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

TULIO TECUN-DELEON,	)	
	)	
Petitioner,	)	
	)	CIV-26-46-G
v.	)	
	)	
KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security, et al.,	)	

Respondents.

RESPONSE IN OPPOSITION TO
THE PETITION FOR WRIT OF HABEAS CORPUS

Respectfully submitted,

ROBERT J. TROESTER
United States Attorney

s/ Cedric C. M. Bond
CEDRIC C. M. BOND
Assistant United States Attorney
Bar Number: 33119 (OK)
210 Park Avenue, Suite 400
Oklahoma City, OK 73102
(405) 553-8700 (Office)
(405) 553-8888 (Fax)
Cedric.Bond2@usdoj.gov

Counsel for Respondents

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RESPONSE IN OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS

Respondents Department of Homeland Security (DHS) Secretary Kristi Noem, United States Attorney General Pamela Bondi, and Acting Director Robert Cerna, Dallas Field Office and Oklahoma City Sub-Office for the U.S. Immigration and Customs Enforcement ("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.

I. INTRODUCTION

Petitioner Tulio Tecun-Deleon is an alien who entered the United States without presenting himself for inspection or admission. He has been living here illegally for an unknown number of years (he alleges since 2008). On December 31, 2025, he was detained and placed in removal proceedings via a notice to appear. Because he was present in the United States without being lawfully admitted, he is deemed an "applicant for admission." *See* 8 U.S.C. § 1225(a)(1). Under this statute, Congress ordered 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 a proceeding under section 1229a of this title. 8 U.S.C. § 1225(b)(2)(A).

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[1]As Warden Scarlet Grant of the Cimarron Correctional Center is not a federal official, this response is not filed on her behalf. Warden Grant's interests in this litigation are contractually derivative of the federal respondents' interests and thus a separate response from Warden Grant is not necessary to resolve the Petition or effectuate relief.

After finally examining Mr. Tecun-Deleon once he came into the custody of immigration authorities, DHS officers determined he was not clearly and beyond a doubt entitled to admission. *See* Exhibit 1, Notice to Appear (Dec. 31, 2025). Thus, under the plain reading of this statute, he must be detained pending removal proceedings. 8 U.S.C. § 1225(b)(2)(A).

Petitioner challenges this conclusion. He argues that § 1225(b)(2)(A) "does not apply to individuals like Petitioner who previously entered and are now residing in the United States." Petition, Doc. 1, ¶ 6. Rather, he claims that he is subject to the general removal statute, 8 U.S.C. § 1226, which grants immigration authorities discretion to release noncitizens pending removal proceedings. *Id.* And he submits that he should be released or receive a bond hearing. *Id.* ¶ 8.

Based on this disagreement, Petitioner advances three counts: (1) a violation of the Immigration and Nationality Act (INA) (for misapplying § 1225(b)(2)(A) when § 1226(a) should apply), a Due Process claim (seeking to apply *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) to detentions pending removal proceedings), and a due process claim to preemptively bar the application of excessive bond. *Id.* ¶¶ 48–63. For relief, Petitioner asks the Court to assume jurisdiction and issue a writ that orders Petitioner's release or alternatively that Respondents provide Petitioner a bond hearing pursuant to 8 U.S.C. § 1226(a). *Id.* at 15–16.

But because Petitioner's detention challenge is premised on a challenge to the manner that DHS initiated removal proceedings, it falls within the narrow jurisdiction channeling and jurisdiction striping provisions that Congress placed within the INA. *See* 8 U.S.C. § 1252(a)(5), (b)(9) & (g). Thus, although habeas jurisdiction is proper before this Court under 28 U.S.C. § 2243(c)(3), the Court lacks jurisdiction to review Petitioner's detention because here it is inextricably entwined with the decision to commence removal proceedings in the first place. *See Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (Alito, J. plurality) (ruling that there was jurisdiction under § 1252(b)(9) because petitioners were "not challenging the decision to detain them in the first place"). The Court thus should dismiss the petition for lack of jurisdiction.

Even if the Court had jurisdiction to consider Petitioner's detention, the Court should deny the petition because, as an "applicant for admission" who is not "clearly and beyond a doubt entitled to admission," the plain language of § 1225(b)(2)(A) requires his detention.

Further, both of Petitioner's novel due process claims are inapplicable. First, the Supreme Court in *Jennings* declined to impose extra-textual *Zadvydas*-like due process restraints on § 1225(b)(2) detentions. *Jennings*, 583 U.S. at 298. And Petitioner's second due process claim fails for the same reasons and because it is premature.

II. Factual Background

Petitioner Tulio Tecun-Deleon was detained and placed in removal proceedings through a notice to appear issued in Oklahoma City, Oklahoma on December 31, 2025. *See* Exhibit 1, Notice to Appear (Dec. 31, 2025). He is a citizen and native of Guatemala who arrived in the United States at an unknown place on an unknown date, without presenting himself for inspection. *Id.*; *see* 8 U.S.C. § 1225(a)(3). He was thus not admitted or paroled after inspection by an immigration officer. Exhibit 1. By his admission, Petitioner has been present in the United States since 2008. *See* Petition, Doc. 1, ¶ 1. He is currently detained at the Cimarron Correctional Facility in Cushing, Oklahoma. He has no relief pending before the immigration court and has not filed a bond redetermination request. As part of the removal proceedings, he has a master hearing scheduled before the immigration court on February 4, 2026. *See* Exhibit 2, Notice of Hearing (Jan. 20, 2026).

III. Discussion

This case comes down to questions of statutory interpretation. First, whether Petitioner's challenge to his detention pending removal proceedings is a "question of law . . . arising from any action taken or proceeding brought to remove an alien from the United States." 8 U.S.C. § 1252(b)(9). And on the merits, whether Petitioner is an "applicant for admission" who "shall be detained for a proceeding under section 1229a." 8 U.S.C. § 1225(b)(2)(A).

"As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). This analysis starts "by looking at the statutory text 'to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.'" *Custodia Bank, Inc. v. Fed. Rsrv. Bd. of Governors*, 157 F.4th 1235, 1250 (10th Cir. 2025) (quoting *Potts v. Ctr. for Excellence in Higher Educ., Inc.*, 908 F.3d 610, 613 (10th Cir. 2018)).

It is "the most natural or ordinary reading" of the term even if there are other "plausible readings of the statutory text." *United States v. Davey*, 151 F.4th 1249, 1255 (10th Cir. 2025) (cleaned up) (quoting *Republic of Sudan v. Harrison*, 587 U.S. 1, 8 (2019)), *cert. denied*, No. 25-5790 (U.S. Nov. 10, 2025). To identify the most natural reading of a term, courts "consider how 'important terms in the statute relate to each other' . . . because 'statutory language cannot be construed in a vacuum.'" *Id.* (first quoting *Babb v. Wilkie*, 589 U.S. 399, 404 (2020), then quoting *Sturgeon v. Frost*, 577 U.S. 424, 438 (2016) (cleaned up)).

"In textual interpretation, context is everything." Antonin Scalia, A MATTER OF INTERPRETATION 37 (1997). And "[c]ontext is not found exclusively 'within the four corners' of a statute." *Biden v. Nebraska*, 600 U.S. 477, 511 (2023) (Barrett, J., concurring) (quoting John F. Manning, *The Absurdity Doctrine*, 116 HARV. L. REV. 2387, 2457 (2003)). So a necessary first part of statutory interpretation is to read the words of a statute "in their

context and with a view to their place in the overall statutory scheme." *Id.* (quoting *Sturgeon*, 577 U.S. at 438).

This is because "[t]he plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Custodia Bank, Inc.*, 157 F.4th at 1250 (quoting *Ceco Concrete Constr., LLC v. Centennial State Carpenters Pension Tr.*, 821 F.3d 1250, 1258 (10th Cir. 2016)).

With these standards in mind, Respondents turn first to the statutes that limit jurisdiction over habeas petitions challenging removal proceedings and then to the statutory language of the INA and the provisions at issue here.

A. Petitioner's challenge to the statutory vehicle the DHS used to commence proceedings is barred by the INA's jurisdiction limiting provisions.

Congress has expressly limited federal district court's jurisdiction over immigration enforcement and has instead channeled judicial review through the Board of Immigration Appeals and the respective U.S. Courts of Appeals. *See* 8 U.S.C. § 1252(a)(5), (b)(9) & (g). Under these provisions, Petitioner's claims are barred because he could challenge his detention through the BIA but instead seeks to challenges it solely through a challenge to the DHS's decision to commence proceedings against him and the method it took in doing so.

Congress gave noncitizens 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." 8 U.S.C. § 1252(b)(9) (emphasis added).

The decision to begin those proceedings via § 1225(b)(2)(A) and the filing of a Notice to Appear is integral to the removal proceedings and a question of law that can be reviewed by the appropriate court of appeals as part of any appeal of a final order of removal—but not this Court. *See Acxel S.Q.D.C. v. Bondi*, 2025 WL 2617973, at *3 (D. Minn. Sept. 9, 2025) ("§ 1252(b)(9) consolidates all questions of law and fact, including constitutional and statutory challenges, arising from removal proceedings into one petition for review—the review of a final removal order before a circuit court of appeals." (quoting *Lopez v. Barr*, CIV-20-1330, 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021))).

Beyond the judicial review provided for above, Congress greatly limited jurisdiction over immigration enforcement proceedings:

> notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g). Because the sole purpose of habeas corpus is to challenge custody, 28 U.S.C. § 2241(c), with this broad language then, Congress intended this provision to

greatly limit the authority of federal district courts to review the detention of noncitizens related to their removal proceedings. *See Van Dinh v. Reno*, 197 F.3d 427, 432 (10th Cir. 1999) (stating that § 1252 "significantly limited statutory habeas jurisdiction in the district courts").

This provision makes the judicial review procedures in § 1252(b)(5) and (9) the exclusive means for challenging the "three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Reno v. Am.-Arab Anti-Discrimination Comm'ee*, 525 U.S. 471, 482 (1999). Even so, as one court put it, "Congress could hardly have been more clear and unequivocal that courts shall not have subject matter jurisdiction over claims arising from the actions of the Attorney General enumerated in § 1252(g) other than jurisdiction that is specifically provided by § 1252." *Mapoy v. Carroll*, 185 F.3d 224, 230 (4th Cir. 1999). And the Court in *Reno* noted that § 1252(b)(9) functioned more broadly than § 1252(g) "since § 1252(b)(9) channels judicial review of all [decisions and actions arising from deportation proceedings]." *Reno*, 525 U.S. at 583.

These jurisdictional limitations on considering the commencement of proceedings includes 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.

In the absence of binding precedent on the application of § 1252's jurisdiction limits to habeas challenges to § 1225(b)(2)(A) detentions, there has been much disagreement among district courts nationally and within this district. Most judges in this district have concluded that they had jurisdiction to consider an similar challenges to a noncitizen's detention based on the DHS's decision to commence proceedings under § 1225(b)(2)(A). *E.g., Medina-Herrera v. Noem*, CIV-25-1203-J, 2025 WL 3460946, at *3 (W.D. Okla. Dec. 2, 2025). But Judge Wyrick recently cast grave doubt on the this, rhetorically asking "if challenging the [DHS's] decision to detain Petitioner pursuant to § 1225(b)(2) so that it may adjudicate his removability pursuant to § 1229a isn't a 'challenge to the process by which his removability will be determined,' what is it?" *Gutierrez Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344, at *2 (W.D. Okla. Jan. 6, 2026) (quoting *Jennings*, 583 U.S. at 294).

The habeas challenge to detention in *Jennings* was much further separated from the challenge to the manner of DHS's decision to commence proceedings that is before the Court today. *See Jennings,* 583 U.S. at 289–90. There, the petitioners challenged their prolonged detention (from April 2004 to May 2007) that occurred under § 1226 during appellate review of a final order of removal. *Id.* And in *Jennings*, the plurality concluded that § 1252(b)(9) did not divest the Court of jurisdiction only because petitioners were "not challenging the decision to detain them in the first place." *Jennings*, 583 U.S. at 294–95.[2] Such a challenge would be integral to the DHS's decision to commence proceedings and thus would fit within even a narrow reading of § 1252(b)(9) and (g).

Petitioner's challenge to his detention must necessarily pass through the DHS's decision to commence proceedings under § 1225(b)(2)(A). It therefore falls within the heartland of § 1252(b)(9) and (g)'s jurisdiction stripping and should thus be dismissed.

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[2]While only two other justices joined this portion of Justice Alito's opinion, Justices Thomas and Gorsuch declined to do so only because they concluded that all "[c]laims challenging detention during removal proceedings . . . fall within the heartland of § 1252(b)(9)." *Jennings*, 583 U.S. at 314–18. Thus at least five justices agreed that a habeas challenge to the decision to detain them in the first place would be barred under § 1252(b)(9).

B. Alternatively, the Court should reject Petitioner's challenge to the involuntary legal status of "Applicant for Admission" that applies to him as a noncitizen present in the United States who has not been admitted.

In the INA, Congress established rules governing when certain aliens/noncitizens[3] 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" not just as noncitizens who formally apply for admission[4] but 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 statute thus defines two groups of noncitizens who are treated as "applicants for admission": (1) those who are present in the United States who did not lawfully enter the country, *or* (2) those who are arriving in the United States. *See id.* Petitioner falls into the first group.

If someone meets the definition of "applicant for admission" they are "deemed" to be one. It is an involuntary legal status. It does not depend on a noncitizen's subjective intent or actions: if they are "present in the United States" and have "not been admitted," then they are "deemed for purposes of this chapter to be an applicant for admission." *Id.* So

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[3] This response "uses the term 'noncitizen' as equivalent to the statutory term 'alien.'" *Nasrallah v. Barr*, 590 U.S. 573, 578 n.2 (2020).

[4] 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." 8 U.S.C. § 1101(a)(13)(A).

even if a noncitizen never presented himself for lawful entry into the United States, he is deemed to be an "applicant for admission." Section 1225(a)(1) further puts no temporal qualifier in its definition of "applicant for admission." Admission cannot be achieved through adverse possession. And the only proximal qualifier on the definition is "present in the United States." *Id.*

1. Section § 1225(b)(2)(A) applies to those applicants for admission who are *not* arriving and have been in the United States for over two years.

Petitioner claims that § 1225 only applies to arriving aliens and recent arrivals. *See* Petition, ¶ 46. In support, he makes three different arguments—but notably does not examine the text of § 1225 within its context. First, he points to the DHS's prior discretionary practice of using § 1226 to institute removal proceedings against all aliens already present in the United States and only applying § 1225 to arriving aliens. *See id.* § 33 (citing *also* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312 (Mar. 6, 1997)). Next he points out that Congress recently amended § 1226(c)(1) to require mandatory detention of a subset of inadmissible aliens who entered without inspection. Petition, ¶¶ 43–45. He then points to dicta in *Jennings*, in which the Court summarized in broad terms all of §§ 1225 and 1226. *Id.* ¶ 46 (citing *Jennings*, 583 U.S. at 287). Yet none of these bases can change the text of § 1225(b)(2)(A).

Within § 1225, Congress created three separate categories of noncitizens who are deemed to be "applicants for admission," all three of which were subject to mandatory

detention. *See Chen v. Almodovar*, No. 25 CIV. 9670 (JPC), 2026 WL 100761, at *4 (S.D.N.Y. Jan. 14, 2026). Congress made key distinctions within each category as show in this table:

Statutory Provision	**Covered Noncitizen**	**Removal Proceeding**	**Detention**
Category 1: § 1225(b)(1)(A)(i)	"[A]n alien" who "is arriving in the United States" and who an immigration officer determines is inadmissible for misrepresentation or lack of documentation	Expedited	Mandatory; no bond but potential for parole
Category 2: § 1225(b)(1)(A)(iii)	"An alien" who "has not been admitted or paroled into the United States," who has not shown continuous physical presence for two years, who has been designated by the Attorney General, and whom an immigration officer determines is inadmissible for misrepresentation or lack of documentation	Expedited	Mandatory; no bond but potential for parole
Category 3: § 1225(b)(2)(A)	"[A]n alien"—other than crewmen, stowaways, and those covered by § 1225(b)(1)—"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"	Full	Mandatory; no bond but potential parole

Chen, 2026 WL 100761, at *4; *see also Lopez v. Director*, __ F. Supp. 3d __, 2026 WL 261938 (M.D. Fla. Jan. 26, 2026).

While all three categories of "applicants for admission" are subject to mandatory detention, the first two then are subject to expedited removal while the third category is entitled to full removal proceedings under § 1229a. What then is the difference between these three categories? The text makes this clear.

The first category applies to noncitizens who are "arriving . . . in the United States" and are determined to be inadmissible under 8 U.S.C. §§ 1182(a)(6)(C) or 1182(a)(7).[5] 8 U.S.C. § 1225(b)(1)(A)(i). This first category thus has a geographic limitation to it. Because the noncitizens in this category have the least connection to the United States, they are subject to removal "without further hearing or review." *Id.*

The second category applies to noncitizens who have not been admitted or paroled who cannot show 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." 8 U.S.C. § 1225(b)(1)(A)(iii). This is noteworthy because unlike the first category, Congress placed no geographic limitation on it. It applies not merely to arriving aliens but also noncitizens "present in the United States who ha[ve] not been admitted" and who have been in the United States for less than two years. *See* 8 U.S.C. § 1225(a)(1). This category too is subject mandatory detention and only expedited removal proceedings. 8 U.S.C. § 1225(b)(1)(A)(iii).

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

But the third category is different. The noncitizens in this category receive the benefit of full removal proceedings, but they are still subject to mandatory detention. 8 U.S.C. § 1225(b)(2)(A). Section 1225(b)(2), thus "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)[.]" *Jennings*, 583 U.S. at 287 (citing 8 U.S.C. § 1225(b)(2)(A), (B)) (emphasis added). As relevant, § 1225(b)(2)(A) states—

> [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.

8 U.S.C. § 1225(b)(2)(A). Thus, it generally provides for detention during full removal proceedings for aliens who are applicants for admission, but who do not fall within one of the first two categories from § 1225(b)(1) (*i.e.*, arriving aliens and other aliens who have been present without admission or parole for less than two years). This category of § 1225 then, applies to all other "applicants for admission, without regard to how many years the alien has been residing in the United States without lawful status. *In re Yajure Hurtado*, 29 I. & N. Dec. 216, 226 (BIA 2025).

Section 1225 does not provide a bond hearing for aliens detained under that provision. *See Jennings*, 583 U.S. at 302 ("In sum, §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin."). Still, the Secretary has discretion to grant "urgent humanitarian parole" to "any alien applying for admission to the United States." 8 U.S.C. § 1182(d)(5)(A).

The difference between the three categories of § 1225 is critical to understanding the reach of § 1225(b)(2)(A). If the first category applies to arriving aliens, and the second applies to unadmitted aliens who have been present in the United States for less than two years, then the third applies to all other applicants for admission.

By contrast, § 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. *See, e.g., Nielsen v. Preap*, 586 U.S. 392 (2019) (lawful permanent resident detained pursuant to § 1226). Further, as a matter of prosecutorial discretion, § 1226 can be initiated by warrants issued by the Secretary[6] of DHS even for noncitizens who might meet one of the categories of § 1225. *See* 62 Fed. Reg. 10312, 10323 ("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."). 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); 8 U.S.C. § 1182(a)(6)(C)(i).

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[6]The authority granted the "Attorney General" in the INA has been transferred to the "Secretary of Homeland Security." *See* 6 U.S.C. § 557 (transferring INA authority from Attorney General to DHS Secretary); *Awe v. Napolitano*, 494 F. App'x. 860, 862 n. 3 (10th Cir. 2012).

It thus provides procedures for detention and removal of a broader class of noncitizens and uses a different means to do so. 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.

Petitioner points to DHS's past agency practice, and asks the Court to place it over the text of § 1225. Petition, ¶ 33. While past regulations drew a different bright line for ease of enforcement, it treated "aliens who are present without having been admitted or paroled" to the full procedures of § 1226 "*Despite [their] being applicants for admission.*" 62 Fed. Reg. at 10323 (emphasis added). And in any event, "government practice—whether longstanding or novel—does not constitute, and cannot 'supersede, the law." *Lopez*, 2026 WL 261938 (slip op. at 21[7]) (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024)).

Petitioner also points to recently amended language in § 1226 that removed DHS's discretion to grant bond to certain inadmissible aliens who would otherwise fall within § 1225. *See* Petition, ¶¶ 44–45. But this is also misplaced. In January 2025, Congress passed and President Trump signed into law the Laken Riley Act. *See* Pub. L. No. 119-1, 139 Stat. 3 (Jan. 29, 2025) (amending 8 U.S.C. § 1226(c)). The Act amended § 1226(c) to make noncitizens who would otherwise be entitled to bond under § 1226(a)(2) subject to

[7]At the time of filing, Westlaw had not added page numbers.

mandatory detention based on their criminal history. *See* 8 U.S.C. § 1226(c). And as Petitioner notes, this applied to some inadmissible noncitizens "who entered without inspection." Petition, ¶ 44 (citing amended 8 U.S.C. § 1226(c)(1)(E)). But there is no law that says Congress may not take a belt-and-suspenders approach to legislating, especially in such a complex area as immigration.

Moreover, this amendment occurred before the DHS ended its prior practice of treating "aliens who are present without having been admitted or paroled" as being eligible for bond hearings under § 1226 "[d]espite [their] being applicants for admission." *In re Yajure Hurtado*, 29 I&N Dec. at 225–26 & n.6 (quoting 62 Fed. Reg. at 10323 (first alteration in original)). So Congress was legislating against a backdrop of agency discretion that applied § 1226 to some inadmissible aliens despite their status as applicants for admission. Under that circumstance, it makes sense that Congress would create a little overlap in the two provisions to better protect the public from certain more dangerous applicants for admission.

2. Applicants for admission are necessarily also "seeking admission."

Turning back to the text of § 1225(b)(2)(A) at issue here, it mandates detention of all applicants for admission who an examining immigration officer determines are "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Some district courts have read into § 1225(b)(2)(A) a requirement that an "applicant for

admission" must also be actively "seeking admission." *E.g., Medina-Herrera*, 2025 WL 3460946, at *3–4. Petitioner makes this argument in passing. *See* Petition, ¶¶ 29, 46.

But a close examination of the logical structure and context § 1225 shows that an applicant for admission must necessarily be deemed to be "seeking admission" regardless of when and where they are encountered. *See Alvarado Montoya v. Holt*, CIV-25-1231-JD, 2025 WL 3733302, at *8–9 (W.D. Okla. Dec. 26, 2025). This is the most natural reading of the statute, and thus the reading that best reflects Congress's intent. *See Davey*, 151 F.4th at 1255.

At first glance, § 1225(b)(2)(A)'s reference to both "an alien who is an applicant for admission" and "an alien seeking admission" could appear to be referring to two different categories of noncitizens. § 1225(b)(2)(A). But reading this sentence in context of the rest of the statute, it is clear that Congress was not introducing a new and undefined class of noncitizens but was using "seeking admission" as a synonym for or an active form of the "alien who is an applicant for admission" that is the subject of the sentence. *See id.*; *see also Alvarado Montoya*, 2025 WL 3733302, at *7–8.

Congress links these two terms together first in § 1225(a)(3): "All aliens . . . who are applicants for admission *or otherwise seeking admission* . . . [to] the United States shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3) (emphasis added). This phrase, "or otherwise seeking admission," functions here as an appositive, "a noun element that immediately follows another noun element in order to define or further identify it."

Appositives—Definition and Use, CHICAGO MANUAL OF STYLE (Online) § 5.26 (18th ed.) (last accessed January 9, 2026),

https://www.chicagomanualofstyle.org/book/ed18/part2/ch05/psec026.html.

The definitional link between "applicants for admission" and "seeking admission" is most apparent from Congress's use of the word "otherwise" to introduce "seeking admission." 8 U.S.C. § 1225(a)(3). This logically requires that someone who meets § 1225(a)(1)'s definition of an "applicant for admission" to likewise be deemed "seeking admission." *Alvarado Montoya*, 2025 WL 3733302, at *8. The "otherwise" adverb serves as a catchall category for other aliens who though not strictly applicants for admission are doing what an applicant for admission is doing: seeking admission. *Id.*; *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.'").

"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).

Interpreting § 1225(a)(3), the court in *Alvarado Montoya* concluded that "applicants for admission or otherwise seeking admission" is best understood as "a noun phrase and a

category encompassing that noun phrase." *Alvarado Montoya*, 2025 WL 3733302, at *8. By virtue of this linking, "all 'applicants for admission' are 'seeking admission'" but the phrasing of § 1225(a)(3) logically precludes the "possibility that some 'applicants for admission' are not 'seeking admission.'" *Id.* at *9.

And the purpose of § 1225(a)(3)'s inspection requirement also ties its use of the appositive "seeking admission" to § 1225(b)(2)(A)'s use of it: Subsection (a)(3) requires applicants for admission or noncitizens who are "otherwise seeking admission" to present themselves for inspection, and subsection (b)(2)(A) dictates what happens to those among them who upon inspection are not "clearly and beyond a doubt entitled to be admitted." § 1225(b)(2)(A).

And section 1225(a)(5) states that "[a]n applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant *in seeking admission* to the United States . . . ." *Id.* § 1225(a)(5) (emphasis added). "Both of these provisions reflect that applicants for admission are seeking admission." *Lopez*, 2026 WL 261938 (slip op. at 15). Thus as used in § 1225(b)(2)(A) and (a)(3), "[s]eeking does not describe what the alien is voluntarily doing or the alien's mindset." *Alvarado Montoya*, 2025 WL 3733302, at *8. Instead, "[t]he alien is 'seeking admission' in the same way the alien is 'an applicant for admission'—by congressional decree." *Id.*

A further contextual clue comes from the history of Congress's efforts to correct the "anomaly" that existed pre-IIRIRA "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); *cf. Reno*, 525 U.S. at 476–78 (relying on the textual changes made between the pre- and post-IIRIRA judicial-review schemes as a proper means of statutory interpretation).

The IIRIRA's 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.'" *Torres*, 976 F.3d at 928

Following Petitioner's argument that § 1225(b)(2)(A) only applies to "people arriving at U.S. ports of entry or who recently entered the United States" would require the Court to delete the language in § 1225(a)(1) that fixed this anomaly and would 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 v. Noem*, CIV-25-02325-CAB, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (rejecting Petitioner's reading because it would repeal the IIRIRA statutory fix); *Sandoval v. Acuna*, No. CIV-25-01467, 2025 WL 3048926, at *6 n.7 (W.D. La. Oct. 31, 2025) at ("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.").

This historical context is consistent with the text of § 1225(a)(1), (a)(3), and (b)(2)(A). And it is consistent with the textual clues and structure of § 1225(b)(2)(A):

> Had Congress meant to imply a category of applicants for admission who might not be seeking admission, the natural manner of doing so would read "in the case of an alien who is *both* an applicant for admission *and seeking admission.*" Instead, the phrase "alien seeking admission" comes after the operative language, "if the examining immigration officer determines." *Id.* This structure indicates that "alien seeking admission" *refers* to the prior subject—it does not imply *modification* of the prior subject.

Alvarado Montoya, 2025 WL 3733302, at *10. This structure thus "suggests equivalent usage." *Id.*

And there is nothing wrong with Congress's use of different words to mean the same thing—especially here when it has already linked them together in § 1225(a)(3) and (a)(5). *See Jennings*, 583 U.S. at 303 ("[T]here is no 'canon of interpretation that forbids interpreting different words used in different parts of the same statute to mean roughly the same thing.'" *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 540 (2013)).

For the reasons explained above, that's what Congress did here. And it did so to prevent those who have secretly and unlawfully entered the country without presenting themselves for admission from disappearing back into the country "before a final

decision can be made." *Jennings*, 583 U.S. at 286. And this means that Petitioner must remain detained while this process proceeds.

C. Petitioner can show no due process violation in his detention pending removal proceedings under § 1225(b)(2)(A).

1. The Court should reject Petitioner's request to expand Due Process into a context that the Supreme Court has rejected.

Petitioner's first due process claim largely merges with his statutory challenge to his detention. He argues that the "government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process." Petition, ¶¶ 51–53.

It is true that noncitizens detained while awaiting removal have a liberty interest protected by due process. *See Zadvydas*, 533 U.S. at 693–95 (addressing indefinite post-removal detention). But their due process rights are far more limited than those that apply to citizens. *Denmore v. Kim*, 538 U.S. 510, 521 (2003). And in *Jennings*, the Supreme Court expressly declined to read a due process limit to the duration of the mandatory detention under § 1225(b)(2). *See Jennings*, 583 U.S. at 297.

Petitioner claims *Zadvydas* supports his request to require a bond hearing at the very outset of his detention pending removal proceedings. Petition, ¶ 52. "*Zadvydas*, however, provides no such authority." *Jennings*, 583 U.S. at 298 (rejecting a due process-based time limit on § 1225(b)(2) detentions). In the post-removal order detention at issue in *Zadvydas*, the Court ruled that prolonged detention beyond "a period reasonably necessary to

secure removal" could violate due process, and that if removal was not reasonably foreseeable after six months, then continued detention would infringe that liberty interest. *Zadvydas*, 533 U.S. at 699–701. But *Zadvydas*'s standard has not been applied to mandatory detention under § 1225(b)(2)(A). *See Jennings*, 583 U.S. at 299–300. And in rejecting the Ninth Circuit's attempt to extend *Zadvydas*'s holding to §§ 1225 & 1226, the Court in *Jennings* noted that the mandatory detention in § 1225(b)(2), unlike the provision at issue in *Zadvydas*, "provided for detention for a specified period of time," namely the time needed "for a removal proceeding." *Id.* at 299 (quoting § 1225(b)(2)(A)). Thus, Petitioner's detention has statutory limits and does not require *Zadvydas*-like intervention.

2. Petitioner's second due process claim is premature and extends far beyond the bounds of existing precedent governing the due process rights of inadmissible aliens who are applicants for admission.

Petitioner argues that this Court should that Respondents may not impose excessive bond. Petition, ¶¶ 55–63. This argument is again tied with the previous ones, and as explained above, there are only limited due process rights in this early stage of the removal proceedings.[8] This argument is also premature and speculative. And it requires the Court, on this speculative basis to extend into new context a layering due process and

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[8]Petitioner states that his "detention has already been prolonged." Petition, ¶ 60. But that's not so. Petitioner had been detained for only two weeks when he filed his petition and has only been detained for a month at this point. *See* Exhibit 1. Even if *Zadvydas* applied to the pre-removal order setting, then Petitioner would not have reached its presumptive six-month limit.

Eighth Amendment-inspired excessive-bail protections beyond those contained in the INA onto §§ 1225(b)(2)(A) and 1226(a)(2). If the Court were to grant the writ, it should do so conditionally pending a bond hearing and it should leave for later things that may never happen.

IV. CONCLUSION

For these reasons, Respondents respectfully request that the Court deny the Petition and dismiss the case.

Respectfully submitted,

ROBERT J. TROESTER
United States Attorney

/s/ Cedric C. M. Bond
CEDRIC C. M. BOND, OBA #33119
Assistant United States Attorney
210 Park Avenue, Suite 400
Oklahoma City, Oklahoma 73102
(405) 553-8700
Cedric.Bond2@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2026, I electronically filed the attached document to the Clerk of Court using the ECF System, which sent a Notice of Electronic Filing to the following ECF registrant:

Kelly Stump, Counsel for Petitioner

/s/ Cedric C. M. Bond
Assistant United States Attorney