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

BATRAZ GAEV, Petitioner,	))	
	)	
v.	)	Case No. CIV-26-111-G
	)	
TODD LYONS, et al., Respondents.	))	

MOTION TO DISMISS THE PETITION FOR WRIT OF HABEAS CORPUS

Dated: February 13, 2026

Respectfully submitted,
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RESPONDENTS' MOTION TO DISMISS THE PETITION FOR WRIT OF HABEAS CORPUS

Respondents[1] 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, and Acting Executive Associate Director of Enforcement and Removal Operations Marcos Charles (collectively, "Respondents"), pursuant to the Court's Order (Doc. 10), respectfully submit this Motion to Dismiss the Petition for Writ of Habeas Corpus (Doc. 1) for failure to state a claim upon which relief can be granted.

INTRODUCTION

The Petition does not clearly articulate the grounds for relief, fails to state sufficient facts supporting each ground, contains factual errors, and attempts a legal argument which disregards Petitioner's designation as an arriving alien who is subject to mandatory detention.

Petitioner is an arriving alien who presented himself at a designated port of entry, applied for admission into the United States, and requested asylum. Thus, he is subject to the mandatory detention procedures of 8 U.S.C. § 1225(b)(1). Petitioner ignores his arriving alien designation and mandatory detention under § 1225(b)(1), and alleges an argument brought by many petitioners of late regarding the applicability of 8 U.S.C. §

[1] Petitioner names former Secretary of Homeland Security, Alejandro Mayorkas as a Respondent. Pet. ¶ 4. Secretary Mayorkas' term ended January 20, 2025. Petitioner also names a general "WARDEN" of Diamondback Correctional Facility. Pet. ¶ 7. The current warden of Diamondback Correctional Facility, Fred Figueroa, is not a federal official and this Response is therefore not filed on his behalf.

1226(a) (which allows for a discretionary bond hearing) to immigration detention rather than 8 U.S.C. § 1225(b)(2) (which requires mandatory detention). But neither of these sections apply to him. Rather, Petitioner is detained pursuant to the mandatory detention procedures of 8 U.S.C. § 1225(b)(1)(B)(ii), *which apply to aliens—like Petitioner—who present themselves at a port of entry.* Reading generously into the Petition, Petitioner may also assert that any ongoing detention without a bail determination violates his procedural due process rights.

BACKGROUND

I. Legal Framework

A. Standard of Dismissal for Failure to State a Claim Upon Which Relief Can Be Granted and the Rules governing 28 U.S.C. 2254 Cases

Under Federal Rule of Civil Procedure 12(b)(6), a party may move for dismissal if the complaint fails to state a claim upon which can be granted. Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The Court will accept as true all well-pled factual allegations and construe them in the light most favorable to the non-movant. *Peterson v. Grisham,* 594 F.3d 723, 727 (10th Cir. 2010).

A complaint "attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations," but it does need "more than labels and conclusions." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). A complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

Fed. R. Civ. P. 2(c) of the Rules Governing 28 U.S.C. § 2254 Cases states in relevant part that "[t]he petition must: (1) specify all the grounds for relief available to the petitioner; (2) state the facts supporting each ground; and (3) state the relief requested." As the United States Supreme Court explained in *Mayle v. Felix*, "[i]f the court orders the [respondent] to file an answer, that pleading must 'address the allegations in the petition.'" 545 U.S. 644, 656 (2005). (citation omitted). For Respondents to sufficiently answer, Respondents must be able to identify the claims. *See Williams v. Williams,* No. 25-3188-JWL, 2025 WL 2806781 at *3 (D. Kan. Oct. 2, 2025) (stating the allegations in a petition must "be clear enough that the respondent will be able to address them.").

B. Applicants for Admission and Arriving Aliens

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 of which "arriving aliens" are a part:

> Arriving alien means *an applicant for admission coming or attempting to come into the United States at a port-of-entry,* or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. 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.

8 C.F.R. § 1.2 (emphasis added). *See also* 8 C.F.R. § 1001.1. An "applicant for admission"

is 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 both groups, and makes no contest to his inclusion in the second group.

C. 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, which is the relevant provision to Petitioner, includes those aliens who are arriving and inadmissible under 8 U.S.C. § 1182(a)(6)(c) or (a)(7).[2] *Id.* § 1225(b)(1)(A)(i). Again, this section is unequivocally applicable to the Petitioner.

The second category includes those aliens who have "not been admitted or paroled into the United States," who have not "affirmatively shown, to the satisfaction of an immigration officer, that [they have] been physically present in the United States

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

continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," and who also are inadmissible under Section 1182(a)(6)(c) or (a)(7). *Id.* § 1225(b)(1)(A)(i), (iii)(II).

Aliens within the two categories described in § 1225(b)(1) are subject to expedited removal, *see* 8 C.F.R. § 235.3(b), and "*shall be detained*" until removed (or until the end of asylum or credible fear proceedings) (emphasis added). 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV).[3] These sections do not provide for a bond hearing.

Section 1225(b)(2), titled "Inspection of other aliens," "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)[.]" *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (citing 8 U.S.C. §§ 1225(b)(2)(A), (B)) (emphasis added). Under § 1225(b)(2)(A), all other applicants for admission who an immigration officer determines are "not clearly and beyond a doubt entitled to be admitted" shall be detained for removal proceedings under 8 U.S.C. § 1229a. Thus, § 1225(b)(2)(A) generally provides for detention during full removal proceedings for aliens who are applicants for admission, but who do not fall within one of the two categories described in § 1225(b)(1) (*i.e.*, arriving aliens and other aliens subject to expedited removal). Section 1225 does not provide a bond hearing for aliens detained under that provision.

D. Warrants for Arrest Pending Deportation: 8 U.S.C. § 1226

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

While § 1225 applies to applicants for admission, § 1226 applies more generally to *all* aliens (including for example, legal permanent residents, stowaways, and others who are *not* applicants for admission), even if the alien has not yet encountered or been examined by immigration officers. Further, § 1226 is initiated by warrants issued by the Secretary of DHS. Thus, § 1226 provides procedures for detention and removal of a broader class of aliens and uses a different means to do so.

Section 1226(a) provides that if the Secretary[4] of DHS issues a warrant, regardless whether there was prior interaction or examination by an immigration officer, an alien may be arrested and detained "pending a decision on whether the alien is to be removed from the United States." The section is a means of effectuating detention prior to any examination by an immigration officer. Following arrest, and subject to certain restrictions, the alien may be examined and remain detained or may be released on bond or conditional parole. *Id.* By regulation, immigration officers can release such an alien if he demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If not released by an immigration officer, the alien can request a custody redetermination by an immigration judge before a final order of removal is issued. *See id.* §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

Within that broader category of all aliens, § 1226(c)(1) pertains to the mandatory detention of aliens who have had certain interactions with the criminal justice system. *See*

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

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 aliens who are *not* applicants for admission, such as aliens admitted erroneously but who are nevertheless deportable for being inadmissible at the time of admission. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(C)(i).

In summary, § 1225 only applies to applicants for admission and requires examination by an immigration officer, while § 1226 more generally applies to *all* aliens, even if not yet encountered or examined by immigration officers and is initiated by warrants—even prior to inspection. While there is some overlap between the provisions, that is consistent with the broad purposes of the INA, the different means and remedies necessary to effectuate them, and the discretion afforded the Executive to do so.

II. Petitioner's Background

Petitioner, a citizen and native of Russia, is an arriving alien who presented himself at San Ysidro, California Port of Entry on November 26, 2021. Pet. ¶¶ 1, 9. Ex. 1, I-213 Narrative ("Narrative") at 2. The Narrative fully explains the details of Petitioner's entry:

> On November 26, 2021, Batraz GAEV [] applied for admission into the United States via the San Ysidro Port of Entry vehicle primary lanes. GAEV was unable to produce valid entry documentation and presented his Russian passport bearing his photo and likeness as his identification document. As per the primary officer's referral, the subject made an asylum request.
>
> . . .

> Subject applied for admission into the United States from Mexico at the San Ysidro Port of Entry and requested asylum. Subject is inadmissible to the United States pursuant to sections 212(a)(7)(i)(I) of the INA.

Id. at 2-3. Petitioner was charged as removable under 8 U.S.C. § 1182(a)(7)(A)(i)(I), alien not in possession of valid entry documents. Ex. 2 at 4 ("Not. to Appear").[5] At the time of entry, the issuing officer checked the box on the Notice to Appear designating Petitioner as an arriving alien. *See id.* at 1, the checked box that states ("You are an arriving alien.").

On September 1, 2022, Petitioner submitted an Application for Asylum and Withholding. Ex. 3, ("Application") (cover page of Application). An immigration judge approved the Application on March 13, 2025. Ex. 4, ("IJ Asylum Order"). Respondents appealed the decision to the Board of Immigration Appeals ("BIA") on April 11, 2025. Ex. 5 ("Not. of Appeal"). The appeal remains pending with briefs due from both parties on February 19, 2026. Ex. 6 ("Br. Sched."). On November 21, 2025, Respondents encountered Petitioner during a traffic stop. Pet. ¶ 12. Petitioner is currently detained at Diamondback Correctional Facility. *Id.* ¶ 7.

III. Petitioner's Claims

The Petition contains no specific claims or grounds for relief, and there are little to no specific facts to support the claims for relief this Court has seen on these issues of late. Employing a charitable interpretation" of the Petition, Respondents read the Petition to

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[5] Aliens, 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).

contain a claim for a statutory violation based on DHS's commencement of proceedings pursuant to § 1225, and a claim for a due process violation stemming from Petitioner's continued detention. The Petition also makes extraordinary requests for relief by asking this Court to dictate the terms of any future re-detention. Pet. at 10-11.

ARGUMENT

The Petition should be dismissed because it fails to state a claim upon which relief can be granted and does not comply with the Rules governing 28 U.S.C. § 2254 Cases. Any argument regarding Petitioner's detention under § 1225(b)(2) rather than § 1226(a) is irrelevant as Petitioner is lawfully detained under § 1225(b)(1) which governs the mandatory detention of arriving aliens who present themselves at a port of entry. A challenge to Respondent's statutory authority to detain Petitioner runs headlong into the INA's jurisdiction channeling and stripping provisions, depriving this Court of jurisdiction. Finally, Petitioner's due process claim is premature and without basis.

I. The Petition Does Not Comply with Rule 2(c) of Rules Governing 28 U.S.C. § 2254 Cases

The Petition does not state with specificity the claims brought against Respondents. The pleading is disjointed, factually inconsistent, and puts forth an inapplicable legal argument based on a misreading of the INA (or possibly ignorance of the facts). Instead of headings describing the grounds for relief, the Petition recites general case law on due process protections and then attempts arguments on that topic. Pet. ¶¶ 17–27. Then, without explanation, the Petition briefly hints at a facial constitutional challenge to immigration policies of the Executive. *Id.* ¶ 28. Petitioner may be asserting a challenge to his detention under § 1226(a), *see, e.g., id.* ¶ 29, but this is not clear as Petitioner then follows this by a discussion of an inapplicable statutory framework and factually distinguishable district court cases. *Id.* ¶¶ 29–32. Sandwiched among those arguments is a vague due process claim regarding Petitioner's re-detention with no authority cited. *Id.* at ¶ 30. Petitioner does not provide relevant factual details connecting his situation to the statutes and case law recited, but instead erroneously states that "the underlying facts of this case are *identical* to the matters referenced above." *Id.* ¶ 33 (emphasis added). Thus, it appears that Petitioner is confused regarding the facts of his own case and his detention under § 1225(b)(1). Petitioner states he "entered the US on or about November 26, 2021" and "resided openly and continuously in, upon information and belief, Glendale, CA." *Id.* ¶¶ 9-10. Petitioner later contradicts himself and states "Petitioner has lived openly in the United States since April, 2023, established residence in Ohio." *Id.* ¶ 26. These are mutually exclusive assertions.

Based on the numerous deficiencies and factual inconsistencies of the Petition, the Court should dismiss the Petition pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted and for failure to comply with Rule 2(c) of the Rules Governing 28 U.S.C. § 2254 Cases.

II. Petitioner's Statutory Argument Is Jurisdictionally Barred and Ignores the Relevant Sections of the INA

A. Petitioner's Statutory Claim Is Barred by the INA's Jurisdiction Channeling and Stripping Provisions

Based on Petitioner's references to detentions under § 1226, Respondents surmise that Petitioner is challenging the statutory basis under which DHS commenced removal proceedings. Presumably, Petitioner asserts his detention is pursuant to § 1226(a) which allows a discretionary bond hearing, as opposed to the mandatory detention proceedings of § 1225(b)(2). Regardless of the statutory provision DHS employed to commence removal proceedings,[6] this Court cannot consider the Petitioner's claim as the INA channels challenges arising from actions taken to remove an alien to the appropriate court of appeals.

Congress has provided aliens with a vehicle to challenge the statutory provision that DHS relies on to detain and remove aliens. 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 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

[6] Respondents maintain Petitioner is an arriving alien who presented himself at a port of entry and is therefore subject to mandatory detention under § 1225(b)(1).

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 may try to sidestep the jurisdictional bar by claiming he is not challenging the decision to *commence* proceedings, but merely his ongoing detention. But any claim that DHS should have used its arrest powers under § 1226 is foreclosed by the statute 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."). 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, "§ 1252(g) 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.").

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

B. Petitioner's Statutory Argument ignores Petitioner's Designation as an Arriving Alien

There is no ambiguity regarding the application of § 1225(b)(1) to Petitioner. Under this section, an alien who arrives at a port of entry and applies for admission, will be ordered removed unless the alien makes a claim for asylum. Petitioner falls squarely within these parameters. The Petitioner, an arriving alien[7] from the Southern border of Mexico and the United States, presented himself to Respondents at the port of entry, San Ysidro, California. *See* Narrative at 2. Petitioner identified himself as Russian, presented his passport, and requested asylum. *Id.* The Petitioner did not have a valid entry document and therefore was charged as removable under 8 U.S.C. § 1182(a)(7)(A)(i)(I), an alien not in possession of valid entry documents. *See* Not. to Appear at 4. The primary officer referred Petitioner to a secondary inspection, where Petitioner was processed by ICE. *Id.* Because the Petitioner made an asylum request, he was referred for further consideration of an asylum application.[8] *Id.* Clearly, §1225(b)(1) applies to the Petitioner and mandatory detention is authorized.[9]

[7] 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.")

[8] § 1225 (b)(1)(A)(i) ("If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review *unless the alien indicates either an intention to apply for asylum* under section 1158 of this title or a fear of persecution.) (emphasis added).

[9] The present case highlights the contradictory outcome of applying § 1226 rather than §1225(b)(2) to aliens present in the United States unlawfully. The misapplication of §1226 to those who have remained unlawfully in the United States for a period of time unfairly places aliens who lawfully presented themselves at port of entry in a less advantageous position than those who entered unlawfully. *See Buenrostro-Mendez v. Bondi, et al.,* No. 25-20496, 2026 WL 323330, at *9 (5th Cir. February 6, 2026) (citing *Torres v. Barr,* 976 F.3d 918, 928 (9th Cir. 2020) (noting that IIRIRA "did away with th[e] 'entry doctrine . . . anomaly" under which "immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully"). *Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) 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

Petitioner mistakenly relies on two recent cases of this Court, *Cruz-Hernandez v. Noem,* No. CIV-25-1378-D, 2026 WL 18932 (W.D. Okla. Jan. 2, 2026), and *Li v. Grant*, No. CIV-25-1426-HE, 2026 WL 147438 (W.D. Okla. Jan. 20, 2026), involving aliens seeking release from immigration detention and who were detained pursuant to § 1225(b)(2). But those aliens *did not present themselves at a port of entry.* In *Cruz-Hernandez,* the alien entered the United States sometime in 2002 at an unknown location in Arizona. *See* Ex. 1 ¶ 5 (Doc. 8-1) and Ex. 2 (Doc. 8-2), No. CIV-25-1378-D. Similarly, in *Li v. Grant,* the alien entered the United States unlawfully at an unknown location and unknown date. Ex. 2, Pet. (Doc. 1-2), *Li v. Grant*, No. CIV-25-1426-HE.In contrast to *Cruz* and *Hernandez*, however, Petitioner here presented himself to authorities at the San Ysidro port of entry and asked for asylum. *See* Narrative at 2. Therefore, Petitioner is an arriving alien seeking admission and is subject to the mandatory detention authority of §1225(b)(1). Petitioner's claim that § 1226(a) applies to him because he has been present in the country since 2021 (or 2023, *see* Pet. ¶ 26) is specifically excluded by the plain language of the section Petitioner tries to invoke. Specifically, Section 1226(b)(2) exempts aliens who present themselves at ports of entry. *See* 8 U.S.C. 1225(b)(2)(B) which carves out an exception for any aliens who present themselves at a port of entry thereby falling within the scope of §1225(b)**(1)** ("Subparagraph (A) shall not apply to an alien – (i) who is a crewman, *(ii) to whom paragraph (1) applies*, or (iii) who is a stowaway.") (emphasis added).

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with the unambiguous language of the governing statutes, but would also seemingly undermine the intent of Congress in enacting the IIRIRA.").

There is no basis for Petitioner's mistaken assertion that Section 1226(a) applies to him. Pet. ¶ 29. Section 1226(a)'s general detention authority, which permits the issuance of warrants to detain all aliens for their removal proceedings, must be read alongside § 1225, which specifically addresses the detention of *applicants for admission* which is a subset of aliens subject to § 1226. And § 1226 does not displace the more specific provisions in § 1225 governing the detention of applicants for admission. It is well established that where "there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one." *Guidry v. Sheet Metal Workers Nat. Pension Fund*, 493 U.S. 365, 375 (1990) (citation omitted). Here, § 1225 is narrower in scope than § 1226. It applies only to "applicants for admission," which includes aliens present in the United States who have not been admitted. *See* 8 U.S.C. § 1225(a)(1).

III. Any Constitutional Due Process Claim Is Premature and Without Basis

A. Petitioner 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)(1), mandates detention in certain circumstances throughout the pendency of removal proceedings. *Id.* at 527–28. The *Demore* detainee argued that continued indefinite detention violates the Due Process Clause. But the *Demore* Court rejected that premise. Section 1226(c) has a definitive end-point—the end of the removal proceedings—and thus an alien is not subject to indefinite detention. *Id.* at 529.

Petitioner relies on *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See* Pet. ¶ 17 (citing *Zadvydas* in support of a potential due process claim for the proposition that "[f]reedom from imprisonment - from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause protects."). *Id.* But the petitioner in *Zadvydas* was facing the prospect of indefinite detention and the Court still held that detention up to six months was presumptively reasonable. Petitioner, here, was detained for approximately two 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 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.").

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

Petitioner seemingly urges the application of *Mathews v. Eldridge*, 424 U.S. 319, 324 (1976). *See* Pet. ¶¶ 22-27 (discussing the *Mathews* factors). But the remand in *Jennings* did not include instructions to apply *Mathews'* analysis to due process claims. *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 is an arriving alien applying for admission 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 aliens 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. Moreover, Petitioner has the power to free himself. *See Richardson v. Reno*, 180 F.3d 1311, 1317 n.7 (11th Cir. 199) (unlike criminal cases, immigration detention "is not entirely beyond an alien'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 an erroneous deprivation given the mandatory detention of § 1225(b)(1). 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.

VI. Petitioner's Request for Extraordinary Remedies Based on a Future Due Process Violation is Not Ripe for Adjudication and Should Be Denied.

Petitioner makes an extraordinary request for relief in this habeas case by asking the Court to restrict the Respondents' *future* actions in setting bond and in any re-detention. Not only does Petitioner ask this Court to order a bond hearing when Petitioner is subject to mandatory detention, but Petitioner seeks to dictate the terms of the parameters and conditions under which that bond can be set. Pet. at 10-11, ¶¶ C and E. This claim is not ripe, but even if it were it would be outside the jurisdiction of this Court to order. The determination of bond is within the purview of the immigration judge, and any appeals of the immigration judge's decision are reviewed by the Board of Immigration Appeals.

As explained by the United States Supreme Court, "Ripeness is a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 807–08 (2003). Petitioner's request to have the Court dictate future discretionary actions invites this Court to "entangle" itself in an abstract issue. It should decline to do so.

In determining whether to set bond and the amount of bond, an immigration judge considers several factors like danger to the community, flight risk, and the ability to pay. *See Matter of Guerra*, 24 I&N Dec. 37, 37–38 (BIA 2006). The immigration judge is in the best position to analyze these considerations. *Id.* at 40. Any appeal of those decisions is within the jurisdiction of the Board of Immigration Appeals – not this District Court. *See, e.g.*, BIA Practice Manual clearly § 7.2(b) (stating "Appellate Jurisdiction – (1) Immigration judge decisions – The Board has jurisdiction over appeals of immigration judge bond rulings."); *see also* 8 C.F.R. § 1003.1(b)(7) (appeals relating to determinations of bond are filed with the Board of Immigration Appeals); 8 C.F.R. § 1236.1(d)(3) (designating the circumstances under which an alien can appeal bond determinations to the Board of Immigration Appeals).

Because the Petitioner's alleged due process violations regarding speculatory bond determinations and future conditions of release and re-detention are not yet ripe and outside the scope of this Court's jurisdiction, the Petition should be dismissed.

CONCLUSION

The Respondents respectfully request that the Court grant Respondents' Motion to Dismiss the Petition.

Dated: February 13, 2026

Respectfully submitted,

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