

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

PEDRO LUIS BAEZ-SANTOS,)	
Petitioner,)	
)	
v.)	CIV-26-0070-SLP
)	
DON JONES, et al.,)	
Respondents.)	

**RESPONSE IN OPPOSITION TO
THE PETITION FOR WRIT OF HABEAS CORPUS**

Respectfully Submitted,

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**RESPONSE IN OPPOSITION TO
THE PETITION FOR WRIT OF HABEAS CORPUS**

Respondents¹ United States Attorney General Pamela Bondi, United States Secretary of the Department of Homeland Security Kristi Noem, Director of Immigration and Customs Enforcement Todd Lyons, and Acting Field Office Director of Enforcement and Removal Operations, Mark Siegel (collectively, “Respondents”), pursuant to the Court’s Order (Doc. 8), respond to the Petition for Writ of Habeas Corpus (Doc. 1) and respectfully submit that the Court should deny the Petition and enter an order of dismissal.²

INTRODUCTION

Petitioner is an alien challenging the Department of Homeland Security’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.

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

² Respondents are aware of this Court’s previous decisions regarding this issue, *see, e.g., Jose-de-Jose v. Noem*, No. CIV-25-1454-SLP, 2025 WL 359922 (W.D. Okla. Jan. 29, 2026), and note that this district is currently split. While Judges Dishman and Wyrick have adopted the Respondents’ position, *see Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025); *Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344 (W.D. Okla. Jan. 6, 2026), other members of the Court have disagreed. *See, e.g., Malacidze v. Noem*, No. CIV-25-1527-D, 2026 WL 227155 (W.D. Okla. Jan. 28, 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); *Escarcega v. Olson*, No. CIV-25-1129-J, 2025 WL 3243438 (W.D. Okla. Nov. 2, 2025).

Petitioner also asserts that any ongoing detention without a bond determination violates due process.

Thus, this case largely turns on the plain language of the Immigration and Nationality Act (“INA”) and specifically 8 U.S.C. § 1225(b)(2)(A). That Section provides:

[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.

Importantly, Petitioner cannot dispute that he is an “applicant for admission.” Instead, Petitioner lodges historical and structural challenges to the use of § 1225, noting that recent enforcement of § 1225(b)(2)(A) is a change in policy by the new administration. While that contention is true, it is hardly a reason to resist the plain language of the statute. Petitioner also notes that several district courts see it differently and have ruled that § 1225 only applies to “arriving aliens,” despite the notable *absence* of that phrase in § 1225(b)(2)(A).

But, as recently held by the United States Court of Appeals for the Fifth Circuit, those decisions cannot account for the plain language of § 1225, the overall statutory structure, and congressional intent behind its adoption as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”). *See Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at *4 (5th Cir. Feb. 6, 2026) (“The text and context of § 1225 contradict the petitioners' reading of the statute.”). Further, Petitioner’s request to construe his detention as pursuant to § 1226(a) rather than § 1225(b)(2)(A) is a challenge to how DHS commenced proceedings (not his mere detention), which is barred by the

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

Moreover, Petitioner advances a conception of due process that precludes any detention of aliens without a bond determination. That expansive position has never been adopted by the Supreme Court, despite repeated invitations to do so. 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 – Statutory Analysis of § 1225 and § 1226

A. Applicants for Admission

In the 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 subset 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 group.

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

Applicants for admission may primarily be placed in removal proceedings one of two ways, either through expedited removal under § 1225(b)(1), or through regular removal proceedings under § 1225(b)(2).

Section 1225(b)(1), titled “Inspection of aliens arriving in the United States ... ,” describes the two categories of applicants for admission that are subject to expedited removal proceedings. The first category includes those aliens who are arriving and inadmissible under 8 U.S.C. § 1182(a)(6)(c) or (a)(7).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 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

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).

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 is a citizen of Cuba who entered the United States on September 18, 2021. Pet. ¶ 1; *See also* Ex. 2, Pet. (Doc. 1-2) (Petitioner's Notice to Appear). He is charged as removable 8 U.S.C. § 1182(a)(6)(A)(i), an alien present without admission or parole. *Id.* at 1. Petitioner is currently detained at Kay County Detention Center in Newkirk, Oklahoma. Pet. ¶ 7.

Significantly, in his immigration proceedings, Petitioner filed a Form I-589 Application for Asylum. Ex. 1 (redacted first page of application). Seeking asylum is 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*, 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*, 2025 WL 3033967, at *8 ("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.”).

III. Petitioner’s Claims

Petitioner asserts four counts. Count I and Count III allege statutory violations stemming from Petitioner’s ongoing detention under § 1225. Count II alleges a regulatory violation of the INA as a result of his detention under § 1225. Count IV alleges a due process violation from Petitioner’s ongoing detention without a bond hearing.

ARGUMENT

The Petition should be denied. Petitioner’s due process violation in Count IV is premature and without basis. Counts I through III 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. Petitioner’s statutory assertions misread the INA and cannot account for the statutory definition of “applicants for admission.”

I. Petitioner’s Statutory Arguments are Jurisdictionally Barred and Misread the INA

A. Petitioner’s Statutory Claims (Counts I and III) are Barred by the INA’s Jurisdiction Channeling and Stripping Provisions

This Court cannot consider Petitioner’s challenge to DHS’s commencement of proceedings pursuant to § 1225(b)(2)(A) rather than § 1226(a). As explained below, the INA channels challenges arising from actions taken to remove an alien to the appropriate court of appeals.

Congress has provided noncitizens with a vehicle to challenge the statutory provision

that DHS relies on to detain and remove noncitizens. Specifically, the INA provides that claims related to removal orders are to be presented to the appropriate court of appeals through a petition for review. 8 U.S.C. § 1252(a)(5). Review of a final order includes review of “all questions of law and fact, *including interpretation and application of constitutional and statutory provisions*, arising from any action taken or proceeding brought to remove an alien from the United States.” *Id.* § 1252(b)(9) (emphasis added). The decision to effectively begin those proceedings via § 1225(b)(2)(A) and immediate filing of an NTA is integral to the removal proceedings and a question of law that can be reviewed by the appropriate court of appeals as part of any appeal of a final order of removal—but not this Court. *See Acxel S.Q.D.C. v. Bondi*, 2025 WL 2617973, at *3 (D. Minn. Sept. 9, 2025) (“1252(b)(9) consolidates all questions of law and fact, including constitutional and statutory challenges, arising from removal proceedings into one petition for review—the review of a final removal order before a circuit court of appeals.” (cleaned up)).

In addition to the channeling provision, Congress also limited what types of claims district courts can review. Specifically, 8 U.S.C. § 1252(g) states that, except as otherwise provided in Section 1252, courts lack jurisdiction to consider “any cause or claim by or on behalf of any alien arising from the decision or action by [DHS] to *commence* proceedings, *adjudicate* cases, or *execute* removal orders against any alien under this chapter.” (emphasis added). The bar on considering the commencement of proceedings includes a bar on considering challenges to the *basis on which* DHS chooses to commence removal proceedings. *See Alvarez v. U.S. Immigr. & Customs Enf’t*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars [courts] from questioning ICE’s discretionary

decisions to commence removal—and thus necessarily prevents [courts] from considering whether the agency should have used a different statutory procedure to initiate the removal process.”).

Accordingly, Congress—in sections 1252(a)(5) and (b)(9)—provided aliens (like Petitioner) with a vehicle to challenge the basis on which ICE seeks to detain and remove them in the court of appeals; but Congress also—in sections 1252(b)(9) and (g)—deprived district courts of jurisdiction to review an alien’s challenge to DHS’s decision about the basis of removal proceedings.

Petitioner will no doubt try to sidestep the jurisdictional bar by claiming that he is not challenging the decision to *execute* proceedings, but merely his ongoing detention. While Petitioner’s due process claim (Counts IV) arguably only challenges his ongoing detention, Counts I through III expressly challenge the basis of the *application* of proceedings against him and is barred. Boiled down to its essence these Counts contend 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.”) (emphasis added).

Further, upon examination and detention, DHS filed charges. Thus, the immigration officer’s examination of Petitioner directly and immediately effected *commencement* of the proceedings and therefore triggers the jurisdictional bar. *See Namgyal Tsering v. U.S. Immigr. & Customs Enf’t*, 403 F. App’x 339, 343 (10th Cir. 2010) (“We agree with the Fifth Circuit that claims that clearly are included within the definition of arising from are those claims connected *directly and immediately* with a decision or action by the Attorney General

to commence proceedings, adjudicate cases, or execute removal orders.” (cleaned up)).

Petitioner’s functional request for relief underscores this point. He asks the Court to *reconstrue Executive actions* into something they are not (§ 1226 instead of § 1225), undermining prosecutorial discretion. Yet, “§ 1252g was directed against ... attempts to impose judicial constraints upon prosecutorial discretion.” *Veloz-Luvevano v. Lynch*, 799 F.3d 1308, 1315 (10th Cir. 2015) (quoting *Reno v. Am.–Arab Anti–Discrimination Comm.*, 525 U.S. 471, 485 n. 9 (1999)); *see also* 8 U.S.C. § 1226(e) (“The Attorney General’s discretionary judgment regarding the application of this section shall not be subject to review.”).

Thus, as opposed to the challenge to detention in Counts I and II, Count III challenges the application of § 1225, which only collaterally affects the potential for release on bond. *Axcel S.Q.D.C.*, 2025 WL 2617973, at *3 (“Petitioner precisely challenges Respondents’ decision to detain him. Although he contends that § 1252(b)(9) does not bar his claims because he is challenging his ongoing detention, not the initial decision to detain him, this difference does not alter the Court’s conclusion.”).

Accordingly, this Court is without jurisdiction to hear Petitioner’s statutory challenge.

B. Petitioner’s Statutory Argument Misconstrues the INA and the “Applicant for Admission” Deeming Provision

The plain language of § 1225(b)(2)(A) straightforwardly applies in this case. To escape that conclusion, some courts have suggested ambiguity based on the title and/or structure of the provision and past practice, and others read a limitation of “arriving

noncitizen” into the language of § 1225(b)(2)(A) that is conspicuously absent from the actual text. As noted below, each of those contentions is in error.

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

Congress used the phrase “arriving alien” throughout Section 1225. *See, e.g.* 8 U.S.C. §§ 1225(a)(2), (b)(1), (c)(1), (d)(2). The phrase distinguishes a noncitizen presently or recently “arriving” in the United States from other “applicants for admission” who, like Petitioner, have been in the United States without being admitted. But Congress *did not* use the word “arriving” to limit the scope of § 1225(b)(2)(A)’s mandatory-detention provision. Had Congress intended to limit § 1225(b)(2)(A)’s scope to “arriving” noncitizens, it would have used that phrase like it did in § 1225(b)(1), a mere one subsection prior. But Congress did not, and that omission must be given effect. *Cabanas v. Bondi*, No. 25-CV-04830, 2025 WL 3171331, at *5 (S.D. Tex. Nov. 13, 2025) (“The problem with the argument, however, is that Congress could have said that § 1225(b) applied only to *arriving aliens* if that’s what was meant. But it didn’t, even as three other closely related subsections did.”); *Russello v. United States*, 464 U.S. 16, 23 (1983) (“Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” (cleaned up)); *Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004) (concluding that “[t]he Government’s request that we read [a specific] phrase into [a statutory] exception, when it is clear that Congress knew how to specify [those words] when it wanted to, runs afoul of the usual rule that when the legislature uses certain language in one part of the statute and different language in another, the court assumes

different meanings were intended.”).

Despite the lack of an “arriving” limitation, Petitioner asserts in conclusory form that the statute’s framework is premised on inspections at the border of people who are ‘seeking admission’ to the United States. But that sweeping position cannot account for the definition of an applicant for admission that includes those found in the country and § 1225(b)(2)(A)’s lack of the “arriving” modifier. *Montoya*, 2025 WL 3733302, at *2 (“The statute gives no temporal or geographic limitations on the status of being an applicant for admission.”).

The Title of § 1225 underscores this point. It reads: “Inspection by immigration officers, *expedited removal of inadmissible arriving aliens*, **referral for hearing.**” The first underlined portion is a reference to subpart (a)’s inspection obligations. The second italicized portion refers to the expedited proceedings of (b)(1) for “arriving aliens.” Importantly, however, the third part of bolded text is a reference to the full removal proceedings under (b)(2)(A) for noncitizens present in the country. That is because “arriving aliens” are subject to *expedited* removals and do not get hearings pursuant to § 1229a. In contrast, noncitizens present in the country are provided full removal hearings under (b)(2)(A) (“detained for a proceeding under section 1229a”). *See Sandoval v. Acuna*, No. 25-CV-1467, 2025 WL 3048926, at *4 (W.D. La. Oct. 31, 2025) (“However, aliens subject to removal under § 1225(b)(2) are not subject to expedited removal but, rather, removal proceedings in the ordinary course pursuant to § 1229a.”). No other portion of § 1225 provides for hearings. Thus, the title is consistent with the Respondents’ reading—and *inconsistent* with Petitioner’s interpretation.

Likewise, the subpart titles of §§ 1225(b)(1) and (b)(2) are consistent. The title of (b)(1) is “Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled.” In contrast, (b)(2) has *no* reference to arriving aliens. It reads “Inspection of other aliens.” Again, the use of “arriving” in some parts of § 1225 and not others must be given effect. Petitioner’s interpretation renders the references to “arriving” superfluous.

2. *Petitioner’s Interpretation Undermines the Purpose of the IIRIRA*

Petitioner’s interpretation effectively repeals a statutory fix Congress enacted with IIRIRA in 1996. Specifically, prior to the IIRIRA, an “anomaly” existed “whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020). The addition of § 1225(a)(1) “ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an ‘applicant for admission.’” *Id.*; *see also* H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“This subsection is intended to replace certain aspects of the current ‘entry doctrine,’ under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry.”).

Petitioner’s argument would undo that fix and incentivize noncompliance with immigration laws by providing more protection to those that bypass border inspections and evade detection to reside within the United States—a result at odds with the intent of

Congress when amending § 1225 of the INA. *See Chavez v. Noem*, No. 25-CV-02325-CAB-SBC, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (rejecting Petitioner’s reading because it would repeal the IIRIRA statutory fix); *Sandoval*, 2025 WL 3048926, at *6 n.7 (“For this Court to conclude that an alien who has unlawfully entered the United States and managed to remain in the country for a sufficient period of time is entitled to a bond hearing, while those who seek lawful entry and submit themselves for inspection are not, not only conflicts with the unambiguous language of the governing statutes, but would also seemingly undermine the intent of Congress in enacting the IIRIRA.”); *Oliveira v. Patterson*, No. 25-CV-01463, 2025 WL 3095972, at *6 (W.D. La. Nov. 4, 2025) (holding that application of § 1225(b)(2)(A) to those residing in the “country comports with the legislative history of [IIRIRA]”).

Petitioner points to the commentary implementing regulations for IIRIRA to suggest that the Executive understood § 1225 to only apply to arriving aliens. Specifically, he cites to Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings, Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). *See* Pet. ¶ 32. The commentary reads: “*Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.*” 62 Fed. Reg. at 10323 (emphasis added). Thus, the italicized portion acknowledges the plain language of the statute that noncitizens in the country *are* “applicants for admission” under § 1225, but announces the *discretionary* choice to use § 1226 for detentions and thus permit bond hearings. A new administration has deviated from that prior choice, as it is

permitted to do. Thus, Petitioner and several courts conflate enforcement discretion with statutory interpretation, which then leads to concern about ambiguity that does not exist. *Rojas*, 2025 WL 3033967 at *9 (“In the end, the Court concludes that it must follow the most natural reading of the statutory text. Prior administrations’ generous interpretations of these laws, while relevant to understanding that text, do not and cannot rewrite it. As explained above, Respondents’ reading is more consistent with the plain terms of Section 1225(b).”).

3. *Claims of Passive Residency Do Not Alter Whether a Noncitizen Is an Applicant for Admission Subject to Detention*

Petitioner makes the argument that he is not seeking admission. Pet. ¶ 44 (claiming § 1225(b)(2) only applies to those seeking admission). Essentially, Petitioner argues that passive residency is not “seeking admission.” Although some courts have adopted that reasoning, those opinions fail to give effect to the plain language of the statute, defy canons of statutory interpretation, and are wrongfully decided. Indeed, the Supreme Court has treated § 1225(b)(2)(A) as applying to “*all applicants for admission* not covered by § 1225(b)(1).” *Jennings*, 583 U.S. at 287 (emphasis added); *see also Sandoval*, 2025 WL 3048926, at *5 n.5 (“The fact that Petitioner may have lacked the subjective intent to ever apply for admission does not prevent her from being categorized as an “applicant for admission” under § 1225. For this Court to hold otherwise would clearly contravene the plain statutory language and Congress’s intent.”). Simply put, “[t]here is no material disjunction—by the terms of the statute or the English language—between the concept of ‘applying’ for something and ‘seeking’ something.” *Buenrostro-Mendez*, 2026 WL

323330, at *4 (citation omitted). Rather, “[w]hen a person applies for something, they are necessarily seeking it.” *Id.*

“As always, we start with the statutory text.” *Garland v. Cargill*, 602 U.S. 406, 415 (2024). Statutory language “is known by the company it keeps.” *Dubin v. United States*, 599 U.S. 110, 124 (2023) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). Section 1225(b)(2) requires the detention of an “applicant for admission, if the examining officer determines that [the] alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory text and context show that being an “applicant for admission” is a means of “seeking admission.” In other words, every “applicant for admission” is inherently and necessarily “seeking admission,” at least absent a choice to withdraw their applications for admission or seek voluntary departure. No additional affirmative step is necessary.

Section 1225(a)(3) confirms this by providing that all aliens “who are applicants for admission or *otherwise seeking admission* . . . shall be inspected by immigration officers.” (emphasis added). The word “[o]therwise’ means ‘in a different way or manner’” *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster’s Third New International Dictionary 1598 (1971)); *see also Att’y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) (“The phrase ‘or otherwise’ operates as a catchall: the specific item that precede it are *meant* to be subsumed by what comes after the phrase ‘or otherwise.’” *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th Cir. 2019) (same); *see also* Black’s Law Dictionary 1101 (6th

ed. 1990) (“Otherwise. In a different manner; in another way, or in other ways”). Being an “applicant for admission” is thus a particular “way or manner” of seeking admission, such that any alien who is an “applicant for admission” *is* “seeking admission” for purposes of Section 1225(b)(2)(A). *Montoya*, 2025 WL 3733302, at *7 (“Here, § 1225(a)(3) explains how the contested phrases relate. Specifically, “applicants for admission or otherwise seeking admission” creates a formal logical relationship between the two concepts.”).

“Seeking admission” is thus ‘a term of art’ that includes not only aliens who “entered the United States with visas or other entry documents before their presence became lawful” but also aliens who “entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of [INA §] 235(a)(1)” *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 n.6 (BIA 2012) (emphases omitted). As a result, “many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws.” *Id.* at 743. For example, an alien who previously unlawfully entered the United States and never is admitted, departs, and subsequently submits a literal application for admission to the United States—*e.g.*, obtaining travel documents, such as a visa, and presenting at a port of entry for inspection—is deemed to be “*again* seek[ing] admission” to the United States. *Id.* at 743-44 & n.6 (emphasis added) (quoting and discussing, 8 U.S.C. § 1182(a)(9)(B)(i)(I)-(II)). Mere presence without admission *is* seeking admission “by operation of law.” *Id.*; *see also Montoya*, 2025 WL 3733302, at *8-9 (“‘Seeking’ does not describe what the alien is voluntarily doing or the alien’s mindset.

The alien is ‘seeking admission’ in the same way the alien is ‘an applicant for admission’—by congressional decree. So, all ‘applicants for admission are ‘seeking admission.’”).

The everyday meaning of the statutory terms also supports this reading. One may “seek” something without “applying” for it—for example, one who is “seeking” happiness is not “applying” for it. But one *applying* for something necessarily is *seeking* it. *Accord Mejia Olalde v. Noem*, No. 25-CV-00168-JMD, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025) (“To ‘seek’ is a synonym of to ‘apply’ for.”). *Compare* Webster’s New World College Dictionary (4th ed.) at 69 (“apply” means “To make a formal request (*to* someone *for* something)”), *with id.* at *1298 (“seek” means “to request, ask for”). For example, a person who is “applying” for admission to a college or club is “seeking” admission to the college or club. *See* The American Heritage Dictionary of the English Language 63 (1980) (“American Heritage Dictionary”) (“apply” means “[t]o request or *seek* employment, acceptance, or *admission*” (emphasis added)). Likewise, an alien who is “applying” for admission to the United States (*i.e.*, an “applicant for admission”) necessarily is “seeking admission” to the United States. *Accord Rojas v. Olson*, No. 25-CV-1437, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025) (“seeking admission” is “best read as simply another way of referring to aliens who are applicants for admission”).

All of this confirms that neither the duration of an alien’s unlawful presence in the United States nor his distance from the border when apprehended alters the legal reality that an “applicant for admission” is “seeking admission.” *Montoya*, 2025 WL 3733302, at *2 (“The statute does not create a third ‘non-seeking applicant’ category, and the ‘applicant for admission’ category explicitly includes both arriving and present unadmitted aliens.”).

“Congress knows how to limit the scope” of the INA “geographically and temporally when it wants to.” *Mejia Olalde*, 2025 WL 3131942, at *4. For example, 8 U.S.C. § 1225(b)(1) may apply to aliens “arriving in the United States” or who “ha[ve] been physically present in the United States continuously for [a] 2-year period.” *Id.* § 1225(b)(1). So, “[i]f Congress meant to say that an alien no longer is ‘seeking admission’ after some amount of time in the United States, Congress knew how to do so.” *Mejia Olalde*, 2025 WL 3131942, at *4. It did not. To the contrary, Section 1225(a)(1)’s inclusion of *both* aliens “arriving” and those “present in the United States” confirms that *all* aliens who are not admitted are “applicants for admission,” regardless of the length of their presence in the country.

None of this is to say, however, that “seeking admission” has no meaning beyond “applicant for admission.” As § 1225(a)(3) shows, being an “applicant for admission” is only *one* “way or manner” of “seeking admission,” not the exclusive way. For example, lawful permanent residents returning to the United States are not “applicants for admission,” but they still may be deemed to be “seeking admission” in some circumstances. *See* 8 U.S.C. § 1101(a)(13)(C). But for purposes of Section 1225(b)(2) and its regulation of “applicants for admission,” the statute unambiguously provides that an alien who is an “applicant for admission” is “seeking admission,” even if the alien is not engaged in some separate, affirmative act to obtain admission. Stowaways, too, are not “applicants for admission” but are still subject to inspection for admissibility. *See* 8 U.S.C. §§ 1182(a)(6)(D); 1225(a)(2). Moreover, given the complexity of the statutory scheme and IIRIRA’s changes, Congress’s use of the phrase “or otherwise seeking admission” ensured

that all aliens would be subject to Section 1225(a)'s inspection requirement—including aliens who entered before IIRIRA's effective date.

Further, as a matter of law, by being “present in the country” without being “admitted,” Petitioner *is deemed* an “applicant for admission.” *Mejia Olalde*, at *3 (“[T]he statute *defines* [petitioner] as seeking admission ... Because [petitioner] is an alien, present in the United States, who has not been admitted, the law defines him to be an applicant for admission. He is thus seeking admission.”); *Sandoval*, 2025 WL 3048926, at *5 n. 5 (“The fact that Petitioner may have lacked the subjective intent to ever apply for admission does not prevent her from being categorized as an “applicant for admission” under § 1225. For this Court to hold otherwise would clearly contravene the plain statutory language and Congress’s intent.”); *Oliveira*, 2025 WL 3095972, at *5 n. 4 (same); *Vargas Lopez v. Trump*, 802 F.Supp.3d 1132, 1142 (D. Neb. Sept. 30, 2025) (“just because [petitioner] illegally remained in this country for years does not mean that he is suddenly not an ‘applicant for admission’ under § 1225(b)(2)”).⁶ Petitioner’s definition of “applicant for admission” would require the Court to find that Congress defined it “broadly in § 1225(a)(1) to include all ‘alien[s] present in the United States who [have] not been admitted,’ but then, every time it subsequently used the phrase in § 1225, narrowed it to

⁶ Additionally, a contrary reading leads to the absurd result that immigration officers cannot immediately detain a noncitizen residing in the United States without determining if they were somehow *actively* seeking admission (a standard not identified or defined in the INA or implementing regulations). Instead, the proper standard for the immigration officer is that which is plainly stated in the INA; namely, whether the noncitizen is “entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A).

apply only to those actively seeking admission.” *Buenrostro-Mendez*, 2026 WL 323330, at *6. The Court should decline to do so.

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

II. Petitioner’s Constitutional Due Process Arguments (Count IV) Regarding his Continued Detention Are Premature and Without Basis

A. Petitioner’s Is Not Subject to Indefinite Detention

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

Petitioner relies on *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See* Pet. ¶ 66 (citing *Zadvydas* in support of Count VI for the proposition that “Freedom from imprisonment . . . lies at the heart of the liberty that the Due Process Clause protects.”). 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. Here, Petitioner was detained less than one and half months 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*, 538 U.S. at 522 (“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.”).

B. Application of *Mathews* Favors Petitioner’s Continued Detention

The Petition urges the application of *Mathews v. Eldridge*, 424 U.S. 319, 324 (1976). Pet. ¶¶ 65-70. But the remand in *Jennings* did not include instructions to apply *Mathews’* analysis. *See also Dusenbery v. United States*, 534 U.S. 161, 167–68 (2002)

“Although we have since invoked *Mathews* to evaluate due process claims in other contexts, we have never viewed *Mathews* as announcing an all-embracing test for deciding due process claims.” (cleaned up)).

Instead, to assess the merits of Petitioner’s constitutional claims, it is necessary to first determine what due process rights Petitioner possesses. As noted above, the federal statute *mandates* Petitioner’s detention. And the Supreme Court has held, nowhere in the statutory rubric did Congress mention a bond hearing or state a maximum period of time within which an alien could be held in such mandatory detention without providing a bond hearing. *See Jennings*, 583 U.S. at 297. Petitioner has not been admitted to the U.S., and for any noncitizen who has not been admitted into the country, the INA provides the only process due under the Constitution. *United States v. Thuraissigiam*, 591 U.S. 103, 138-40 (2020); *see also Demore*, 538 U.S. at 523 (“It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings. At the same time, however, this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process.” (cleaned up)).

Indeed, the Supreme Court has described “our century-old rule” as:

[T]he power to admit or exclude aliens is a sovereign prerogative; the Constitution gives the political department of the government plenary authority to decide which aliens to admit; and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted.

Thuraissigiam, 591 U.S. at 139 (cleaned up); *see also U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) (“Whatever the procedure authorized by Congress is, it is due

process as far as an alien denied entry is concerned.”). Those holdings cannot be squared with Petitioner’s broad claim.

But even under that three-part *Mathews* test, Petitioner should remain detained. As to the first factor, while liberty is of paramount importance, it is limited in this context. The Supreme Court has emphasized that “detention during deportation proceedings [remains] a constitutionally valid aspect of the deportation process.” *Demore*, 538 U.S. at 523. Any assessment of the private interest at stake therefore must account for the fact that the Supreme Court has never held that noncitizens have a constitutional right to be released from custody during the pendency of removal proceedings, and in fact has held precisely the opposite. *See id.* at 530. Petitioner entered and stayed in this country in violation of its laws. *Aguilera v. Kirkpatrick*, 241 F.3d 1286, 1292 (10th Cir. 2001) (“Moreover, the procedural safeguards are minimal because aliens do not have a constitutional right to enter or remain in the United States.”). Thus, “the due process rights at issue” here are “more limited liberty in the United States by someone no longer entitled to remain in the country.” *Montoya*, No. CIV-25-01231-JD, 2025 WL 3733302, at *14 (citing *Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999)). Moreover, Petitioner has the power to free himself. *See Richardson v. Reno*, 180 F.3d 1311, 1317 n.7 (11th Cir. 1999) (unlike criminal cases, immigration detention “is not entirely beyond [the noncitizen’s] control; he is detained only because of the removal proceedings, and he may obtain his release any time he chooses by withdrawing his application for admission and leaving”), *overruled on other grounds by INS v. St. Cyr*, 533 U.S. 289, 312-13 (2001).

As to the second factor, regarding the potential for erroneous deprivation, Petitioner concedes he has not complied with the immigration laws. There is virtually no risk of erroneous deprivation given the mandatory detention of 8 U.S.C. § 1225(b)(2)(A). Further, Petitioner may be paroled for “urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A).

Finally, the government’s interests, and the fiscal and administrative burdens of using a different scheme, are substantial and strongly weigh against Petitioner’s claim. A court “must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Additionally, “[t]here is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of [U.S.] law.” *Nken v. Holder*, 556 U.S. 418, 436 (2009); *see Landon*, 459 U.S. at 34 (“The government’s interest in efficient administration of the immigration laws . . . is weighty.”). Mandatory detention remedies this risk by “increasing the chance that, if ordered removed, [Petitioner] will be successfully removed.” *Demore*, 538 U.S. at 528 ; *see also Montoya*, No. CIV-25-01231-JD, 2025 WL 3733302, at *15 (noting “That the Executive did provide bond hearings in the past says nothing about administrative burdens associated with that practice.”). Petitioner’s mandatory detention indisputably serves each of these interests. And as the Supreme Court has made clear, civil immigration detention is “constitutionally valid” as long as it “serve[s] its purported immigration purpose.” *Demore*, 538 U.S. at 523, 527.

CONCLUSION

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

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