTS

	Page(s)
Federal Cases	
<i>Axel S.Q.D.C. v. Bondi</i> , 2025 WL 2617973 (D. Minn. Sept. 9, 2025).....	8, 10
<i>Alvarez v. U.S. Immigr. & Customs Enf't</i> , 818 F.3d 1194 (11th Cir. 2016)	9
<i>Awe v. Napolitano</i> , 494 F. App'x. 860 (10th Cir. 2012)	4
<i>Bennett v. Spear</i> , 520 U.S. 154 (1997).....	15
<i>Chen v. Almodovar</i> , No. 1:25-cv-8350-MKV ,2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025).....	13
<i>Clinton v. Goldsmith</i> , 526 U.S. 529 (1999).....	17
<i>Colin v. Holt, et al.</i> , No. CIV-25-1189-D, 2025 WL 3645176 (W.D. Okla. Dec. 16, 2025).....	13
<i>Cortez v. Holt</i> , No. CIV-25-1176-SLP, 2026 WL 147435 (W.D. Okla. Jan. 20, 2026).....	13
<i>Demore v. Kim</i> , 538 U.S. 510 (2003).....	13, 14, 15
<i>Escarcega v. Olson</i> , No. CIV-25-1129-J, 2025 WL 3243438 (W.D. Okla. Nov. 20, 2025).....	13
<i>Jennings v. Rodriguez</i> , 583 U.S. 281 (2018).....	3, 4, 14
<i>Liang v. Almodovar</i> , No. 1:25-CV-09322-MKV, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025).....	13
<i>Lujan v. Nat'l Wildlife Fed'n</i> , 497 U.S. 871 (1990).....	15

Mathews v. Diaz,
426 U.S. 67 (1976)..... 14

Montoya v. Holt,
No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2026) 12

Murphy Bros. Inc. v. Michetti Pipe Stringing, Inc.,
526 U.S. 344 (1999)..... 16

Namgyal Tsering v. U.S. Immigr. & Customs Enf't,
403 F. App'x 339 (10th Cir. 2010) 9, 10

Nasrallah v. Barr,
590 U.S. 573 (2020)..... 2

Nielsen v. Preap,
586 U.S. 392 (2019)..... 5

Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co. Ltd.,
484 U.S. 97 (1987)..... 16

Purgatory Recreation I, LLC v. United States,
No. 24-1241, 2025 WL 2958091 (10th Cir. Oct. 21, 2025) 16, 17

Reno v. Am.–Arab Anti–Discrimination Comm.,
525 U.S. 471 (1999)..... 10

Rojas v. Noem,
No. CIV-25-1236-HE, 2026 WL 94641 (W.D. Okla. Jan. 13, 2026) 13

Rojas v. Olson,
No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) 11

Ugarte-Arenas v. Olson,
No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) 11

Valdez v. Holt,
No. CIV-25-1250-R, 2025 WL 3709021 (W.D. Okla. Dec. 22, 2025) 13

Veloz-Luvevano v. Lynch,
799 F.3d 1308 (10th Cir. 2015) 10

Zadvydas v. Davis,
533 U.S. 678 (2001)..... 14

Federal Statutes

5 U.S.C. § 702	15
5 U.S.C. § 704	15
8 U.S.C. § 1101(a)(13)(A).....	2
8 U.S.C. § 1159(b).....	11
8 U.S.C. § 1182(a)(6)(c).....	3, 4
8 U.S.C. § 1182(a)(7)	3, 12
8 U.S.C. § 1182(a)(7)(A)(i)(I).....	6
8 U.S.C. § 1224(a)(4)	12
8 U.S.C. § 1225	<i>passim</i>
8 U.S.C. 1225(a)(1)	2, 11
8 U.S.C. § 1225(b)(1).....	3, 4, 14
8 U.S.C. 1225(b)(2).....	16
8 U.S.C. § 1225(b)(2)(A).....	4, 7, 8, 11, 14
8 U.S.C. § 1225(b)(2)(B).....	4
8 U.S.C. § 1226	<i>passim</i>
8 U.S.C. § 1226(a).....	4, 7, 13
8 U.S.C. § 1226(c).....	5, 14
8 U.S.C. § 1226(c)(1)	5
8 U.S.C. § 1226(e).....	9, 10
8 U.S.C. § 1229(c).....	12
8 U.S.C. § 1229a.....	4, 6, 11
8 U.S.C. § 1229a(b)(1)	6
8 U.S.C. § 1229a(b)(4)(A).....	6

8 U.S.C. § 1231(a)(3) 3

8 U.S.C. § 1252(a)(5) 8, 9

8 U.S.C. § 1252(b)(9) 8, 9

8 U.S.C. § 1252(g) 8, 9, 10

8 U.S.C. § 1227(a)(1)(A) 5

28 U.S.C. § 2243 16

Federal Regulations

8 C.F.R. § 1.2 12, 13

8 C.F.R. § 235.3(b) 4

8 C.F.R. § 236.1(c)(8) 5

8 C.F.R. § 236.1(d)(1) 5

8 C.F.R. § 1236.1(d)(1) 5

8 C.F.R. § 1003.19 5

8 C.F.R. § 1209.2(a)(1) 11

8 C.F.R. § 1240.10(a) 6

Respondents United States Attorney General Pamela Bondi, United States Secretary of the Department of Homeland Security Kristi Noem, Acting Director of the United States Immigration and Customs Enforcement (ICE) Todd Lyons, Acting Executive Associate Director for Enforcement and Removal Operations (ERO) Marcos Charles, Field Office Director for Enforcement and Removal Operations Mark Siegel, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security (DHS), and Warden of Cimarron Correctional Facility Scarlet Grant (collectively, “Respondents”¹), pursuant to the Court’s Order (Doc. 8), respond to the Verified 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 DHS’s 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. 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

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.

stripping provision of the Immigration and Nationality Act (INA). That is especially true given that § 1226 does not guarantee a bond determination.

Finally, Petitioner advances a conception of due process that precludes any detention of noncitizens without a bond determination. That expansive position has never been adopted by the Supreme Court, despite repeated invitations to do so. Moreover, in other contexts, the Court has only recognized an obligation to conduct bond determinations 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/noncitizens² may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of “applicants for admission”—a subset of noncitizens. Section 1225 defines an “applicant for admission” as any “alien present in the United States who has not been admitted or **who arrives in the United States.**” 8 U.S.C. § 1225(a)(1) (emphasis added). The INA defines “admission” and “admitted” as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” *Id.* § 1101(a)(13)(A). In other words, an applicant for admission is a noncitizen who (1) is present in the United States and did not lawfully enter the country *or* (2) is arriving in the United States. Petitioner falls into the second group.

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

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).³ *Id.* § 1225(b)(1)(A)(i). The second category includes those noncitizens who have “not been admitted or paroled into the United States,” who have not “affirmatively shown, to the satisfaction of an immigration officer, that [they have] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility,” and who also are inadmissible under Section 1182(a)(6)(c) or (a)(7). *Id.* § 1225(b)(1)(A)(i), (iii)(II). Noncitizens within the two categories described in § 1225(b)(1) are subject to expedited removal, *see* 8 C.F.R. § 235.3(b), and “shall be detained” until removed (or until the end of asylum or credible fear proceedings). 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV).⁴

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)[.]”

³ Section 1182(a)(6)(c) and (a)(7) address inadmissibility based on misrepresentation or the lack of valid entry documents.

⁴ 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).

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 Secretary⁵ of DHS issues a warrant, regardless of whether there was prior interaction or examination by an immigration officer, a noncitizen may be arrested and detained “pending a decision on whether the alien is to be removed from the United States.” The section is a means of effectuating detention prior to

⁵ 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).

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); 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. Petitioner alleges that he “entered the United States without inspection or parole in 2016” and that he “was not charged as an arriving alien.” Pet. at 2 (¶ 2) and 9 (¶¶ 38–39). Petitioner is incorrect. On December 16, 2016, he was issued a Notice to Appear, which charged him as an “**arriving alien**” who “**applied for admission** into the United States from Mexico at the DeConcini Port of Entry in Nogales, Arizona,” which made him inadmissible because “**at the time of application for admission,**” he was not in possession of valid entry documents pursuant to 8 C.F.R. 212(a)(7)(A)(i)(I) (8 U.S.C. § 1182 (a)(7)(A)(i)(I)). Ex. 1, Notice to Appear (emphasis added). On March 9, 2017, Petitioner filed Form I-589. Ex. 2, Form I-589 (first page); *see also* Pet. at 2 (¶ 2). That form is an application for asylum and for withholding of removal. *See* <https://www.uscis.gov/i-589>, last visited 02/03/26. On August 10, 2017, Petitioner was released on bond. Ex. 3, Order of the Immigration Judge with Respect to Custody. On November 4, 2025, he was arrested and taken into custody.⁶ Pet. at 2 (¶ 3) and 10 (¶ 40).

⁶ 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).

III. Petitioner's Claims

Petitioner asserts five counts. Count One seeks declaratory relief. Pet. at 19 (¶¶ 76–80). However, declaratory relief is unavailable in this habeas action. Counts Two and Four allege statutory violations of the INA and challenge DHS's commencement of proceedings pursuant to § 1225(b)(2)(A).⁷ *Id.* at 20 (¶¶ 81–86), 21–22 (¶¶ 91–95). Count Three alleges a broader due process violation stemming from Petitioner's ongoing detention without a bond determination. *Id.* at 20–21 (¶¶ 87–90). And Count Five alleges a violation of the APA. *Id.* at 22–23 (¶¶ 96–103).

ARGUMENT

The Petition should be denied. Counts Two and Four challenge 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 factual assertions are incorrect, and he is undoubtedly an "applicant for admission." Count Four's claim of a due process violation is premature and without basis. Counts One and Five are not cognizable or applicable.

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

A. Petitioner's Statutory Claim (Counts Two and Four) 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

⁷ Count Four alleges violations of discretionary actions codified in regulations relevant to § 1226.

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 Three) arguably only challenges his ongoing detention, Counts Two, Four, and Five expressly challenge the basis of the *commencement* of proceedings against him and is barred. Boiled down to its essence, Petitioner 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.”). But an 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 Three, Counts Two, Four, and Five challenge 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 is an “Applicant for Admission.”

The plain language of the INA straightforwardly applies in this case. 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.

(emphasis added). First, it is imperative to note that Petitioner was categorized as an “arriving alien” who “applied for admission” making him an “applicant for admission.” See Ex. 1; see also 8 U.S.C. 1225(a)(1) (“An alien . . . who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission.”).

Additionally, Petitioner’s filing of Form I-589 is significant because seeking asylum is unambiguously a step towards seeking a form of admission. “The Secretary of Homeland Security or the Attorney General . . . may adjust to the status of an alien **lawfully admitted** for permanent residence the status of any alien granted asylum” who meets various requirements. 8 U.S.C. § 1159(b) (emphasis added); 8 C.F.R. § 1209.2(a)(1) (“the status of any alien who has been granted asylum in the United States may be adjusted to that of an alien **lawfully admitted** for permanent residence, provided the alien . . .” (emphasis added)). Thus, Petitioner is seeking a form of admission. *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451, at *4 (E.D. Wis. Dec. 8, 2025) (“As a matter of fact, however, it is clear Petitioner is seeking admission into the United States. He has filed an application for asylum and is thus seeking authorization to remain in the country. Petitioner is therefore an “alien seeking admission” into the United States subject to § 1225(b)(2)(A).”); *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.”). Moreover, Petitioner has *not* offered to voluntarily depart, *see* 8 U.S.C. § 1229(c) (Voluntary Departure). To the contrary, Petitioner is **seeking admission** by trying to stay in the country. *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302, at *10 (W.D. Okla. Dec. 26, 2026) (“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].”)

When Petitioner first arrived in the United States, he was subject to the expedited removal process pursuant to § 1225(b)(1)(A)(i) because he had been found inadmissible pursuant to 8 U.S.C. § 1182(a)(7). However, when he applied for asylum, he fell into the provision of § 1225(b)(1)(A)(ii). Perhaps because his asylum application has not yet been resolved and because of his pending application for Temporary Protected Status as a Ukrainian citizen, Pet. at 2 (¶ 2), it appears the immigration judge granted him a bond. *See* Ex. 3. Thus, it appears he is now subject to and detained by § 1225(b)(2)(A) because he is an “applicant for admission” that “is not clearly and beyond a doubt entitled to be admitted.” As such, Petitioner is not entitled to a bond hearing pursuant to § 1225.

Petitioner’s whole argument rests on his incorrect factual premise that he entered the United States without inspection and was not charged as an arriving alien. Pet. at 9 (§§ 38–39). However, based upon his Notice to Appear, he cannot argue that he was not categorized as an “arriving alien” and that § 1225(b) does not apply to him. *See* 8 C.F.R. § 1.2 (“*Arriving alien* means an applicant for admission coming or attempting to come into the United States at a port-of-entry An arriving alien remains an arriving alien even if

paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked.”). In fact, several judges in this Court have ruled that § 1225 only applies to “arriving aliens.”⁸

While Petitioner may argue that because he was granted a bond pursuant to § 1226, he should be entitled to a bond hearing again under that section, there is no justification for this in the statute. *See Chen v. Almodovar*, No. 1:25-cv-8350-MKV, 2025 WL 3484855, *7–8 (S.D.N.Y. Dec. 4, 2025) (rejecting argument that because DHS previously released the noncitizen under 8 U.S.C. 1226(a), it forfeited the chance to argue that such a noncitizen should be subject to mandatory detention pursuant to 8 U.S.C. 1225(b)(2) in the future); *see also Liang v. Almodovar*, No. 1:25-CV-09322-MKV, 2025 WL 3641512, *5 (S.D.N.Y. Dec. 15, 2025) (“Petitioner’s conditional parole under Section 1226(a)(2)(B) in 2023 does not, for example, require that any subsequent detention occur under 1226.” (citing *Chen*, 2025 WL 3484855 at *8)).

II. Petitioner’s Constitutional Due Process Argument (Count Three) 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

⁸ *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, et al.*, 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).

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 violated 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). Pet. at 18 (¶ 70). 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 only detained 66 days 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.”).

III. Petitioner’s Invocation of the APA, as well as Declaratory Judgment and the All Writs Act is Misplaced

Petitioner’s assertion of APA jurisdiction suffers several infirmities, including the lack of final agency action, alternative adequate remedies at law, and the lack of jurisdiction given the failure to serve any respondent. And as a result, Petitioner’s assertion of Declaratory Judgment Act (DJA) jurisdiction also fails. Likewise, the All Writs Act (AWA) does not confer any additional jurisdiction. Therefore, this is a habeas-only case.

By the APA’s terms, it is available only for “final agency action for which there is no other adequate remedy in a court.” 5 U.S.C. § 704; *see also Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 882 (1990) (explaining that an action under 5 U.S.C. § 702 must also satisfy the requirements of § 704). “As a general matter, two conditions must be satisfied for agency action to be ‘final’: First, the action must mark the consummation of the agency’s decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154,177–78 (1997) (cleaned up). But Petitioner does not identify a final agency action, and his deportation proceedings are ongoing. Therefore, APA relief is unavailable.

Furthermore, this Court is without jurisdiction to order APA remedies. “Service of process, under longstanding tradition in our system of justice, is fundamental to any procedural imposition on a named defendant.” *Murphy Bros. Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999). But the Petition has not been served pursuant to the Federal Rules. “In the absence of service of process (or waiver of service by the defendant), a court ordinarily may not exercise power over a party the complaint names as defendant.” *Id.*; *see also Omni Capital Int’l, Ltd. v. Rudolf Wolff & Co. Ltd.*, 484 U.S. 97, 104 (1987) (“Before a ... court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied.”). But proper service has not occurred. In fact, no summons has even been issued. The Respondents endeavor to comply with the Court’s orders for response in habeas proceedings implicating liberty interests associated with shortened statutory response times authorized by statute and rule. *See, e.g.*, 28 U.S.C. § 2243; Rules Governing 2254 Cases. But Respondents have *not* waived service. That is especially true for non-habeas claims that permit broader judicial review and do not enjoy statutory preference for compelling accelerated responses. Indeed, even under Rule 4 of the Rules Governing 2254 Cases, there is improper service in this case. Accordingly, the Court is without jurisdiction to award APA relief.

And finally, given that the APA’s waiver of sovereign immunity does not apply, Petitioner cannot resort to the DJA or AWA. As the Tenth Circuit recently reaffirmed, “the DJA does not confer jurisdiction upon federal courts, so the power to issue declaratory judgments must lie in some independent basis of jurisdiction. Nor does the DJA provide a waiver of sovereign immunity.” *Purgatory Recreation I, LLC v. United States*, No. 24-

1241, 2025 WL 2958091, at *10 (10th Cir. Oct. 21, 2025) (cleaned up). In *Purgatory Recreation*, the Tenth Circuit applied the DJA only because of the application of the APA and its waiver of sovereign immunity, which is the inverse of the present case, underscoring that the DJA cannot be applied to the Petition. *Id.* at *10-11. Likewise, the express terms of the AWA confine courts to issuing process in aid of its *existing* statutory authority; “the Act does not enlarge that jurisdiction.” *Clinton v. Goldsmith*, 526 U.S. 529, 535 (1999). Accordingly, the AWA provides no grant of jurisdiction or cause of action not already conferred.

In summary, this is a habeas-only case. No other authority is conferred or available for Petitioner to seek relief.

CONCLUSION

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

Dated: February 3, 2026

Respectfully Submitted,

ROBERT J. TROESTER
United States Attorney

/s/ Jessica L. Cárdenas

JESSICA L. CÁRDENAS
Assistant U.S. Attorney
Bar No.: 82766 (Ohio)
210 Park Avenue, Suite 400
Oklahoma City, OK 73102
(405) 553-8700
jessica.cardenas@usdoj.gov
Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2026, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Nico Ratkowski, Counsel for Petitioner

/s/ Jessica L. Cárdenas _____
Assistant U.S. Attorney