

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

KAIRAT KUDUSOV,	)	
Petitioner,	)	
	)	
v.	)	CIV-26-0132-HE
	)	
SCARLET GRANT, Warden et al.,	)	
Respondents.	)	

RESPONSE IN OPPOSITION TO
PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C § 2241

Respectfully Submitted,

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Respondents Scarlet Grant, Warden of Cimarron Correctional Facility, Director of Immigration and Customs Enforcement (ICE) Dallas Field Office Joshua Johnson, Acting Director of ICE Todd Lyons, U.S. Immigration and Customs Enforcement, United States Secretary of the Department of Homeland Security Kristi Noem, and United States Attorney General Pamela Bondi, (collectively, “Respondents”¹), pursuant to the Court’s Order (Doc. 4), respond to the Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 (Pet., Doc. 1), and respectfully submit that the Court should deny the Petition and enter an order of dismissal.

INTRODUCTION

Petitioner is a noncitizen challenging the DHS’s decision to detain him pursuant to 8 U.S.C. § 1225(b)(2)(A), rather than 8 U.S.C. § 1226(a). The practical difference between the two sections is that noncitizens detained under § 1226(a) *may* be eligible for a bond hearing at the *discretion* of DHS, but noncitizens detained under § 1225(b)(2)(A) may not be released on bond. Petitioner contends that he should be regarded as detained pursuant to § 1226 and provided a bond determination. He also asserts that any ongoing detention without a bail determination violates due process. Further, Petitioner’s request to construe his detention as pursuant to § 1226(a) rather than § 1225(b)(2)(A) is a challenge to how DHS commenced proceedings (not his mere detention), which is barred by the jurisdiction stripping provision of the INA. That is especially true given that § 1226 does not guarantee a bond determination.

¹ Respondent Scarlet Grant, Warden of the Cimarron Correctional Center, is not a federal official and this response is therefore not filed on her behalf.

Finally, Petitioner advances a conception of due process that precludes any detention of noncitizens without a bond determination. That expansive position has never been adopted by the Supreme Court, despite repeated invitations to do so. Moreover, in other contexts, the Court has only recognized an obligation to conduct bond determinations under different circumstances and after much longer detention than Petitioner has faced.

BACKGROUND

I. Legal Framework

A. Applicants for Admission

In the Immigration and Nationality Act (INA), Congress established rules governing when certain aliens/noncitizens² may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of “applicants for admission”—a subset of noncitizens. Section 1225 defines an “applicant for admission” as any “alien present in the United States who has not been admitted or **who arrives in the United States.**” 8 U.S.C. § 1225(a)(1) (emphasis added). The INA defines “admission” and “admitted” as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” *Id.* § 1101(a)(13)(A). In other words, an applicant for admission is a noncitizen who (1) is present in the United States and did not lawfully enter the country *or* (2) is arriving in the United States. Petitioner falls into the second group.

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

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

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

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

Section 1225(b)(2), titled “Inspection of other aliens,” “serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)[.]”

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

⁴ Depending on the circumstances, an alien who is ordered removed under Section 1225(b)(1)(A)(i) but who is not removed within 90 days of the removal order, *may* be released under an order of supervision. 8 U.S.C. § 1231(a)(3).

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

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

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

Section 1226(a) provides that if the Secretary⁵ of DHS issues a warrant, regardless of whether there was prior interaction or examination by an immigration officer, a noncitizen may be arrested and detained “pending a decision on whether the alien is to be removed from the United States.” The section is a means of effectuating detention prior to

⁵ The INA’s statutory references to the Attorney General are “a legal artifact,” and the term “Attorney General” should be read to mean the “Secretary of Homeland Security.” *Awe v. Napolitano*, 494 F. App’x. 860, 862 n. 3 (10th Cir. 2012).

any examination by an immigration officer. Following arrest, and subject to certain restrictions, the noncitizen may be examined and remain detained or may be released on bond or conditional parole. *Id.* By regulation, immigration officers can release such an alien if he demonstrates that he “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). If not released by an immigration officer, the alien can request a custody redetermination by an immigration judge before a final order of removal is issued. *See id.* §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

Within that broader category of all noncitizens, § 1226(c)(1) pertains to the mandatory detention of noncitizens who have had certain interactions with the criminal justice system. *See* 8 U.S.C. § 1226(c) (“The Attorney General shall take into custody *any* alien who--” (emphasis added)). To this end, lawful permanent residents—*i.e.*, those who *have been admitted* to the United States and are *not* applicants for admission—may be subject to this mandatory detention provision. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(A)(i); *Nielsen v. Preap*, 586 U.S. 392 (2019) (lawful permanent resident detained pursuant to § 1226). It also reaches other noncitizens who are *not* applicants for admission, such as noncitizens admitted erroneously but who are nevertheless deportable for being inadmissible at the time of admission. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(C)(i).

In summary, § 1225 only applies to applicants for admission and requires examination by an immigration officer, while § 1226 more generally applies to *all* noncitizens, even if not yet encountered or examined by immigration officers and is

initiated by warrants—even prior to inspection. While there is some overlap between the provisions, that is consistent with the broad purposes of the INA, the different means and remedies necessary to effectuate them, and the discretion afforded the Executive to do so.

II. Petitioner’s Background

Petitioner is an applicant for admission. Petitioner states that “On March  2023, he presented himself for inspection at the port of entry pursuant to a scheduled CBP One humanitarian parole appointment.” Pet. at 2 (¶ 1). “Petitioner was inspected by U.S. Customs and Border Protection and lawfully paroled into the United States under INA § 212(d)(5), with a Form I-94 authorizing his stay through March  2024.” *Id.* (¶ 2). Also on March  2023, Petitioner was issued a Notice to Appear, which charged him as an “**arriving alien**” who “**applied for admission on March  2023 at San Ysidro port of entry,**” which made him inadmissible because “**at the time of application for admission,**” he was not in possession of valid entry documents pursuant to 8 C.F.R. § 212(a)(7)(A)(i)(I) (8 U.S.C. § 1182 (a)(7)(A)(i)(I)). Ex. 1, Notice to Appear (emphasis added). On February  2024, Petitioner filed .


 On October  2024, Petitioner, in a written plea in immigration court, conceded the allegations and charge of removability in the March  2023 Notice to Appear (i.e. that he is not a citizen or national of the United States, that ).

 required by the INA in violation of 8 C.F.R. § 212(a)(7)(A)(i)(I)). Ex. 3, Respondent's Written Plea at 2 (¶¶ 4–5). On November  2025, he was arrested and taken into custody.⁶ Pet. at 3 (¶ 6). Petitioner has an individual merits hearing in his removal case set for April  2026, with the Aurora, Colorado Immigration Court. Ex. 4, Notice of Internet Based Hearing.

III. Petitioner's Claims

Petitioner asserts four counts. Claim One alleges statutory violations of the INA and challenge DHS's commencement of proceedings pursuant to § 1225(b)(2)(A). Pet. at 19–20 (¶¶ 67–72). Claim Two alleges a broader due process violation stemming from Petitioner's ongoing detention without a bond determination. *Id.* at 21–22 (¶¶ 73–79). Claim Three alleges a violation of the Suspension Clause. *Id.* at 23–24 (¶¶ 80–83). And Claim Four requests an award of attorneys' fees and costs.⁷ *Id.* at 25–26 (¶¶ 84–87).

ARGUMENT

The Petition should be denied. Claim One challenges DHS's decision to detain Petitioner under § 1225(b)(2)(A) and therefore runs headlong into the INA's jurisdiction channeling and stripping provisions, depriving this Court of jurisdiction. Further, Petitioner's factual assertions are incorrect, and he is undoubtedly an “applicant for

⁶ Noncitizens, like Petitioner, who are placed in removal proceedings under 8 U.S.C. § 1229a are entitled to retain counsel, receive notice of the charges of removability, have a hearing, and present a defense, cross-examine witnesses, and compel production of documents and witnesses. *See* 8 U.S.C. § 1229a(b)(1); 8 U.S.C. § 1229a(b)(4)(A); 8 C.F.R. § 1240.10(a).

⁷ Petitioner's request for fees is not a proper cause of action currently. It should be brought in a separate action; thus, the request is premature.

admission.” Claim Two’s issue of a due process violation is premature and without basis.

Claim Three is not fully briefed.

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

A. Petitioner’s Statutory Claim (Claim One) Is Barred by the INA’s Jurisdiction Channeling and Stripping Provisions.

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

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

for review—the review of a final removal order before a circuit court of appeals.” (cleaned up)).

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

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

Petitioner will no doubt try to sidestep the jurisdictional bar by claiming that he is not challenging the decision to *commence* proceedings, but merely his ongoing detention. While Petitioner’s due process claim (Claim Two) arguably only challenges his ongoing

detention, Claim One expressly challenges the basis of the *commencement* of proceedings against him and is barred. Boiled down to its essence, Petitioner contends that DHS should have used its arrest powers under § 1226. But that is foreclosed by § 1226 itself. *See* 8 U.S.C. § 1226(e) (“The Attorney General’s discretionary judgment regarding the application of this section shall not be subject to review.”). But an immigration officer’s examination of Petitioner directly and immediately effected *commencement* of the proceedings and therefore triggers the jurisdictional bar. *See Namgyal Tsering v. U.S. Immigr. & Customs Enf’t*, 403 F. App’x 339, 343 (10th Cir. 2010) (“We agree with the Fifth Circuit that claims that clearly are included within the definition of arising from are those claims connected *directly and immediately* with a decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” (cleaned up)).

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

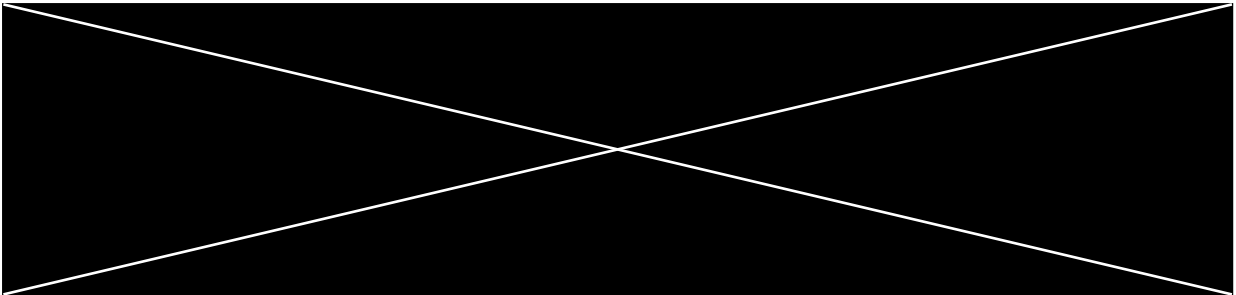
B. Petitioner is an “Applicant for Admission.”

The plain language of the INA straightforwardly applies in this case. 8 U.S.C. § 1225(b)(2)(A) provides that:

[I]n the case of an alien who is an **applicant for admission**, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

(emphasis added). First, it is imperative to note that Petitioner was categorized as an “arriving alien” who “applied for admission” making him an “applicant for admission.” *See* Ex. 1; *see also* 8 U.S.C. 1225(a)(1) (“An alien . . . who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission.”). Second, Petitioner conceded that he was an arriving alien at his immigration hearing on October 9, 2024. *See* Ex. 3 at 2 (¶¶ 4–5). Finally, Petitioner’s filing of 

 is unambiguously a step towards seeking a form of admission.



may be adjusted to that of an alien **lawfully admitted** for permanent residence, provided the alien . . .” (emphasis added)). Thus, Petitioner is seeking a form of admission. *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451, at *4 (E.D. Wis. Dec. 8, 2025) (“As a matter of fact, however, it is clear Petitioner is seeking admission into the United States. He [REDACTED] is thus seeking authorization to remain in the country. Petitioner is therefore an “alien seeking admission” into the United States subject to § 1225(b)(2)(A).”); *Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025) (“The record confirms that Cirrus Rojas is now in fact seeking admission to the United States. [REDACTED] [REDACTED]”). Moreover, Petitioner has *not* offered to voluntarily depart, *see* 8 U.S.C. § 1229(c) (Voluntary Departure). To the contrary, Petitioner is **seeking admission** by trying to stay in the country. *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302, at *10 (W.D. Okla. Dec. 26, 2026) (“This in turn lends the straightforward inference that ‘applicants for admission’ apply for admission until taking the actions prescribed under § 1225(a)(4) [voluntary departure].”)

When Petitioner first arrived in the United States on March ~~X~~ 2024, he was paroled into the United States until March ~~X~~ 2024, under INA § 212(d)(5) for humanitarian reasons, which is codified at 8 U.S.C. § 1182(d)(5). *See* Pet. at 2 (§§ 1–2). Petitioner argues that because he “was inspected, paroled, and released into the interior years ago” that 8 U.S.C. § 1225(b) should not apply to him, and his detention should be governed by 8 U.S.C. § 1226(a) instead. Pet. at 4 (§§ 9–15). Petitioner argues that “[o]nce parole was granted and jurisdiction vested with the Immigration Court, Petitioner ceased to be a

noncitizen ‘seeking admission’ within the meaning of § 1225(b).” *Id.* at 20 (¶ 69).

Petitioner is incorrect.

Section 1182(d)(5)(A) provides that:

The Secretary of Homeland Security may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, **but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.**

8 U.S.C. § 1182(d)(5)(A) (emphasis added). Moreover, 8 C.F.R. § 212(e)(1) applies and provides that parole is automatically terminated without written notice if (1) the alien leaves the United States or (2) when the time for which parole was authorized expires, which in this case was March 8 2024. At the time of expiration of parole, the alien “shall be restored to the status that he or she had at the time of parole,” which here means an “arriving alien” otherwise known as an “applicant for admission.” 8 C.F.R. § 212(e)(2)(i). As plainly stated in 8 C.F.R. § 1.2, an “[a]rriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry **An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked.**” *Id.* (emphasis added). In a nutshell, Petitioner’s parole automatically terminated when it expired on March 8 2024. Parole did not mean that Petitioner was “admitted” into the United States, *see* 8 U.S.C. § 1182(d)(5)(A), and after his parole was terminated, Petitioner reverted back to his

status of an arriving alien, otherwise known as an applicant for admission, who was inadmissible because he was not in possession of valid entry documents, *see* 8 C.F.R. § 212(e)(2)(i). As an arriving alien [REDACTED], Petitioner is now subject to and detained by § 1225(b)(2)(A) because he is an “applicant for admission” that “is not clearly and beyond a doubt entitled to be admitted.” Because several judges in this Court have ruled that § 1225 applies to “arriving aliens,”⁸ Petitioner is not entitled to a bond hearing pursuant to § 1225.

II. Petitioner’s Constitutional Due Process Argument (Count Two) Is Premature and Without Basis

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

⁸ See, e.g., *Cortez v. Holt*, No. CIV-25-1176-SLP, 2026 WL 147435, at *1 (W.D. Okla. Jan. 20, 2026); *Rojas v. Noem*, No. CIV-25-1236-HE, 2026 WL 94641 (W.D. Okla. Jan. 13, 2026); *Valdez v. Holt*, No. CIV-25-1250-R, 2025 WL 3709021 (W.D. Okla. Dec. 22, 2025); *Colin v. Holt, et al.*, No. CIV-25-1189-D, 2025 WL 3645176 (W.D. Okla. Dec. 16, 2025); *Escarcega v. Olson*, No. CIV-25-1129-J, 2025 WL 3243438 (W.D. Okla. Nov. 20, 2025).

indefinite detention. *Id.* at 529.

Petitioner relies on *Zadvydas v. Davis*, 533 U.S. 678 (2001). Pet. at 22 (¶¶ 76, 78). But the petitioner there was facing the prospect of indefinite detention and the Court still held that detention up to six months was presumptively reasonable. Petitioner, here, was only detained 76 days when the Petition was filed. Further, like § 1225(c), detention pursuant to § 1225(b) is *not* indefinite. On the contrary, “§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time.” *Jennings*, 583 U.S. at 299. Specifically, “detention must continue . . . until removal proceedings have concluded.” *Id.* (internal citation omitted). But “[o]nce those proceedings end, detention under § 1225(b) must end as well.” *Id.* at 297. In short, the Petition is premature and without basis.

Thus, granting the Petition under the premise that *all* detention must be subject to bond hearings would require a reading of the Due Process Clause that the Supreme Court has never endorsed and in fact has repeatedly avoided. *See Jennings*, 583 U.S. at 312 (remanding for consideration of constitutional arguments). This Court should decline to take such a drastic step. *See Mathews v. Diaz*, 426 U.S. 67, 81 (1976) (“Any rule of constitutional law that would inhibit the flexibility of the political branches of government to respond to changing world conditions should be adopted only with the greatest caution.”); *Demore v. Kim*, 538 U.S. 510, 522 (2003) (“And, since *Mathews*, this Court has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.”).

III. Petitioner has not shown that his detention violates the Suspension Clause

The Suspension Clause prohibits the political branches from “suspend[ing]” the writ of habeas corpus “unless when in Cases of Rebellion or Invasion the public Safety may require it.” U.S. CONST. art. I, § IX, cl. 2. In its recent *Thuraissigiam* opinion, the Supreme Court reserved the question of whether the Suspension Clause provides any protection beyond “the scope of the writ as it existed in 1789,” *DHS v. Thuraissigiam*, 591 U.S. 103, 116 n.12 (2020), but made clear that the Clause may not be used to “extend the writ of habeas corpus far beyond its scope when the Constitution was drafted and ratified.” *Id.* at 107 (citation omitted).

Additionally, the Federal Rules of Civil Procedure apply to habeas corpus proceedings. FED. R. CIV. P. 81(a)(4). Rule 12(b)(6) authorizes dismissal of causes of action for “failure to state a claim upon which relief can be granted.” To state a claim, a complaint’s allegations must “raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

A court’s function under Rule 12(b)(6) is to assess whether the complaint is legally sufficient. 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). This requires “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* A complaint must nudge its claims “‘across the line from conceivable to plausible.’” *Id.* at 683 (quoting *Twombly* at 570). The nature and specificity of the allegations needed to state a claim will vary based on context. *Khalik v. United Air Lines*, 671 F.3d 1188, 1191 (10th Cir. 2012).

Claim Three states that because the Petitioner is detained under 8 U.S.C. § 1225(b) that the United States “has effectively extinguished the core function of the writ [of habeas corpus].” Pet. at 23 (¶ 80). Petitioner offers nothing more except that he believes that he should be detained pursuant to 8 U.S.C. § 1225. Claim Three constitutes “an unadorned, the-defendant-unlawfully-harmed-me accusation” and represents the type of conclusory pleading that the Supreme Court rejected years ago. *Iqbal*, 566 U.S. at 678. As such, the Court should dismiss this claim.

CONCLUSION

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

Dated: February 10, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2026, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Harun Taskin, Counsel for Petitioner

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