No. 26-6019

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Santillan Quiroz,
Petitioner-Appellant,

v.

Noem, et al.,
Respondent-Appellee.

On Appeal from the United States District Court
for the Western District of Oklahoma, Case No. 5:25-CV-01349-PRW
The Hon. Patrick Robert Wyrick

APPENDIX

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APPENDIX TABLE OF CONTENTS

CERTIFICATION

Undersigned counsel hereby certifies that this Appendix complies with Federal Rule of Appellate Procedure 30(d) and with Circuit Rules 10.4 and 30.1(D).

Dated: March 24, 2026.

Respectfully submitted,

/s/ Scott C. Medlock
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March 24, 2026
Counsel for Petitioner-Appellant

APPEAL,CLOSED,MAXFIELD,_WYRICK−LC1

U.S. District Court
Western District of Oklahoma[LIVE] (Oklahoma City)
CIVIL DOCKET FOR CASE #: 5:25−cv−01349−PRW

Quiroz v. Noem et al
Assigned to: Judge Patrick R Wyrick
Case in other court: Tenth Circuit, 26−06019
Cause: 28:2241 Petition for Writ of Habeas Corpus (federal)

Date Filed: 11/14/2025
Date Terminated: 01/13/2026
Jury Demand: None
Nature of Suit: 463 Habeas Corpus − Alien Detainee
Jurisdiction: U.S. Government Defendant

Petitioner

Rigoberto Santillan Quiroz

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V.

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Respondent

Pamela Bondi
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Respondent

Joshua Johnson
Field Office Director of Enforcement and Removal Operations, ICE Dallas Field Office, Immigration and Customs Enforcement;

represented by **Emily B Fagan**
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Respondent

Scarlett Grant
Warden of Cimarron Correctional Facility,

Date Filed	#	Docket Text
11/14/2025	1	PETITION for Writ of Habeas Corpus filed by Rigoberto Santillan Quiroz. (Attachments: # 1 Civil Cover Sheet)(kb) (Entered: 11/14/2025)
11/14/2025	2	NO PREVIOUS Cases (kb) (Entered: 11/14/2025)

11/14/2025	3	ENTER ORDER REFERRING CASE to Magistrate Judge Amanda Leigh Maxfield. Signed by Deputy Clerk on 11/14/2025. (kb) (Entered: 11/14/2025)
11/14/2025	4	Receipt for Money Received from Petitioner Rigoberto Santillan Quiroz in the amount of $5.00, receipt number 500014514 regarding 1 Petition for Writ of Habeas Corpus. Receipt emailed to Kelli J Stump at kelli.stump@stumpimmigration.com (kb) (Entered: 11/14/2025)
11/14/2025	5	ENTRY of Appearance by Kelli J Stump on behalf of Rigoberto Santillan Quiroz (Stump, Kelli) (Entered: 11/14/2025)
11/17/2025	6	ORDER for Response re 1 Petition for Writ of Habeas Corpus filed by Rigoberto Santillan Quiroz. Signed by Magistrate Judge Amanda Leigh Maxfield on 11/17/2025. (rb) (Entered: 11/17/2025)
12/01/2025	7	ENTRY of Appearance by Emily B Fagan on behalf of Pamela Bondi, Joshua Johnson, Kristi Noem (Fagan, Emily) (Entered: 12/01/2025)
12/01/2025	8	RESPONSE re 1 Petition for Writ of Habeas Corpus filed by Pamela Bondi, Joshua Johnson, Kristi Noem. (Attachments: # 1 Exhibit 1 − Declaration of Garley, # 2 Exhibit 2 − Notice to Appear, # 3 Exhibit 3 − Notice of Hearing)(Fagan, Emily) (Entered: 12/01/2025)
12/08/2025	9	REPLY by Petitioner Rigoberto Santillan Quiroz filed by Rigoberto Santillan Quiroz. (Stump, Kelli) (Entered: 12/08/2025)
12/11/2025	10	REPORT AND RECOMMENDATION. Objections to R&R due by 12/18/2025. The undersigned recommends that the Petition (Doc. 1) be GRANTED in part. The undersigned recommends that the Court order Respondents to provide Petitioner with an individualized bond hearing under 8 U.S.C. § 1226(a) within seven days or otherwise release Petitioner if he has not received a lawful bond hearing within that period. The undersigned further recommends that the Court order Respondents to certify compliance by filing a status report within ten days of the Court's order. This Report and Recommendation terminates the referral of this matter to the undersigned. Signed by Magistrate Judge Amanda Leigh Maxfield on 12/11/2025. (ldc) (Entered: 12/11/2025)
12/18/2025	11	OBJECTION TO REPORT AND RECOMMENDATION 10 filed by Pamela Bondi, Joshua Johnson, Kristi Noem. (Fagan, Emily) (Entered: 12/18/2025)
01/13/2026	12	Order Declining to Adopt 10 Report and Recommendation and denying 1 Petitioner's Petition for Writ of Habeas Corpus (as more fully set out in the order). Signed by Judge Patrick R Wyrick on 1/13/2026. (ekw) (Entered: 01/13/2026)
01/13/2026	13	JUDGMENT − In accordance with the Court's Order entered this date, the Petition for Writ of Habeas Corpus is DENIED. This judgment fully and finally resolves all claims and terminates this civil action. Signed by Judge Patrick R Wyrick on 1/13/2026. (ekw) (Entered: 01/13/2026)
01/28/2026	14	NOTICE OF APPEAL by Rigoberto Santillan Quiroz. Filing fee $ 605, receipt number AOKWDC−4897590. (Stump, Kelli) (Entered: 01/28/2026)
01/28/2026	15	PRELIMINARY RECORD LETTER − Electronic Transmission of Notice of Appeal with Preliminary Record sent to Tenth Circuit Court of Appeals re 14 Notice of Appeal (Attachments: # 1 Attachment 1 − Preliminary Record on Appeal)(llr) (Entered: 01/28/2026)
01/28/2026	16	Tenth Circuit USCA Case Number 26−6019 for 14 Notice of Appeal filed by Rigoberto Santillan Quiroz. Prisoner case docketed. DATE RECEIVED: 01/28/2026. Docketing statement, Notice of appearance and Transcript order form due 02/11/2026 for Rigoberto Santillan Quiroz. Notice of appearance due on 02/11/2026 for Pamela Bondi, Scarlet Grant, Joshua Johnson and Kristi Noem. [26−6019] (llr) (Entered: 01/29/2026)
02/11/2026	17	TRANSCRIPT Order Form by Rigoberto Santillan Quiroz that transcripts No necessary. See order form for dates and proceedings. (Stump, Kelli) (Entered: 02/11/2026)

02/11/2026	18	TRANSCRIPT LETTER advising no transcripts are necessary re 14 Notice of Appeal filed by Rigoberto Santillan Quiroz. The record is ready for appeal purposes. (llr) (Entered: 02/11/2026)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

Rigoberto SANTILLAN QUIROZ Petitioner, v. 1. KRISTI NOEM, Secretary, U.S. Department of Homeland Security; U.S.DEPARTMENT OF HOMELAND SECURITY; 2. Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; 3. Joshua JOHNSON, Field Office Director of Enforcement and Removal Operations, ICE Dallas Field Office, Immigration and Customs Enforcement; 4. Scarlett GRANT, Warden of Cimarron Correctional Facility Respondents.	)	Case No. _____ Immigration File No. A221-061-097

INTRODUCTION

1. Petitioner, Rigoberto Santillan Quiroz, ("Petitioner"), by and through his undersigned counsel, hereby petitions this Court for a writ of habeas corpus to review the lawfulness of his detention. Petitioner is currently being held in detention by Immigration and Customs Enforcement ("ICE"), a part of the U.S. Department of Homeland Security. Petitioner challenges his unlawful and indefinite detention, which is the result of a new and erroneous interpretation of the Immigration and Nationality Act ("INA") by the U.S. Department of Homeland Security ("DHS") and the U.S. Department of Justice ("DOJ").

Petitioner is a husband and stepfather who has resided in the United States for nearly two decades. Petitioner has been held without the possibility of bond due to the misapplication of 8 U.S.C. § 1225(b)(2)(A) and the Board of Immigration Appeals' ("BIA") recent decision in *Matter of Yajure Hurtado*, 26 I&N Dec. 216 (BIA 2025). Petitioner and countless of similarly situated individuals have been stripped of their ability for bond hearings guaranteed by 8 U.S.C. § 1226. As a result, Petitioner remains detained at the Cimarron Correctional Facility in Cushing, Oklahoma, without judicial oversight, in violation of both the INA and the Due Process Clause of the Fifth Amendment.

2. Petitioner, Rigoberto Santillan Quiroz, is in the physical custody of Respondents at the Cimarron Correctional Facility in Cushing, Oklahoma. He now faces unlawful detention because DHS and the Executive Office for Immigration Review ("EOIR") have concluded Petitioner is subject to mandatory detention.

3. Petitioner is charged with, *inter alia*, entered the United States without admission or inspection. See 8 U.S.C. § 1182(a)(6)(A)(i).

4. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all ICE employees to consider anyone inadmissible under § 1182(a)(6)(A)(i), i.e., those who entered the United States without admission or inspection, subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. On September 5, 2025, the BIA issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond

requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

6. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

7. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

8. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

JURISDICTION

9. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Cimarron Correctional Facility in Cushing, Oklahoma.

10. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

12. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court held that habeas corpus may be used to bring a constitutional challenge to pre-removal order detention.

VENUE

13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky* , 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Western District of Oklahoma, the judicial district in which Petitioner currently is detained.

14. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the United States District Court for Western District of Oklahoma.

REQUIREMENTS OF 28 U.S.C. § 2243

15. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

16. Habeas corpus is "perhaps the most important writ known to the constitutional law… affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

17. Petitioner, Rigoberto Santillan Quiroz, is alleged to be a citizen of Mexico who has been in immigration detention since November 2, 2025. After detaining Petitioner, ICE did not set bond and Petitioner is unable to obtain review of his custody by an immigration judge, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

18. Respondent, Kristi Noem, is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

19. Respondent, Pamela Bondi, is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee EOIR, which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

20. Respondent, Joshua Johnson, is sued in his official capacity as the Acting Director of the Dallas Field Office and Oklahoma City Sub-Office of U.S. Immigration and Customs Enforcement (ICE). Respondent Johnson is a legal custodian of Petitioner and has authority to release him.

21. Respondent, Dr. Scarlet Grant, is the Warden of Cimarron Correctional Facility, and she has immediate physical custody of Petitioner pursuant to the facility's contract with

U.S. Immigration and Customs Enforcement. Respondent Grant is a legal custodian of Petitioner.

STATEMENT OF FACTS

22. Petitioner has resided continuously in the United States since 2006 and currently lives in Oklahoma City, Oklahoma.

23. On November 2, 2025, Petitioner was arrested by ICE agents in Oklahoma City, Oklahoma following an alleged vehicle stop. Petitioner was taken into custody and is presently detained at the Cimarron Correctional Facility in Cushing, Oklahoma.

24. DHS placed Petitioner in removal proceedings before the Aurora, Colorado Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. §1182(a)(6)(A)(i) as someone who entered the United States without inspection.

25. Petitioner has resided in the United States for more than ten (10) years. He is married to a lawful permanent resident ("LPR") and has a U.S. citizen stepdaughter. Petitioner is the sole financial provider for his family. He has consistently complied with his civic obligations, including the regular filing of his income tax returns. Petitioner was arrested once for DUI in approximately 2021. Since then, he has completed community service and has not reoffended. Petitioner's wife suffers from a heart condition, for which she requires ongoing care and support. Petitioner poses neither a fight risk nor a danger to the community.

26. Without intervention from this Court, Petitioner faces the prospect of indefinite detention lasting months or even years, separated from his family and community.

LEGAL FRAMEWORK

27. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

28. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

29. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

30. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a) – (b).

31. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

32. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

33. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* 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).

34. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

35. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

36. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

[1] Available at https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

37. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

38. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

39. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

40. Subsequently, courts have adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation, including our sister courts in the Tenth Circuit. *See*, *Garcia Cortes v. Noem*, No, 1:25-cv-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Salazar v. Dedos*, No. 1:25-cv-00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); and *Gamez Lira v. Noem*, No. 1:25-cv-00855 (D.N.M. Sept. 24, 2025).

41. Other District Courts across the country have also rejected ICE's erroneous interpretation. See, e.g., *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----,

2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025)

(same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025)(same).

42. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

43. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

44. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co*., 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

45. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

46. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on

inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

47. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

CLAIMS FOR RELIEF

COUNT ONE
Violation of the INA

48. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

49. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

50. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT TWO
Violation of Due Process

51. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

52. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

53. Petitioner has a fundamental interest in liberty and being free from official restraint.

54. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner shall not be transferred outside the Western District of Oklahoma while this habeas petition is pending;

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

(4) Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days; Declare that Petitioner's detention is unlawful;

(5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

(6) Grant any further relief this Court deems just and proper.

DATED this 14th of November 2025.

Respectfully submitted,

s/Kelli J. Stump
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Attorney for the Petitioner

Counsel for Petitioner

Dated: November 14, 2025

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I or my co-counsel have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 14th day of November, in Oklahoma City, Oklahoma.

Respectfully submitted,

s/Kelli J. Stump
Kelli J. Stump
OBA No. 21374
Kelli J. Stump, PLLC
111 NW 15th St. Ste. B
Oklahoma City, Oklahoma 73103
(405)217-4550
kelli.stump@stumpimmigration.com
Attorney for the Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2025, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Robert J. Troester, U.S. Attorney
Western District of Oklahoma
210 W. Park Avenue, Suite 400
Oklahoma City, OK 73102

s/Kelli J. Stump
Kelli Stump, OBA No. 21374

JS 44 (Rev. 03/24)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Rigoberto SANTILLAN QUIROZ

(b) County of Residence of First Listed Plaintiff OKLAHOMA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Kelli J. Stump, Kelli J Stump PLLC, 111 NW 15th Street Oklahoma City, OK 73103 (405) 217-4550

DEFENDANTS

Kristi NOEM, Secretary of the U.S. Department of Homeland Security, et. al.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

Robert J. Troester, U.S. Attorney 210 W. Park Avenue, Suite 400 Oklahoma City, OK 73102

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

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- ☐ 120 Marine
- ☐ 130 Miller Act
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- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
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- ☐ 153 Recovery of Overpayment of Veteran's Benefits
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- ☐ 196 Franchise

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V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. § 2241

Brief description of cause:
Petition for Habeas Corpus

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
11/14/2025

SIGNATURE OF ATTORNEY OF RECORD
s/Kelli J. Stump

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

Rigoberto Santillan Quiroz	)	
	)	
Petitioner(s)	)	
v.	)	CIV-25-1349-PRW
	)	
	)	
	)	
Noem et al	)	
Respondent(s)	)	

November 14, 2025
Enter Order:

In accordance with 28 U.S.C. §636, this matter is hereby referred to Magistrate Judge Amanda L. Maxfield for preliminary review, for conducting any necessary hearings, including evidentiary hearings, for the entry of appropriate orders as to non-dispositive matters, and for the preparation and submission to the undersigned judge of Findings and Recommendations as to dispositive matters referenced in 28 U.S.C. §§ 636(b)(1)(B), and (C).

THE ABOVE ORDER ENTERED AT THE DIRECTION OF JUDGE PATRICK R. WYRICK

JOAN KANE, CLERK

by: s/ K. Boulet
Deputy Court Clerk

Revised 01/03/2022 kmt

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

RIGOBERTO SANTILLAN QUIROZ	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No. CIV-25-1349-PRW**
	)	
KRISTI NOEM, et al.,	)	
	)	
Respondents.	)	

ORDER

Petitioner Rigoberto Santillan Quiroz, a Mexican citizen proceeding with counsel, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 ("Petition") challenging his detention by the U.S. Immigration and Customs Enforcement ("ICE").[1] (Doc. 1). United States District Judge Patrick R. Wyrick referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B)-(C). (Doc. 3). The undersigned has examined Petitioner's petition for writ of habeas corpus and now orders as follows:

1. **Not later than 14 days**, Respondents shall file an answer, motion, or other response consistent with Rule 5 of the Rules Governing Section 2254 Cases.[2]

2. If Respondents file an answer or other response, Petitioner may file a reply within **7 days** from the filing date. *See* Rule 5(e). If Respondents file a motion, Petitioner shall file a response within 10 days after the date the motion was filed.

[1] Petitioner is housed at Cimarron Correctional Facility in Cushing, Oklahoma. (Doc. 1, at 2).

[2] The Court may apply the Rules Governing 28 U.S.C. § 2254 Cases to habeas petitions arising under 28 U.S.C. § 2241. See Rule 1(b) of the Rules Governing Section 2254 Cases.

Any motion that is not opposed within 10 days may, in the discretion of the court, be deemed confessed. *See* LCvR 7(g).

3. The Petition alleges that Petitioner is being held within the territorial jurisdiction of the Western District of Oklahoma.

    a. Respondents shall file written notice at least seventy-two hours before removing, transferring, relocating, or otherwise moving Petitioner, regardless of whether the new location is within the territorial jurisdiction of the Western District of Oklahoma.

    b. If Respondents contest that Petitioner is presently being held within the territorial jurisdiction of the Western District of Oklahoma, they shall file a written notice stating the name and location of the facility in which Petitioner is confined. Such notice shall be provided promptly after Respondents become aware of Petitioner's location.

4. The Clerk of Court is directed to send copies of the Petition (Doc. 1) and this Order to the United States Attorney for the Western District of Oklahoma on Respondents' behalf at the following address: 210 W. Park Ave., Suite 400, Oklahoma City, Oklahoma 73102.

IT IS SO ORDERED this 17th day of November, 2025.

Amanda L. Maxfield

AMANDA L. MAXFIELD
UNITED STATES MAGISTRATE JUDGE

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

RIGOBERTO SANTILLAN QUIROZ,	)	
	)	
Petitioner,	)	
	)	CIV-25-1349-PRW
v.	)	
	)	
KRISTI NOEM, et al.,	)	
	)	
Respondents.	)	

RESPONSE IN OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS

ROBERT J. TROESTER
United States Attorney

/s/ Emily B. Fagan
Emily B. Fagan (OBA 22427)
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RESPONSE IN OPPOSITION TO
THE PETITION FOR WRIT OF HABEAS CORPUS

Respondents United States Attorney General Pamela Bondi, United States Secretary of the Department of Homeland Security ("DHS") Kristi Noem, and United States Immigration and Customs Enforcement ("ICE") Field Office Director Joshua Johnson (collectively, "Respondents"[1]), pursuant to the Court's Order (Doc. 6), 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.

INTRODUCTION

Petitioner is a noncitizen challenging DHS' 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.

Ultimately, this case turns on the plain language of the Immigration and Nationality Act ("INA"). 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

[1] Respondent Scarlett Grant of the Cimarron Correctional Facility is not a federal official and this response is therefore not filed on her behalf. It is respectfully submitted that her interests are contractually derivative of the federal Respondents' interests (*see* Petition at ¶ 21 (noting contract with ICE)) and that a separate response from Grant is not necessary to resolve the Petition or effectuate relief.

> beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

Petitioner is detained pursuant to that provision because he is an *applicant for admission*, that *is seeking admission*, and an immigration officer determined that he is not clearly and beyond a doubt entitled to be admitted. Importantly, the factual predicate for the application of the statute is not in dispute. Petitioner pleads that he has illegally resided in the United States and has previously—and is currently—seeking admission to the United States. Indeed, if he were not an applicant for admission who is currently seeking admission, he would voluntarily deport. *See, e.g., Valencia v. Chestnut*, No. 1:25-CV-01550 WBS JDP, 2025 WL 3205133, at *3 (E.D. Cal. Nov. 17, 2025) ("The suggestion that petitioner may evade the designation of "applicant for admission" merely because he has already entered the United States elides the fact that he was never lawfully admitted, regardless of what steps he may have taken to acquire that status."); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331, at *5 (S.D. Tex. Nov. 13, 2025) ("Attempts by Petitioner to distinguish an applicant for admission from an alien seeking admission are unavailing.").

Instead, Petitioner challenges the straight-forward application of the statute by noting that enforcement of § 1225(b)(2)(A) is a change in policy by the new administration. And 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 against the government largely based on the change in enforcement and associated interpretations of statutory structure premised on that change to conclude that § 1225 only

applies to "arriving aliens," despite the notable *absence* of that phrase in § 1225(b)(2)(A).[2] But those opinions do not account for the language and history of the INA, to say nothing of the resulting conundrum of what role § 1225(b)(2)(A) plays if so interpreted.

Before 1996, the INA only contemplated inspection of noncitizens arriving at ports of entry. Other noncitizens like Petitioner who entered illegally were not subject to § 1225. But Congress changed that in 1996 with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") to place those who entered illegally on equal footing with those encountered at the border. Thus, § 1225(a)(1) now defines "alien[s] present in the United States" as "applicants for admission." Further, IIRIRA created two provisions outlining different processes for noncitizens encountered at the border and *those found within*. While § 1225(b)(1) addresses detention of those aliens "arriving in the United States" and provides for expedited removal, § 1225(b)(2) addresses "[i]nspection of *other* aliens" (i.e., including those *not* arriving) and provides for full removal proceedings making it clear that § 1225 includes those noncitizens already in the country and that those noncitizens receive full (not expedited) proceedings.

The additional detention authority under § 1226 does not change this understanding.

[2] Indeed, the Honorable Judge Stephens has recently so ruled in several recent cases. *See, e.g.*, Oct. 28, 2005 Orders in *Escarcega v. Olson*, Case No. 25-cv-1129-J and *Gallardo v. Olson*, Case No. 25-cv-1090-R; *but see Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926, at *6 (W.D. La. Oct. 31, 2025) (rejecting district court opinions "that rest upon the premise that §§ 1225 and 1226 are mutually exclusive" after surveying the statutory structure and history).

While § 1225(b)(2)(A) allows detention when an immigration officer encounters noncitizens and makes determinations regarding their admissibility, § 1226(a) also provides for detention using a different means and order of operation; namely, the issuance of a warrant and then examination of the noncitizen. The two provisions should be read together to provide flexibility and discretion for *different* means of examination and detention, applied to overlapping but not coexistent groups of noncitizens. A contrary ruling imperils intended flexibility, ignores the history of IIRIRA, and introduces statutory ambiguity by giving legal significance to a class of noncitizen *not* recognized in the INA; namely, those illegally present but not seeking admission.[3]

Moreover, 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.

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

[3] Limiting § 1225 to "arriving aliens" will have serious implications for other immigration enforcement. Under § 1225, DHS has exercised its unreviewable authority to designate noncitizens that have entered illegally and been present in the country for up to two years (i.e., not "arriving") for expedited removal. *See* 8 U.S.C. § 1225(b)(1)(A)(iii); Designating Aliens for Expedited Removal, 90 FR 8139 (Jan. 24, 2025). Petitioner's construction of § 1225 cannot be squared with that statutorily authorized initiative.

after periods of detention much longer than Petitioner has faced.

Accordingly, the Petition should be denied.

BACKGROUND

I. Legal Framework

A. Applicants for Admission

In the INA, Congress established rules governing when certain aliens/noncitizens[4] 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). "Thus, under the plain text of § 1225(a)(1), any alien physically present in the United States who has not been admitted is an 'applicant for admission,' regardless of how long they have been in the country or whether they intended to apply or enter properly." *Sandoval*, 2025 WL 3048926, at *3; *Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL 3199872, at *5 (C.D. Cal. Nov. 12, 2025) ("Petitioner is 'seeking admission' because the statute treats an alien who is 'an applicant for admission' as someone who is, legally speaking, 'seeking admission.'"). Any reading of § 1225 that

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

limits its application to "arriving" noncitizens reads the first portion of the definition of applicant for admission out of the statute.

Pursuant to § 1225(a)(3), *all* applicants for admission are subject to inspection by immigration officers to determine if they are admissible. Section 1225(a)(3) does not make any exception for applicants for admission who are merely residing in the country.

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

Applicants for admission are primarily placed in removal proceedings one of two ways, either through expedited removal under § 1225(b)(1) for arriving noncitizens or through regular removal proceedings under § 1225(b)(2) for non-arriving noncitizens.

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).[5] *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

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

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).

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 or other noncitizens subject to expedited removal). Section 1225 does not provide a bond hearing for noncitizens detained under that provision.

C. Warrants for Arrest Pending Determination: 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 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 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 Secretary[6] 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 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 a noncitizen 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 noncitizen can request a custody redetermination by an IJ 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

[6] 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 Fed. Appx. 860, 862 n. 3 (10th Cir. 2012).

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). Other examples include noncitizens in possession of visas or battered women and children that have been otherwise exempted from applicants for admission.

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. It also contains a mandatory process for certain criminal noncitizens that is not discretionary. While there is some overlap between the provisions, it 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: An Applicant Seeking Admission

Petitioner is an applicant for admission that has sought and is seeking admission. Specifically, Petitioner claims he is a "citizen of Mexico", who "has resided continuously in the United States since 2006[.]" Petition at ¶¶ 17, 22. He was arrested and detained on November 2, 2025, following a traffic stop. *Id.* at ¶ 23. ERO Officers determined that he was a Mexican National and was present in the United States with no legal entry. During the field interview, officers verified his immigration history and Petitioner admitted that he entered the United States without admission or parole. Ex. 1, Decl. of Garley at ¶ 4.

That same day, Petitioner was placed into removal proceedings through an issuance of a Notice to Appear and was charged as removable under INA § 212(a)(6)(A)(i). *Id.* at ¶ 5; Ex. 2, Notice to Appear. On November 10, 2025, Petitioner was booked into Cimarron

Correction Facility, where he remains currently detained under INA § 235. Ex. 1 at ¶¶ 6-7. Petitioner was scheduled for an initial master hearing on November 13, 2025. *See* Ex. 2. He was also scheduled for a master hearing before the immigration court on November 26, 2005. Ex. 3, Notice of Hearing.

III. Petitioner's Claims

Petitioner asserts two counts: Count One alleges a violation of the INA and Count Two alleges a constitutional violation.

ARGUMENT

The Petition should be denied. Count One effectively challenges the manner of DHS's commencement of proceedings (using § 1225 instead of § 1226) and is therefore barred by the INA's jurisdiction stripping provisions. Further, Petitioner's statutory assertions misread the INA and are inconsistent with the intent of IIRIRA. Count Two asserts a due process violation that is premature and without basis.

I. Petitioner's Statutory Argument (Count One) Is Jurisdictionally Barred and Misreads the INA

A. Petitioner's Statutory Claim (Count One) Is Barred by the INA's Jurisdiction 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). Given that Petitioner is subject to a Notice to Appear (Ex. 2), the decision to effectively begin those proceedings via § 1225(b)(2)(A) detention 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*, No. CV 25-3348 (PAM/DLM), 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 non-citizens (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 a non-citizen's challenge to DHS's decision about the basis of removal proceedings.

Petitioner will no doubt try to sidestep the jurisdictional bar by claiming that he is not challenging the decision to *commence* proceedings, but merely his ongoing detention. While Petitioner's due process claim (Count Two) arguably only challenges his ongoing detention, Count One expressly challenges the basis of the *commencement* of proceedings against him and is barred. Boiled down to its essence, Count I 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."). Moreover, even under § 1226, release on a bond is not guaranteed. It is a matter of discretion. As a result, challenging the application of §1225 rather than § 1226 is not a direct challenge regarding detention.

Further, a Notice to Appear has been issued for Petitioner. *See* Ex. 2. Thus, the immigration officer's detention 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. Appx 339, 343 (10th Cir. 2010)

("We agree with the Fifth Circuit that claims that clearly are included within the definition of arising from are those claims connected *directly and immediately* with a decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." (cleaned up)).

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

Thus, as opposed to the challenge to detention in Count Two, Count One challenges the application of § 1225, which only collaterally affects the potential for release on bond. *Acxel 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 Arguments Misconstrue the INA and Cannot Account for the Statutory Definition of "Applicant for Admission" and the IIRIRA

The plain language of § 1225(b)(2)(A) straightforwardly applies in this case. To escape that conclusion, Petitioner suggests ambiguity based on the title and/or structure of the provision and past practice, and then urges the Court to read a limitation of "arriving noncitizen" into the language of § 1225(b)(2)(A) that is conspicuously absent. Instead, the Court should apply plain language of the statute.

1. Petitioner Is an Applicant for Admission, Seeking Admission

Petitioner does not explain why he is not an applicant for admission or contest the immigration officer's assessment that he is not clearly and beyond a reasonable doubt not entitled to admission. Nor does he claim that he is not seeking admission. Put differently, other than broad structural arguments, Petitioner does not explain why the section does not apply. Respectfully, the Court should not supply the missing analysis.

2. 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. *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.").

Nevertheless, in an attempt to create ambiguity where it does not exist, some courts argue that the title of § 1225 helps establish its intended meaning. As an initial matter, the resort to a statutory title is unnecessary unless there is ambiguity and the title should not limit the plain text. *Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008) ("To be sure, a subchapter heading cannot substitute for the operative text of the statute."); *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998) ("The title of a statute cannot limit the plain meaning of the text." (cleaned up)).

Moreover, the title of § 1225 does not support Petitioner's interpretation. The title reads: "Inspection by immigration officers, *expedited removal of in admissible 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*, 2025 WL 3048926, at *4 ("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.[7] Thus, the title is consistent with the Respondents' reading—and *inconsistent* with Petitioner's interpretation.

Moreover, those that point to the title of § 1225 notably stop there and fail to contrast the subpart titles of §§ 1225(b)(1) and (b)(2). 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.

3. Petitioner's Interpretation Undermines the Purpose of the IIRIRA

Petitioner's interpretation effectively repeals a statutory fix Congress enacted with IIRIRA. 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

[7] It is also clear that the "hearing" in the title is a reference to the § 1229a removal hearing. That is plain from the use of the term throughout § 1225. *See, e.g.*, 8 U.S.C. § 1225 ("In no case may a stowaway be considered an applicant for admission or eligible for a *hearing under section 1229a of this title*." (emphasis added)).

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*, 3:25-cv-2325-CAB, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (rejecting Petitioner's reading because it would repeal the IIRIRA statutory fix); *Sandoval*, 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.").

Some courts point to the implementing statement of IIRIRA to suggest that the Executive understood § 1225 to only apply to arriving aliens. Specifically, they cite to the

statement "*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. 10312, 10323 (Mar. 6, 1997) (emphasis added). But contrary to Petitioner's position, 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.

4. The Laken Riley Act Does Not Render § 1225(b)(2)(A) Superfluous

Petitioner next argues that a recent amendment to the INA—the Laken Riley Act ("LRA")—would be superfluous if the government's reading of § 1225(b)(2)(A) is accepted. But Petitioner confuses a Venn diagram of overlapping enforcement schemes that facilitate prosecutorial discretion with perfectly congruent (and therefore superfluous) enforcement provisions that do not exist. Instead, in both 1996 and 2025, Congress wanted *more* enforcement of immigration restrictions and enacted complementary provisions to effectuate that purpose.

Section 1226(a)'s general detention authority, which permits the issuance of warrants to detain all noncitizens for their removal proceedings, must be read alongside § 1225, which specifically addresses the detention of applicants for admission which is a subset of noncitizens 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 noncitizens present in the United States who have not been admitted, such as Petitioner. *See* 8 U.S.C. § 1225(a)(1).

To be sure, as amended by the LRA, § 1226(c)(1)(E) mandates detention for a group of noncitizens that includes a narrow subset of applicants for admission that may also be subject to § 1225(b)(2)(A) detention; namely, those who both entered without inspection and were arrested for, committed, or have admitted to committing one of a list of enumerated crimes. But § 1226(c)(1)(E) applies to *all* noncitizens who meet the criminal criteria and is thus broader. Conversely, the mandatory detention provisions of § 1226(c)(1)(E) do not reach the rest of applicants for admission under § 1225(b)(2)(A) who do *not* meet the criminal criteria. Put simply, the two enforcement provisions have overlap much like a Venn diagram, but they are not perfectly overlapping so as to make a provision superfluous. *See Jennings* 583 U.S. at 305 (rejecting a claim of superfluity in the INA context by observing "[a]lthough the two provisions overlap in part, they are by no means congruent" and "apply to different categories of aliens in different ways"); *Am. Car Rental Ass'n v. Humphreys*, No. 1:24-CV-02450-DDD, 2025 WL 1758898, at *5 (D. Colo. May 29, 2025) ("There is, to be sure, significant overlap between the two. But the canon against superfluity only requires what its name implies; it does not require that each provision have

entirely distinct coverage—just that total superfluity be avoided.").

As the Supreme Court has acknowledged, some overlap and redundancies "are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton v. Barr*, 590 U.S. 222, 239 (2020). "Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.*; *Rimini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019) ("Sometimes the better overall reading of the statute contains some redundancy."). Section 1225(b)(2)(A) allows detention upon encountering an immigration agent and § 1225(c) provides for detention by the issuance of a warrant. Two *different* routes to detention, in addition to two different (albeit with some overlap) groups of noncitizens affected.

Moreover, if Petitioner's construction is correct, then one would expect to find a cross-reference to § 1225(a)(1) in § 1226(c)(1)(E)(i) or simply a reference to all "applicants for admission." That would be the direct manner accomplishing what Petitioner suggests. But the LRA has no such cross reference, demonstrating that the LRA amendment is not limited to "applicants for admission."

Petitioner's assertion is also contradicted by the statute. The plain language of the LRA applies to *all* noncitizens who meet its criminal criteria, not just "applicants for admission." For example, § 1226(c)(1)(E)(i) applies to noncitizens inadmissible under "paragraph … (6)(C) … of section 1182(a)." In turn, the referenced paragraph (6)(C) of § 1182(a) addresses misrepresentation of material facts and applies *even if a noncitizen*

obtained admission (meaning, not an "applicant for admission") by fraud or misrepresentation. *See* 8 U.S.C. § 1182(a)(6)(C) ("Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible."). Put simply, even as amended by the LRA, § 1226 applies to *all* noncitizens and sweeps much broader than Petitioner argues. It is plainly not limited to applicants for admission. *Sandoval*, 2025 WL 3048926, at *5 ("Petitioner's argument that § 1226 would be rendered superfluous under Respondents' interpretation of § 1225(b)(2) is unpersuasive. The statutory scheme of the INA does not render these two provisions mutually exclusive, and there are many other categories of aliens to whom § 1226(a) is applicable, but not § 1225(b)(2)").

Finally, even if there is some overlap in the class of noncitizens between § 1225(b)(2)(A) and the LRA, the two provisions provide different means, procedures, and obligations that independently demonstrate a lack of superfluity. Section 1225(b)(2)(A) requires a personal examination of the noncitizen by an immigration officer and then, based on determinations drawn from the examination, potential detention. But § 1226 is different. It permits a warrant to be issued and a noncitizen detained in order to facilitate the later examination and determinations regarding admission. Further, while examination of any particular applicant for admission under § 1225 is subject to discretion as encountered, § 1226 imposes a mandate of arrest for certain noncitizens regardless of other enforcement priorities. As such, the two provisions use different means, have different obligations, and invert the order of detention and examination. Those differences independently undercut

the assertion of any superfluity.

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

Petitioner's constitutional claim is not well developed. While he alleges that his detention violates Fifth Amendment, he does not explain why. Presumably, Petitioner contends that *any* detention without a bail determination violates due process. But that broad claim is unsupported.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001)), the Court held that detention for six months (approximately 182 days) was presumptively permissible. When this case was filed, Petitioner had only been detained 12 days. As of the date of this filing, he has been detained 29 days. That falls far short of the six months set forth in *Zadvydas*. And in *Zadvydas*, the petitioner was facing the prospect of indefinite detention. That is also not the case here. While detention pursuant to § 1225(b) is mandatory, it 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.

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 297 ("nothing in the statutory text imposes any limit on the length of detention. And neither § 1225(b)(1)

nor § 1225(b)(2) says anything whatsoever about bond hearings"). 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.").

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.

CONCLUSION

The Respondents respectfully request that the Court deny the Petition.

Dated: December 1, 2025

Respectfully submitted,
ROBERT J. TROESTER
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Rigoberto SANTILLAN QUIROZ,	§	
	§	
Petitioner,	§	
	§	Cause No. CIV-25-1349-PRW
v.	§	
	§	
Kristi NOEM, et al.,	§	
	§	
Respondents.	§	

DECLARATION OF ANDRES R. GARLEY

In accordance with the provisions of Section 1746 of Title 28, United States Code, I, the undersigned, Andres R. Garley, do hereby make the following declaration, under penalty of perjury in the above-styled and numbered cause:

1. I, Andres R. Garley, am presently employed by the United States Department of Homeland Security, Immigration and Customs Enforcement ("DHS"), in the position of Deportation Officer for Enforcement Removal Operations ("ERO").

2. My duties as a Deportation Officer include: (1) arresting aliens who are removable from the United States; (2) processing aliens who will be removed from the United States or placed into removal proceedings before an immigration judge; (3) monitoring aliens' cases until removal; (4) responding to aliens' requests while in ICE custody; and (5) requesting travel documents and coordinating travel for aliens ordered removed from the United States. My duties may, at times, include other responsibilities related to the apprehension, arrest, and removal of aliens, as needed.

3. I am familiar with the case of Rigoberto SANTILLAN QUIROZ ("Santillan Quiroz"), alien file number 221-061-097, a native and citizen of El Salvador. The following

Ex. 1 - Declaration of Garley

information is based on my personal knowledge, information obtained from government databases maintained by DHS, and other documents related to the case of Santillan Quiroz.

4. On November 2, 2025, Santillan Quiroz was encountered during a traffic stop. ERO Officers determined Santillan Quiroz was a Mexican National and was present in the United States with no legal entry. During the field interview, officers verified Santillan Quiroz's immigration history, and Santillan Quiroz admitted that he entered the United States without admission or parole. Santillan Quiroz was arrested and detained.

5. On November 2, 2025, Santillan Quiroz was placed into removal proceedings through an issuance of the Notice to Appear and was charged as removable under INA § 212(a)(6)(A)(i).

6. On November 10, 2025, Santillan Quiroz was booked into Cimarron Correctional Facility, where he remains currently detained.

7. Santillan Quiroz is detained under INA § 235.

Sworn to and subscribed this 24 day of November, 2025.

Andres R. Garley
Deportation Officer
Department of Homeland Security
Immigration and Customs Enforcement

DEPARTMENT OF HOMELAND SECURITY

NOTICE TO APPEAR

DOB: 01/28/1981

Event No: OKC2611000014

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: 400581088 FINS: 2298794 File No: 221 061 097

In the Matter of:

Respondent: RIGOBERTO SANTILLAN QUIROZ currently residing at:

3200 S Kings Hwy Cushing, OKLAHOMA 740235355 (405) 414-0069

(Number, street, city, state and ZIP code) (Area code and phone number)

☐ You are an arriving alien.

☒ You are an alien present in the United States who has not been admitted or paroled.

☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;

2. You are a native of MEXICO and a citizen of MEXICO;

3. You entered the United States at or near unknown place, on or about unknown date;

4. You were not then admitted or paroled after inspection by an Immigration Officer.ORAt that time you arrived at a time or place other than as designated by the Attorney General.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

3130 N OAKLAND ST, AURORA, COLORADO 80010. AURORA IMMIGRATION COURT

(Complete Address of Immigration Court, including Room Number, if any)

on November 13, 2025 (Date) at 8:00 am (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

M3599 KINNISON - SDDO

(Signature and Title of Issuing Officer)

Date: November 2, 2025 ERO Oklahoma City, OK

(City and State)

EOIR – 1 of 4

DHS Form I-862 (6/22)

Ex. 2 - Notice to Appear

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at http://www.ice.gov/contact/ero, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before: _____

_____ (Signature of Respondent)

_____ Date: _____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on November 2, 2025, in the following manner and in compliance with section 239(a)(1) of the Act.

☒ in person ☐ by certified mail, returned receipt # _____ requested ☐ by regular mail

☐ Attached is a credible fear worksheet.

☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

X Rigoberto Santillan
(Signature of Respondent if Personally Served)

K10318 ITKIN - Special Agent
(Signature and Title of officer)

EOIR – 2 of 4

Privacy Act Statement

Authority:
The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:
You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:
For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at https://www.dhs.gov/system-records-notices-sorns. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at https://www.justice.gov/opcl/doj-systems-records. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:
Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

EOIR – 3 of 4

U.S. DEPARTMENT OF HOMELAND SECURITY **Warrant for Arrest of Alien**

File No. 221 061 097

Date: 11/02/2025

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that SANTILLAN QUIROZ, RIGOBERTO is removable from the United States. This determination is based upon:

☒ the execution of a charging document to initiate removal proceedings against the subject;

☐ the pendency of ongoing removal proceedings against the subject;

☐ the failure to establish admissibility subsequent to deferred inspection;

☒ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or

☒ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

M3599 KINNISON - SDDO
(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at ERO Oklahoma City, OK (Location)

on SANTILLAN QUIROZ, RIGOBERTO (Name of Alien) on November 2, 2025 (Date of Service), and the contents of this notice were read to him or her in the ENGLISH (Language) language.

K10318 ITKIN
Special Agent
Name and Signature of Officer

Name or Number of Interpreter (if applicable)

Form I-200 (Rev. 09/16)

EOIR – 4 of 4

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
AURORA IMMIGRATION COURT

LEAD FILE: 221-061-097
IN REMOVAL PROCEEDINGS
DATE: Nov 13, 2025
EAD Clock:

TO:
SANTILLAN QUIROZ, RIGOBERTO
3200 S KINGS HWY
CUSHING, OK 74023

RE: 221-061-097 SANTILLAN QUIROZ, RIGOBERTO

Notice of Internet-Based Hearing

Your case has been scheduled for a MASTER hearing before the immigration court on:

Your hearing is not in person. You will access your hearing by using the web page below.
URL: HTTPS://EOIR.WEBEX.COM/MEET/IJ.ATTILA.BOGDAN

Date: Nov 26, 2025
Time: 09:00 A.M. MT
Court Address: 3130 N. OAKLAND ST., AURORA, CO 80010

Representation: You may be represented in these proceedings, at no expense to the Government, by an attorney or other representative of your choice who is authorized and qualified to represent persons before an immigration court. If you are represented, your attorney or representative must also appear at your hearing and be ready to proceed with your case. Enclosed and online at https://www.justice.gov/eoir/list-pro-bono-legal-service-providers is a list of free legal service providers who may be able to assist you.

Failure to Appear: If you fail to appear at your hearing and the Department of Homeland Security establishes by clear, unequivocal, and convincing evidence that written notice of your hearing was provided and that you are removable, you will be ordered removed from the United States. Exceptions to these rules are only for exceptional circumstances.

Change of Address: The court will send all correspondence, including hearing notices, to you based on the most recent contact information you have provided, and your immigration proceedings can go forward in your absence if you do not appear before the court. If your contact information is missing or is incorrect on the Notice to Appear, you must provide the immigration court with your updated contact information within five days of receipt of that notice so you do not miss important information. Each time your address, telephone number, or email address changes, you must inform the immigration court within five days. To update your contact information with the immigration court, you must complete a Form EOIR-33 either online at https://respondentaccess.eoir.justice.gov/en/ or by completing the enclosed paper form and mailing it to the immigration court listed above.

Ex. 3 - Notice of Hearing

Internet-Based Hearings: If you are scheduled to have an internet-based hearing, you will appear by video or telephone. If you prefer to appear in person at the immigration court named above, you must file a motion for an in-person hearing with the immigration court at least fifteen days before the hearing date provided above. Additional information about internet-based hearings for each immigration court is available on EOIR's website at https://www.justice.gov/eoir/eoir-immigration-court-listing.

In-Person Hearings: If you are scheduled to have an in-person hearing, you will appear in person at the immigration court named above. If you prefer to appear remotely, you must file a motion for an internet-based hearing with the immigration court at least fifteen days before the hearing date provided above.

For information about your case, please call **1-800-898-7180** (toll-free) or **304-625-2050.**

The Certificate of Service on this document allows the immigration court to record delivery of this notice to you and to the Department of Homeland Security.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY:MAIL[M] PERSONAL SERVICE[P] ELECTRONIC SERVICE[E]
TO: [ ] Noncitizen | [M] Noncitizen c/o Custodial Officer |
[ ] Noncitizen ATT/REP | [E] DHS
DATE: 11-13-25 BY: COURT STAFF RK
Attachments:[ ] EOIR-33 [ ] Appeal Packet [ ] Legal Services List [ ] Other NH

Use a smartphone's camera to scan the code on this page to read the notice online.

Usa la cámara de un teléfono inteligente para escanear el código de esta página y leer el aviso en línea.

Use a câmara do smartphone para digitalizar o código nesta página e ler o manual de instruções online.

使用智能手机摄像头扫描本页面的代码，即可在线阅读该通知。

ਨੋਟਿਸ ਨੂੰ ਔਨਲਾਈਨ ਪੜ੍ਹਨ ਲਈ ਇਸ ਪੰਨੇ 'ਤੇ ਕੋਡ ਨੂੰ ਸਕੈਨ ਕਰਨ ਲਈ ਸਮਾਰਟਫੋਨ ਦੇ ਕੈਮਰੇ ਦੀ ਵਰਤੋਂ ਕਰੋ।

অনলাইনে নোটিশ পড়ার জন্য এই পেজের কোডটি স্ক্যান করতে স্মার্টফোনের ক্যামেরা ব্যবহার করুন

सूचना अनलाइनमा पढ्न यस पृष्ठमा कोड स्क्यान गर्न स्मार्टफोनको क्यामेरा प्रयोग गर्नुहोस्।

Sèvi ak kamera yon telefòn entèlijan pou eskane kòd ki nan paj sa a pou li avi a sou entènèt.

استخدم كاميرا الهاتف الذكي لمسح الرمز الموجود في هذه الصفحة لقراءة الإشعار على الإنترنت

Чтобы прочитать уведомление онлайн, отсканируйте код на этой странице с помощью камеры вашего смартфона.

Utilisez l'appareil photo d'un téléphone intelligent pour scanner le code sur cette page afin de lire l'avis en ligne.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

Rigoberto SANTILLAN QUIROZ, Petitioner, v. 1. Kristi NOEM, et. al., Respondents.	Case No. CIV-25-1349-PRW

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

I. INTRODUCTION

Petitioner, by and through his undersigned counsel, hereby submits this Reply to Respondent's Response in Opposition to Writ of Habeas Corpus. Petitioner has now been in custody for 36 days without the opportunity to have his custody redetermined due to Respondents' mischaracterization of the law. Respondents' opposition rests on two fundamental errors: first, they mischaracterize Petitioner's challenge to his detention authority under 8 U.S.C. § 1225(b)(2)(A) as a forbidden challenge to the "commencement of removal proceedings"; second, they distort the structure and history of the Immigration and Nationality Act ("INA") to suggest Congress intended to allow mandatory, no-bond detention for any noncitizen present without admission, no matter how long they have lived in the United States.

Neither claim withstands scrutiny. Petitioner's habeas petition challenges only the legality of his custody, not the initiation or merits of his removal case, and thus falls squarely within the district court's jurisdiction under 28 U.S.C. § 2241. Moreover, Respondents' sweeping interpretation of § 1225(b)(2)(A) conflicts with the statutory text, structure, and long-standing practice of distinguishing between "arriving aliens" subject to inspection at the border and noncitizens arrested within the United States, who are detained under § 1226(a) and entitled to a bond hearing.

Finally, Respondents' attempt to avoid constitutional scrutiny fails. The Fifth Amendment prohibits categorical detention without individualized review. This Court should therefore reject Respondents' position and grant habeas relief.

II. JURISDICTION IS PROPER UNDER 28 U.S.C. § 2241

Respondents argue that 8 U.S.C. § 1252(a)(5), (b)(9), and (g) strip this Court of jurisdiction. Respondents' reading misstates precedent and the scope of the provisions.

A. Habeas jurisdiction remains for detention challenges.

The Supreme Court has repeatedly held that § 1252's jurisdictional bars do not preclude review of detention authority. *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Demore v. Kim*, 538 U.S. 510 (2003). Both decisions addressed identical habeas challenges to the legality of immigration custody while removal proceedings were pending. This is the very claim raised here.

B. Petitioner does not challenge a "decision to commence proceedings."

Respondents' reliance on § 1252(g) and *Alvarez v. ICE*, 818 F.3d 1194 (11th Cir. 2016) is misplaced. Petitioner does not contest the filing of a Notice to Appear (NTA) or any prosecutorial discretion. Petitioner challenges which detention statute DHS invoked to hold him without bond. Courts across circuits have treated such challenges as distinct and reviewable.

C. Section 1252(b)(9) does not swallow all claims.

Section 1252(b)(9), the "zipper clause," consolidates judicial review of questions arising from removal orders, not stand-alone detention claims. Otherwise, district courts could never adjudicate habeas petitions under § 2241. *Jennings* expressly rejected such a result. This petition challenges only the legality and constitutionality of ongoing detention, and therefore falls within this Court's jurisdiction.

III. SECTION 1225(b)(2)(A) DOES NOT AUTHORIZE DETENTION OF NON-ARRIVING ALIENS

A. Statutory Text and Structure

Respondents read § 1225(b)(2)(A) to apply to any person present without admission, regardless of when or how they entered. The interpretation conflicts with the statute's plain structure. Section 1225(b)(1) governs "inspection of aliens arriving in the United States," while § 1225(b)(2) governs "inspection of other aliens." Both provisions describe individuals subject to inspection. That is, a process that occurs at or near the border when admission is sought. Once an individual is apprehended in the interior, the inspection phase is complete. At that point, detention falls under § 1226(a), which authorizes arrest "pending a decision on whether the alien is to be removed."

Respondents' claim that Congress intended § 1225(b)(2)(A) to encompass everyone who entered unlawfully renders § 1226(a) meaningless and violates the canon against surplusage. Congress enacted § 1226 to provide a discretionary bond framework for interior arrests. If DHS could detain every noncitizen who entered the United States without undergoing lawful inspection at a port of entry, commonly termed "EWI" or "entry without inspection," under § 1225, then § 1226(a)'s separate procedures governing detention and bond for individuals apprehended within the United States would have no practical effect. Therefore, Respondents' interpretation should be rejected.

B. Historical and Regulatory Practice

For nearly three decades after the 1996 IIRIRA amendments, DHS and EOIR treated long-term residents apprehended inside the United States as detained under § 1226(a), not

§ 1225. Respondents admit this shift as "a change in policy by the new administration," not a textual mandate. Policy changes cannot rewrite statutory limits. Further, the 1997 implementing regulations (62 Fed. Reg. 10312, 10323) explicitly recognized that EWIs, though technically "applicants for admission," "will be eligible for bond and bond redetermination." This is further confirmation that they are processed under § 1226(a). Respondents' brief does not acknowledge this context.

C. Legislative Intent

Respondents invoke IIRIRA's purpose of "placing all non-admitted immigrants on equal footing." The amendment addressed procedural parity. It ensured that EWIs, like arriving aliens, are placed in removal proceedings under § 1229a, not that they be subject to identical custody rules. Congress sought to eliminate the old "entry fiction," not to impose permanent mandatory detention on interior residents.

Courts rejecting Respondents' recent reinterpretation have recognized this. *See Escarcega v. Olson*, No. 25-cv-1129 (W.D. Okla. Oct. 28, 2025); *Salinas Gallardo v. Olson*, No. 25-cv-1090 (W.D. Okla. Oct. 28, 2025) (holding § 1226(a) governs detention of non-arriving aliens arrested in the interior).

IV. CONSTITUTIONAL AVOIDANCE REQUIRES APPLICATION OF § 1226(a)

Even if § 1225(b)(2)(A) were ambiguous, the constitutional-avoidance canon compels reading it to exclude long-term residents. Mandatory, indefinite detention without bond raises Fifth Amendment concerns.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that the Due Process Clause prohibits prolonged detention absent a reasonable relation to removal.

Jennings did not authorize limitless no-bond detention. Rather, it remanded to allow constitutional claims to proceed. Similarly, *Demore* upheld short-term detention pending completion of streamlined proceedings for recent entrants. It did not authorize months-long confinement of individuals like Petitioner, who has resided in the U.S. since 2006.

Respondents' reliance on *Thuraissigiam*, 591 U.S. 103 (2020), is misplaced. *Thuraissigiam* addressed procedural rights of arriving asylum applicants at the border, not residents apprehended in Oklahoma after nearly two decades of residence. The Fifth Amendment requires at least an individualized custody review by a neutral decision-maker.

V. RESPONDENTS' REMAINING ARGUMENTS LACK MERIT

A. "Passive Residency" and "Applicant for Admission."

To label a person who entered the United States nearly twenty years ago as "seeking admission" is a legal fiction. Courts have rejected this approach because it produces absurd results and erases statutory distinctions Congress preserved.

B. Superfluity and the Laken Riley Act.

Respondents' "Venn diagram" theory proves too much. The 2025 Laken Riley Act expanded criminal-based mandatory detention under § 1226(c). It did not retroactively redefine § 1225(b)(2)(A). Congress legislates against a background where § 1226 governs interior custody.

C. "Premature" Due-Process Claims.

Respondents incorrectly applies *Zadvydas*'s six-month post-removal presumption to pre-removal detention. Pre-removal custody implicates a liberty interest from the

moment of arrest. A categorical bar on bond violates procedural due process regardless of duration.

VI. CONCLUSION

Respondents' attempt to stretch § 1225(b)(2)(A) to cover all noncitizens inside the United States contradicts statutory text, structure, decades of agency practice, and constitutional principles. Petitioner has been detained without the opportunity to demonstrate his eligibility for release—contrary to the INA and the Fifth Amendment.

Accordingly, Petitioner respectfully requests that this Court:

1. Declare that Petitioner's detention is governed by 8 U.S.C. § 1226(a),
2. Order that he be provided a prompt bond hearing before an Immigration Judge,
3. Order that Petitioner be released if he is not provided a lawful bond hearing before an Immigration Judge within a time frame set by this Court; and
4. Grant such other relief as the Court deems just and proper.

DATED this 8th of December, 2025.

Respectfully submitted,

s/Kelli J. Stump
Kelli J. Stump
OBA No. 21374
Kelli J. Stump, PLLC
111 NW 15th St. Ste. B
Oklahoma City, Oklahoma 73103
(405)217-4550
kelli.stump@stumpimmigration.com
Attorney for the Petitioner

CERTIFICATE OF SERVICE

This is to certify that on December 8, 2025, 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 counsel of record

/s/ Kelli J. Stump
Kelli J. Stump

IN THE UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF OKLAHOMA

RIGOBERTO SANTILLAN QUIROZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No. CIV-25-1349-PRW**
	)	
KRISTI NOEM, et al.,	)	
	)	
Respondents.	)	

REPORT AND RECOMMENDATION

Petitioner, Rigoberto Santillan Quiroz, a Mexican citizen proceeding with counsel, filed a petition for a writ of habeas corpus ("Petition") under 28 U.S.C. § 2241 challenging his detention by the U.S. Immigration and Customs Enforcement ("ICE").[1] (Doc. 1).[2] United States District Judge Patrick R. Wyrick referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C). (Doc. 3). In accordance with the briefing schedule, (Doc. 6), Respondents timely filed a Response in Opposition to the Petition for Writ of Habeas Corpus.[3] (Doc. 8). Petitioner

[1] Petitioner is housed at Cimarron Correctional Facility in Cushing, Oklahoma. (Doc. 1, at 2).

[2] Citations to the parties' filings and attached exhibits will refer to this Court's CM/ECF pagination.

[3] The response was not filed on behalf of Respondent Scarlet Grant, Warden of the Cimarron Correctional Center, because she is not a federal official. (Doc. 8, at 7 n.1). The undersigned agrees with the responding Respondents that a separate response from Warden Grant is not necessary to resolve this matter.

timely filed a Reply. (Doc. 9). As fully set forth below, the undersigned recommends that the Court **GRANT** the Petition in part and order Respondents to provide Petitioner a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days or otherwise to release him if no hearing is held within that time.

I. Introduction

This action turns on one question: can Petitioner – an alien who has not been admitted or inspected, but has lived in the United States for nearly twenty years – be classified as an alien who is an "applicant for admission" under 8 U.S.C. § 1225 or must he instead be classified as an alien under 8 U.S.C. § 1226? The answer to this question directly affects Petitioner's detention, as the parties agree that he is subject to mandatory detention if he is classified as an applicant for admission under § 1225 and that he is entitled to a bond hearing if he is classified as an alien under § 1226.

While the Immigration and Nationality Act ("INA") is not new, this question is newly before federal courts across the country because of a change in interpretation by the executive branch. For many years, Immigration Judges provided bond hearings for detained aliens who had entered the country without inspection. *See Jonathan Javier Yajure Hurtado*, 29 I. & N. Dec. 216, 225 n.6 (BIA 2025) ("*Hurtado*"). But on September 5, 2025, the Board of Immigration Appeals ("BIA") determined that an immigration judge does not have authority to hear a request for bond by an alien present in the United States who has not been admitted after inspection because the alien was "subject to mandatory detention" under Section 1225. *Id.* at 229. This change in procedure has led to a

nationwide influx of habeas corpus petitions seeking bond hearings for aliens who were recently detained after living for years in the United States without inspection.

II. Background

Petitioner alleges he entered the United States in 2006 without being inspected or admitted. (Doc. 1, at 6; Doc. 8, at 15). On November 2, 2025, Petitioner was arrested after a traffic stop. (Doc. 1, at 6; Doc. 8, at 15). ICE instituted removal proceedings that day, alleging he was an alien present in the United States who had not been admitted or paroled. (Doc. 8, at Ex. 2, at 1). Respondents assert that Petitioner is detained pursuant to 8 U.S.C. § 1225.[4] (*Id.* at 16). Petitioner asserts that he "has been held without the possibility of bond due to the misapplication of 8 U.S.C. § 1225(b)(2)(A) and the [BIA's] recent decision in [*Hurtado*]." (Doc. 1, at 2). Petitioner's removal proceeding is ongoing. (Doc. 8, at 15-16).

III. Petitioner's Claims and Respondents' Response

In Count I, Petitioner asserts his detention violates the Immigration and Nationality Act because his detention under 8 U.S.C. § 1225(b)(2) "does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings . . . ." (Doc. 1, at 12). In Count II, Petitioner contends his detention "without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process." (*Id.* at 13).

[4] Respondents specifically assert that Petitioner is "currently detained under [Section] 235 [of the Immigration and Nationality Act]." (Doc. 8, at 16). This provision is the same as 8 U.S.C. § 1225. *See, e.g.*, *Gutierrez v. Baltasar*, 2025 WL 3251143, at *1 (Nov. 21, 2025) (noting the two are the same).

As relief, Petitioner asks the Court to issue "a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days." (*Id.* at 3).

Respondents contend that judicial review of Count I is barred by 8 U.S.C. § 1252. (Doc. 8, at 16-19). They also assert that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2). (*Id.* at 20-28). Finally, they contend that Count II is both premature and without basis. (*Id.* at 28-30).

IV. Standard of Review

To obtain habeas corpus relief, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241 (c)(3). "Challenges to immigration detention are properly brought directly through habeas." *Soberanes v. Comfort,* 388 F.3d 1305, 1310 (10th Cir. 2004) (citing *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001)).

V. Analysis

A. The Court Has Jurisdiction to Consider the Petition.

Based on specific provisions of the INA at issue, Respondents argue this Court lacks jurisdiction to consider Petitioner's claims. (Doc. 8, at 16-19). Similar jurisdictional arguments have recently been rejected by multiple district courts throughout the country. *See, e.g.*, *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), --- F.3d. Supp. ---, 2025 WL 2682255, at *3 n.7 (E.D. Va. Sep. 19, 2025) ("Federal courts throughout the country have similarly found that these jurisdiction-stripping provisions do not deprive the federal courts of jurisdiction to review a noncitizen's challenge to the legality of his detention.")

(collecting cases). As explained below, the undersigned agrees with those courts that have found jurisdiction exists to consider arguments challenging detention in circumstances similar to Petitioner's.

1. Sections 1252(a)(5) and 1252(b)(9).

Respondents first argue the Court lacks jurisdiction to consider the Petition because (1) the INA channels "claims related to removal orders" to a court of appeals rather than a district court, and (2) such claims include "the decision to effectively begin those proceedings via [8 U.S.C.] § 1225(b)(2)(A) . . . ." (Doc. 8, at 17) (citing 8 U.S.C. §§ 1252(a)(5) and 1252(b)(9)). Accordingly, Respondents argue that under § 1252(a)(5) and § 1252(b)(9), the decision to charge and detain Petitioner "can be reviewed by the appropriate court of appeals as part of any appeal of a final order of removal—but not this Court." (*Id.*)

Several courts have recently rejected this jurisdictional argument for the fundamental reason that detention orders "are separate and apart from orders of removal." *Hasan*, 2025 WL 2682255, at *4 (citation modified). Challenges to detention orders "are legal in nature and challenge specific conduct unrelated to removal proceedings." *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS, 2025 WL 2652880, at *2 (D. Colo. Sep. 16, 2025) ("Congress did not intend the zipper clause to cut off claims that have a tangential relationship with pending removal proceedings. A claim only arises from a removal proceeding when the parties in fact are challenging removal proceedings.") (quoting *Mukantagara v. US. Dep't of Homeland Sec.*, 67 F.4th 1113, 1116 (10th Cir. 2023)) (citation modified); *Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at

*2-3 (D. Colo. Oct. 17, 2025) (rejecting jurisdictional argument, in part, because the petitioner's claims challenging detention under 8 U.S.C. § 1225 rather than § 1226 due to a change in policy was a challenge to specific conduct unrelated to removal proceedings).

The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018), recognized the limited circumstances where § 1252(b)(9) would bar a district court's jurisdiction. The Court in *Jennings* noted the aliens in that case "are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined. Under these circumstances, § 1252(b)(9) does not present a jurisdictional bar." *Id.*

Here, like many recent habeas cases by aliens challenging mandatory detention under § 1225(b)(2)(A), "Petitioner does not challenge any removal order because no order of removal has yet been entered against him. Rather, he challenges the constitutionality and legality of his detention during the period before his removal hearing." *S.D.B.B. v. Johnson,* No. 1:25-cv-882, 2025 WL 2845170, at *3 (M.D.N.C. Oct. 7, 2025). As such, "§ 1252(b)(9) does not deprive the court of jurisdiction." *Id.* This interpretation of § 1252(a)(5) and § 1252(b)(9) tracks the same recent analysis of several district courts. *See, e.g.*, *Caballero v. Baltazar*, No. 25-cv-3120-NYW, 2025 WL 2977650, at *4 (Oct. 22, 2025) (ruling § 1252(b)(9) does not present a jurisdictional bar to an alien challenging "the legality of his continued detention without a bond hearing"); *Hasan*, 2025 WL 2682255, at *4 ("Section 1252(b)(9) does not insulate detention orders from judicial review because they are separate and apart from orders of removal.") (citation modified); *Hernandez*

Marcelo v. Trump, No. 3:25-cv-00094-RGE-WPK, --- F. Supp. 3d ----, 2025 WL 2741230, at *6 (S.D. Iowa Sep. 10, 2025) (concluding § 1252(a)(5) and § 1252(b)(9) are inapplicable because the habeas petitioner was challenging his detention without a bond hearing, not an order of removal); *Jose J.O.E. v. Bondi*, No. 25-cv-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670, at *7 (D. Minn. Aug. 27, 2025) (same) (collecting cases)). Notably, Respondents provided no example of a recent district court decision adopting their view.

The undersigned agrees with the prevailing analysis from other district courts that have recently considered this question and concludes that § 1252(a)(5) and § 1252(b)(9) do not deprive the Court of jurisdiction.

2. Section 1252(g)

Respondents also argue that the INA limits a district court's 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." (Doc. 8, at 17) (quoting 8 U.S.C. § 1252(g)). Respondents assert that "[t]he bar on considering the commencement of proceedings includes a bar on considering challenges to the *basis on which* DHS chooses to commence removal proceedings." (*Id.*)

In *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999), the Supreme Court explained that § 1252(g)'s jurisdictional bar applies only to "three discrete actions" – the commencement of removal proceedings, adjudication of removal proceedings, and execution of removal orders. The Supreme Court found it "implausible that the mention of three discrete events along the road to deportation was a shorthand way

of referring to all claims arising from deportation proceedings." *Id.* More recently, in *Jennings*, the Court reaffirmed this narrow reading, explaining that *Reno* "did not interpret [§ 1252(g)] to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General." 583 U.S. at 294. Instead, the statutory language refers "to just those three specific actions themselves." *Id.*

Though § 1252(g) indeed imposes a jurisdictional bar on a court's ability to review certain habeas petitions, the restrictions are to be read narrowly. *See, e.g.*, *Reno*, 525 U.S. at 487 (referencing the Court's "narrow reading of § 1252(g)"); *Gutierrez*, 2025 WL 2962908, at *3 ("Section 1252(g) imposes a narrow judicial bar to a federal court's review of 'any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.'") (quoting 8 U.S.C. § 1252(g)); *Hasan*, 2025 WL 2682255, at *4 ("Section 1252(g) has a narrow reach."); *Garcia Cortes*, 2025 WL 2652880, at *1 ("These statutory bars are read narrowly."); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *3 (S.D. Fla. Sep. 9, 2025) ("The Supreme Court has given § 1252(g) a 'narrow reading,' emphasizing that it does not cover 'all claims arising from deportation proceedings' or impose 'a general jurisdictional limitation.'") (quoting *Reno,* 525 U.S. at 482, 487).

Here, Petitioner does not challenge the commencement of removal proceedings, the adjudication of removal proceedings, or the execution of removal orders. Instead, he challenges "the narrow legal questions of whether [his] detention under 8 U.S.C. § 1225 violates the INA and whether he is entitled to a bond hearing under § 1226's discretionary

detention framework." *Gutierrez*, 2025 WL 2962908, at *3. As such, Petitioner's claims fall outside the narrow jurisdictional limitations of § 1252(g) and, accordingly, § 1252(g) does not deprive the Court of jurisdiction. This conclusion is consistent with many district courts that have recently addressed this jurisdictional challenge from the government. *See, e.g.*, *id.* (finding § 1252(g) did not strip the court of jurisdiction to consider petitioner's challenge to his detention under § 1225 rather than § 1226); *S.D.B.B.*, 2025 WL 2845170, at *3 (same); *Hasan*, 2025 WL 2682255, at *4 (same); *Garcia Cortes*, 2025 WL 2652880, at *l (same); *Grigorian*, 2025 WL 2604573, at *4 (same).

Respondents cite only one decision, from the District of Minnesota, that has squarely ruled that § 1252(g) bars a district court's jurisdiction to consider a petitioner's challenge to detention. *See S.Q.D.C. v. Bondi*, No. 25-3348 (PAM/DLM), 2025 WL 2617973, at *3 (D. Minn. Sept. 9, 2025). That decision "appears to represent an extreme minority position, both in its own district and nationally." *Gonzalez Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *2 (W.D. Tex. Oct. 21, 2025); *see also Belsai D.S. v. Bondi*, No. 25-cv-3682 (KMM/EMB), 2025 WL 2802947, at *5 n.3 (D. Minn. Oct. 1, 2025) ("respectfully disagree[ing] with the conclusion reached by the Court in *S.Q.D.C.*").[5]

[5] The district court in *S.Q.D.C.* relied on *Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016). *S.Q.D.C.*, 2025 WL 2617973, at *3. Respondents likewise rely on *Alvarez* to argue that "[t]he bar on considering the commencement of proceedings includes a bar on considering challenges to the *basis on which* DHS chooses to commence removal proceedings." (Doc. 8, at 17). Not only is *Alvarez* distinguishable on its facts from those here, but district courts considering detention orders have also recently disagreed with jurisdictional arguments relying on *Alvarez*. *E.g.*, *Avila v. Bondi*, No. 25-3741 (JRT/SGE), 2025 WL 2976539, at *4 (D. Minn. Oct. 21, 2025); *Belsai D.S.*,

3. Conclusion

The undersigned concludes that neither § 1252(a)(5), § 1252(b)(9), nor § 1252(g) bars this Court from jurisdiction to consider Petitioner's challenge to his detention.

B. Section 1226(a) Applies to Petitioner's Detention.

Petitioner argues he is being held in violation of the INA and that 8 U.S.C. § 1225(b)(2) does not apply to him because he "previously entered the country and ha[s] been residing in the United States prior to being apprehended." (Doc. 1, at 12). According to Petitioner, his continued detention under § 1225(b)(2) is unlawful and he is entitled to a bond hearing under § 1226(a) – as an alien who previously entered the country and has been residing in the United States before being apprehended and placed in removal proceedings by ICE. (*Id.*)

Respondents contend that Petitioner is an "applicant for admission" and therefore properly detained under § 1225(b)(2)(A). (Doc. 8, at 20). That is, because Petitioner did not enter the country lawfully and has not offered to voluntarily depart, he is still considered an "applicant for admission" or "seeking admission" under § 1225. (*Id.* at 20-22). In arguing this point, Respondents contend that detention under § 1225(b)(2)(A) is not limited to aliens "arriving" in the United States, and that a contrary interpretation would undermine the purpose of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. (*Id.* at 20-24). Further, Respondents claim (1) § 1226(a) is reserved for those who do not fall within the confines of § 1225(b)(2)(A), namely, aliens who entered the country

2025 WL 2802947, at *5 n.3; *Grigorian*, 2025 WL 1895479, at *4-5 (S.D. Fla. July 8, 2025).

lawfully, and (2) any overlap between the two provisions does not undermine ICE's interpretation of the two statutes. (*Id.* at 24-28).

The parties agree that if Petitioner is an "applicant for admission" under § 1225(b)(2)(A), he is not entitled to a bond hearing. (Doc. 1, at 2; Doc. 8, at 13). They further agree that if he is not an "applicant for admission" under § 1225, then Petitioner falls within the confines of § 1226(a), which would entitle him to a bond hearing. *Jennings*, 583 U.S. at 306 ("Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention."). The undersigned has reviewed the statutory text, Congressional intent, legislative history, and § 1226(a)'s application for the past three decades, as well as numerous recent cases addressing this exact issue. The undersigned agrees with the great weight of authority and finds that Petitioner falls within the confines of § 1226(a), and not § 1225(b)(2)(A). As such, Petitioner is entitled to a bond re-determination hearing.

1. Statutory Interpretation of § 1225(b)(2)(A) and § 1226(a)

When interpreting a statute, the "inquiry begins with the statutory text, and ends there as well if the text is unambiguous." *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004). "If the statutory language is plain, [the Court] must enforce it according to its terms." *King v. Burwell*, 576 U.S. 473, 486 (2015). "But oftentimes the meaning—or ambiguity—of certain words or phrases may only become evident when placed in context." *Id.* (citation modified). "So when deciding whether the language is plain, the Court must read the words in their context and with a view to their place in the overall statutory scheme." *Id.* (citation modified).

Section 1225(a)(1) describes an "applicant for admission" as "an alien present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(l) (citation modified). The statute 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). As relevant here, § 1225(b)(2)(A) allows an examining immigration officer to detain "an applicant for admission" under § 1229a if the alien "seeking admission is not clearly and beyond a doubt entitled to be admitted." *Id.* § 1225(b)(2)(A). Section 1226(a), on the other hand, authorizes detention of an alien "on a warrant issued by the Attorney General" pending removal proceedings. *Id.* § 1226(a).

At issue is whether "an applicant for admission" – that is, "an alien present in the United States who has not been admitted" – includes an alien like Petitioner who intentionally avoided lawful entry. *See id.* § 1225(a)(l). The statutory text does not provide a definitive answer as to what it means to be present without admittance where, as here, the alien has already entered and spent many years residing in the United States. Even when statutory terms are unambiguous, context still matters. *See United States v. Bishop*, 412 U.S. 346, 356 (1973) ("[C]ontext is important in the quest for [a] word's meaning."); *United States v. Ceballos-Martinez*, 387 F.3d 1140, 1144 (10th Cir. 2004) (noting that statutory interpretation "requires [courts] to interpret Congress's choice of words in the context that it chose to use them"). Further, "it is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (citation modified). When considering the overall

context of § 1225, the undersigned concludes the statute limits the scope of the terms "applicant for admission" and "seeking admission" in § 1225(b)(2)(A).

At the outset, giving effect to each clause and word of a statute includes an analysis of the statute's title. "A title is especially valuable where it reinforces what the text's nouns and verbs independently suggest." *Dubin v. United States*, 599 U.S. 110, 121 (2023) (citation modified). Section 1225 is titled: "Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing." (Emphasis added). The use of "arriving" to describe aliens indicates that the statute governs the entrance of aliens to the United States at the border or ports of entry.

This reading is bolstered by the fact that § 1225 establishes an inspection scheme for when to let aliens into the country. In fact, the subheading for § 1225(b)(2) reads "Inspection of Other Aliens," reinforcing the idea that the subsection applies to those coming in, not already present. Section 1225(d) is labeled "Authority Relating to Inspections" and describes the powers of immigration officers to search and detain vessels and "arriving aliens." *See* 8 U.S.C. § 1225(d)(l) (authorizing immigration officers to "board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States"); *id.* § 1225(d)(2) (authorizing immigration officers to detain an "arriving" alien and incoming vessel or aircraft and to deliver the "arriving" alien for inspection). Section 1225 also explicitly addresses its effect on "stowaways" and "crewmen," words that likewise suggest arrival at a border or port of entry. *See id.* § 1225(a)(2) ("An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted shall be ordered removed upon inspection by an

immigration officer."); *id.* § 1225(a)(3) ("All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.").

Further, § 1225's place in the overall statutory scheme supports the undersigned's reading. *See King*, 576 U.S. at 486 (holding that courts are meant to "construe statutes, not isolated provisions") (citation modified). That Congress separated removal of "arriving aliens" from its more general section for "Apprehension and detention of aliens" in § 1226, strongly implies that Congress enacted § 1225 for a specific, limited purpose. Whereas § 1225 governs removal proceedings for "arriving aliens," § 1226(a) serves as a catch-all. As the Supreme Court in *Jennings* explained, § 1226(a) is the "default rule" and "applies to aliens already present in the United States." 583 U.S. at 288, 303.[6] The inclusion of both provisions in the INA is likely no coincidence, but rather a way for Congress to delineate between the specified categories of § 1225 and the more general provision of § 1226(a), which captures aliens who fall outside of § 1225's specificity.

[6] Both Petitioner and Respondents argue that *Jennings* supports their position. (Doc. 8, at 13; Doc. 9, at 6). The Court in *Jennings*, however, did not rule on whether non-admitted or inadmissible aliens were governed by § 1225(b)(2)(A) or § 1226(a). Accordingly, the undersigned takes the same approach as other courts that have recently addressed this issue and cites *Jennings* for its acknowledgement that § 1226(a) is the default rule but does not make a recommendation based on *Jennings*. *See, e.g.*, *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *5 n.4 (E.D. Mich. Sep. 9, 2025) ("The Court cites *Jennings* because it acknowledges § 1226(a) as the default rule. But the Supreme Court did not rule on whether non-admitted or inadmissible aliens fell within boundaries of § 1226(a) as opposed to § 1225(b)(2)(A)."); *S.D.B.B.*, 2025 WL 2845170, at *5 ("On the other hand, § 1226(a) sets out the 'default rule' for detaining and removing aliens 'already present in the United States.'") (quoting *Jennings*, 583 U.S. at 303).

After considering the text and statutory framework, the undersigned concludes the terms "applicant for admission" and "seeking admission" in § 1225(b)(2) do not cleanly apply to aliens like Petitioner. "The plain meaning of the phrase 'seeking admission' requires that the applicant must be presently and actively seeking lawful entry into the United States. The use of the present participle in § 1225(b)(2)(A) implies action – something that is currently occurring, and in this instance, would most logically occur at the border upon inspection." *Caballero*, 2025 WL 2977650, at *6 (citation modified). In contrast, Petitioner has resided in the United States continuously for nearly twenty years, never sought admission, and was not arrested when attempting to cross the border or pass through a port of entry illegally. (Doc. 1, at 6). "Simply put, noncitizens who are just 'present' in the country, who have been here for years upon years and never proceeded to obtain any form of citizenship, are not 'seeking' admission under § 1225(b)(2)(A)." *Caballero*, 2025 WL 2977650, at *6 (citation modified). Ultimately, a textual analysis of the immigration framework suggests Petitioner's circumstances align with § 1226(a), not § 1225(b)(2)(A).

2. Legislative History and Recent Amendment

The legislative history and recent amendment of § 1226 also indicate the statute applies to aliens who reside in the United States but previously entered without inspection. First, § 1226(a)'s predecessor statute, 8 U.S.C. § 1252(a)(l),

> governed deportation proceedings for all noncitizens arrested within the United States. *See* 8 U.S.C. § 1252(a)(l) (1994) ("Pending a determination of deportability any noncitizen may, upon warrant of the Attorney General, be arrested and taken into custody."); *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) ("A deportation hearing was the 'usual means of proceeding

> against a noncitizen already physically in the United States.'"). This predecessor statute, like Section 1226(a), included discretionary release on bond. *See* § 1252(a)(l) (1994) ("Any such noncitizen taken into custody may, in the discretion of the Attorney General be continued in custody or be released under bond."). Upon passing [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996], Congress declared that the new Section 1226(a) "restates the current provisions in the predecessor statute regarding the authority of the Attorney General to arrest, detain, and release on bond a noncitizen who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229; *see also* H.R. Rep. No. 104-828, at 210 (same).

Rodriguez v. Bostock, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (citation modified); *see also Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sep. 9, 2025) ("If § 1226(a) adopted the predecessor[] [statute]'s authority to release noncitizens unlawfully present in the United States on bond, then [petitioner] is entitled to discretionary release on bond as well."). This history contradicts Respondent's claim that applying § 1226 to Petitioner "[u]ndermines the [p]urpose of the [Illegal Immigration Reform and Immigrant Responsibility Act]." (Doc. 8, at 22).

In addition, and contrary to Respondents' assertions, Congress' recent amendment to § 1226 renders the government's interpretation of § 1225(b)(2)(A) superfluous. Earlier this year, Congress amended § 1226 via the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025). The Laken Riley Act added § 1226(c)(l)(E), which mandates detention for aliens who

- are inadmissible under § 1182(a)(6)(A) (aliens present in the United States without being admitted or paroled, like Petitioner), § 1182(a)(6)(C) (misrepresentation), or § 1182(a)(7) (lacking valid documentation) and
- have been arrested for, charged with, or convicted of certain crimes.

8 U.S.C. § 1226(c)(1)(E)(i)-(ii).

Considering that § 1182(a)(6)(A)(i) specifically refers to "alien[s] present in the United States without being admitted or paroled," and that § 1226(c)(1)(E) requires detention without bond of these individuals if they have also committed certain felonies, the new statutory exception would be superfluous if § 1225(b)(2) already authorized their mandatory detention regardless of felony status. That is, because an "alien present in the United States" without admittance would be unlikely to prove that they are "clearly and beyond a doubt entitled to be admitted," ICE would never need to rely on § 1226(c)(1)(E) to detain them. *See Marx v. Gen. Rev. Corp.*, 568 U.S. 371, 386 (2013) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.") (citation modified). District courts have noted that adoption of Respondents' interpretation "would largely nullify a statute Congress enacted this very year and must be rejected." *Pizarro Reyes*, 2025 WL 2609425, at *5 (quoting *Gomes v. Hyde,* No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025)) (citation modified).

The undersigned's recommended interpretation is consistent with recent holdings of numerous district courts that have ruled on this exact issue. *See, e.g.*, *Menjivar Sanchez v. Wofford*, No. 1:25-cv-01187-SKO (HC), 2025 WL 2959274, at *5 (E.D. Cal. Oct. 17, 2025) ("The third problem with the government's argument is that application of section 1225(b)(2)(A) to noncitizens already in the country would render superfluous a recent amendment to section 1226(c)."); *Alvarez Puga v. Assistant Field Off. Dir., Krome N Serv. Processing Ctr.*, No. 25-24535-CIV, 2025 WL 2938369, at *5 (S.D. Fla. Oct. 15, 2025) ("If Respondents' interpretation of section 1225 is correct – that the mandatory detention

provision in section 1225(b)(2)(A) applies to all noncitizens present in the United States who have not been admitted – then Congress would have had no reason to enact section 1226(c)(l)(E)."); *Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK, 2025 WL 2896348, at *8 (S.D. Ind. Oct. 11, 2025) ("Under Respondents' expansive interpretation of § 1225, the amendment would have no purpose. Section 1225(b)(2) would already provide for mandatory detention of every unadmitted alien, regardless of whether the alien falls within one of the new classes of non-bondable aliens established by the Laken Riley Act."); *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511, at *10 (E.D.N.Y. Oct. 6, 2025) (same); *Quispe v. Crawford*, 1:25-cv-1471-AJT-LRV, 2025 WL 2783799, at *5 (E.D. Va. Sep. 29, 2025) (same); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ, --- F. Supp. 3d---, 2025 WL 2639390, at *9 (D.N.H. Sep. 8, 2025) (same); *Maldonado v. Olson*, No. 25-cv-3142 (SRN/SGE), 2025 WL 2374411, *12 (D. Minn. Aug. 15, 2025) (same); *Gomes*, 2025 WL 1869299, at *6-7 (same).

3. BIA's Current and Historical Interpretations of § 1225(b)(2)(A) and § 1226(a)

On September 5, 2025, the BIA issued a precedential decision holding that an immigration judge lacks authority to consider a bond request for any person who is present in the United States without admission, treating such person as an applicant for admission and subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *Hurtado*, 29 I. & N. Dec. at 220, 229. The BIA in *Hurtado* concluded that § 1225(b)(2)(A) covers inadmissible aliens who lived unlawfully in the United States for longer than two years without apprehension. *Id.* at 229.

The undersigned reaches the opposite conclusion from the BIA's statutory analysis in *Hurtado*. Notably, this Court is not bound by the BIA's interpretation of § 1225(b)(2)(A). *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) ("Courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous.") (citation modified). In *Hurtado*, the BIA characterized as a "legal conundrum" the idea that an alien's continued unlawful presence means they are not "seeking admission." 29 I. & N. Dec. at 221. However, an alien's continued presence cannot constitute "seeking admission" when that alien *never attempted* to obtain lawful status. This is especially true in light of § 1225's statutory context. The BIA also found that § 1225(b)(2)(A) does not render superfluous the Laken Riley Act. *Id.* at 222. Considering, however, that both § 1225(b)(2)(A) and § 1226(c)(1)(E) mandate detention for inadmissible aliens, the fact that one includes additional conditions for such detention does not alter the redundant impact.

The BIA's decision in *Hurtado* reflects a sharp pivot from long-standing immigration practice and policies. For almost three decades, most aliens who entered without inspection and were later apprehended were placed in standard removal proceedings and received bond hearings, unless subject to an exception. *See 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) ("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.") (citation modified). The decades of ICE practices lend support to Petitioner's entitlement to a bond

re-determination hearing under § 1226(a) "because the longstanding practice of the government—like any other interpretive aid—can inform a court's determination of what the law is." *Loper Bright Enters.*, 603 U.S. at 386 (citation modified). Respect for Executive Branch interpretations of statutes may be "especially warranted" when the interpretation "was issued roughly contemporaneously with enactment of the statute and remained consistent over time." *Id.*

Accordingly, the government's historical application of immigration laws also supports the undersigned's conclusion that § 1226(a) applies to Petitioner. Again, this analysis aligns with numerous courts that have recently addressed this issue. *See, e.g.*, *Jimenez Garcia v. Raybon*, No. 25-cv-13086, 2025 WL 2976950, at *4 (E.D. Mich. Oct. 21, 2025) (finding that "ICE's decision to upend 30 years of reasoned statutory interpretation is not persuasive"); *Sabi Polo v. Chestnut*, No. 1:25-CV-01342 JLT HBK, 2025 WL 2959346, at *11 (E.D. Cal. Oct. 17, 2025) ("Accordingly, the Court finds the well-reasoned decisions of the many district courts that have rejected the Government's expansive view of 1225(b)(2) far more persuasive than the new BIA ruling, a ruling at odds with its prior decisions and DHS's actions over the past thirty years.") (quoting *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at * 12 (N.D. Cal. Sep. 12, 2025)).

4. Conclusion

In sum, the undersigned is not persuaded by BIA's newfound statutory interpretation or Respondents' arguments and instead agrees with the myriad district courts that have recently applied § 1226(a) to govern detention of aliens like Petitioner.

Respondents' arguments and BIA's decision to pivot from decades of consistent statutory interpretation and to mandate Petitioner's detention under § 1225(b)(2)(A) are contrary to nearly every court that has recently addressed this question of statutory interpretation.

As a starting point, district courts within the Tenth Circuit have uniformly applied § 1226(a) to aliens living in the United States who were not apprehended at the border. *See, e.g.*, *Urbina Garcia v. Holt*, No. CIV-25-1225-J, 2025 WL 3516071, at *4 (W.D. Okla. Dec. 8, 2025) ("[T]he Court finds that Petitioner is entitled to a bond hearing and Respondents' failure to provide one violates § 1226(a) of the INA."); *Cruz Valera v. Baltazar*, No. 1:25-cv-3744-CNS, 2025 WL 3496174, at *3 (D. Colo. Dec. 5, 2025) ("Respondents' arguments do not persuade the Court that it should deviate from its prior determination that § 1225(b)(2)(A) and its mandatory detention requirement do not apply to noncitizens, like Petitioner, who have been present in the United States for over two decades."); *Pu Sacvin v. De Anda-Ybarra*, No. 2:25-cv-1031-KG-JFR, 2025 WL 3187432, at *3 (D.N.M. Nov. 14, 2025) ("Consistent with the majority of district courts to address the issue, this Court finds that § 1226 governs here."); *Arauz v. Baltazar*, No. 1:25-CV-03260-CNS, 2025 WL 3041840, at *4 (D. Colo. Oct. 31, 2025) ("Simply put, because Petitioner has lived in the United States for nearly 40 years and was not detained while attempting to enter the country, he is improperly subject to mandatory detention under § 1225(b)(2)(A) and should instead be detained under § 1226(a)"); *Hernandez v. Baltazar*, No. 1:25-CV-03094-CNS, 2025 WL 2996643, at *7 (D. Colo. Oct. 24, 2025) ("The Court joins the many other courts nationwide who have declined to accept Respondents' novel new interpretation of decades-old law."); *Caballero*, 2025 WL 2977650, at *8 ("The Court

joins the numerous courts across the country that have held that [aliens not apprehended at the border, who have been present in the United States for many years without lawful status] are subject to the discretionary detention framework of § 1226(a)."); *Gutierrez*, 2025 WL 2962908, at *4-5 (finding that "Petitioner is likely to succeed on the merits of his claims that he is unlawfully detained under 8 U.S.C. § 1225(b)(2)(A)'s mandatory detention authority and should be subject to 8 U.S.C. § 1226(a)'s discretionary scheme," and respondents had "readily admit[ted] that other district courts that have considered this same or similar issue have concluded that aliens who enter without inspection and then reside in the United States fall within the scope of Section 1226(a) rather than Section 1225(b)(2)(A)") (citation modified).

Further, in the last few weeks alone, numerous district courts around the country have consistently applied § 1226(a) to govern detention proceedings for aliens like Petitioner.[7] *See, e.g.*, *Balderas v. Olson*, No. 25 C 12749, 2025 WL 3210422, at *1 (N.D. Ill. Nov. 17, 2025) ("This case is similar to hundreds of cases across the country, and nearly all district judges have determined that the government's novel interpretation of the immigration detention statute is contrary to its plain language and inconsistent with binding precedent. This Court now joins the chorus of decisions granting a bond hearing to a

[7] On December 9, 2025, at least fifteen opinions uniformly held on the merits that § 1226(a) governs detention for aliens like Petitioner. *See, e.g.*, *Duran Avalos v. Bondi*, No. C25-4063-LTS-KEM, 2025 WL 3530162, at *2 (N.D. Iowa, Dec. 9, 2025); *Anirudh v. McShane*, No. 25-6458, 2025 WL 3527528, at *6 (E.D. Pa. Dec. 9, 2025); *Morales v. Bondi*, No. 1:25-cv-1472, 2025 WL 3525488, at *6 (W.D. Mich. Dec. 9, 2025); *Ramirez Ibanez v. Lynch*, No. 1:25-cv-1493, 2025 WL 3525324, at *6 (W.D. Mich. Dec. 9, 2025); *Cruz-Flores v. Noem*, No. 25-CV-3263 JLS (VET), 2025 WL 3526830, at *4 (S.D. Cal. Dec. 9, 2025).

detainee who had previously been present and living in the United States—a right guaranteed by statute and the Constitution."); *Jimenez Garcia*, 2025 WL 2976950, at *4 ("To this Court, there is simply no question that § 1226(a)—not § 1225(b)(2)(A)—applies to noncitizens such as [petitioner] who have resided in the United States for many years and were not apprehended while arriving at the border."); *Sabi Polo*, 2025 WL 2959346, at *11 ("This Court . . . joins the numerous other district courts that have rejected the government's recent interpretation of the relationship between § 1225 and § 1226."); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *6 (N.D. Ill. Oct. 16, 2025) ("In agreement with other district courts, this court rejects Respondents' expanded reading of § 1225(b)(2) and the term 'seeking admission.'"); *Padron Covarrubias v. Vergara*, No. 25-CV-112, 2025 WL 2950097, at *4 (S.D. Tex. Oct. 8, 2025) ("Along with most other courts that have considered this issue, the Court finds that [petitioner] is not properly detained without a bond hearing under Section 1225, and instead, Section 1226 applies."); *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025) ("As almost every district court to consider this issue has concluded, the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades support finding that § 1226 applies to these circumstances.") (citation modified).

Finally, the undersigned has considered Respondents' citations to two recent cases adopting their position that aliens like Petitioner are "applicants for admission" despite years of residing in the United States. *See Chavez v. Noem*, No. 3:25-cv-02325-CAB-SBC, --- F.3d. Supp. ---, 2025 WL 2730228, at *4 (S.D. Cal. Sep. 24, 2025); *Sandoval v. Acuna*,

No. 6:25-cv-1467, 2025 WL 3048926, at *3 (W.D. La. Oct. 31, 2025). For the reasons previously discussed, the undersigned respectfully disagrees with the textual analysis and statutory interpretations by these district courts. The undersigned instead agrees with the overwhelming number of courts that have recently addressed this question.

After carefully analyzing the statute's text, structure, history, and long-standing immigration practices, the undersigned recommends that the Court apply § 1226(a) to govern Petitioner's detention. Further, the undersigned concludes that Petitioner is entitled under § 1226(a) to a prompt individualized bond hearing before a neutral Immigration Judge. *See, e.g.*, *Alvarez Puga*, 2025 WL 2938369, at *5 (finding "that section 1226(a) and its implementing regulations govern [p]etitioner's detention, not section 1225(b)(2)(A)" and that petitioner "is entitled to an individualized bond hearing as a detainee under section 1226(a)"). Accordingly, the undersigned recommends that the Court grant the Petition in part and order Respondents to provide Petitioner with a bond hearing under § 1226(a) within seven days or otherwise release Petitioner if he has not received a lawful bond hearing within that period.

C. The Court Should Decline to Address Petitioner's Due Process Claim.

In his second habeas claim, Petitioner argues that his continued detention without a bond re-determination hearing violates his rights to due process. (Doc. 1, at 13). If the Court grants Petitioner's requested relief for a bond re-determination hearing under § 1226(a), the undersigned recommends that the Court follow an approach of other district courts and decline to decide the merits of the due process claim, and allow Petitioner to renew that claim if Respondents do not provide him with a bond hearing or release him

within the ordered time. *See Pizarro Reyes*, 2025 WL 2609425, at *8 ("The Court will decline to decide the merits of [petitioner's] due process claim given that the Court will grant the relief he seeks based on its interpretation of the applicability of § 1226(a)."); *see also Jimenez Garcia*, 2025 WL 2976950, at *4 (same); *Alvarez Puga*, 2025 WL 2938369, at *6 (citing *Pizarro Reyes* and declining to decide the merits of petitioner's due process claim); *Buenrostro-Mendez*, 2025 WL 2886346, at *3 n.4 (same).[8]

VI. Recommendation and Notice of Right to Object

For the reasons discussed above, the undersigned recommends that the Petition (Doc. 1) be **GRANTED in part.** The undersigned recommends that the Court order Respondents to provide Petitioner with an individualized bond hearing under 8 U.S.C. § 1226(a) within seven days or otherwise release Petitioner if he has not received a lawful bond hearing within that period. The undersigned further recommends that the Court order Respondents to certify compliance by filing a status report within ten days of the Court's order.

The court advises the parties of their right to object to this Report and Recommendation by December 18, 2025, under 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2).[9] The Court further advises the parties that failure to make timely objection to

[8] Respondents argue that Petitioner's due process claim insufficiently alleges facts to warrant habeas relief. (Doc. 8, at 28-30). Because the undersigned recommends that the Court grant relief under Petitioner's statutory claim and agrees that Petitioner's due process allegations are unclear and conclusory, this Report and Recommendation does not address the merits of any due process claim potentially raised by Petitioner.

[9] Given the expedited nature of these proceedings, the undersigned has reduced the typical objection time to Report and Recommendations to seven days. *See* Fed. R. Civ. P. 72(b)(2)

this report and recommendation waives their right to appellate review of both factual and legal issues contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

ENTERED this 11th day of December, 2025.

Amanda L. Maxfield

AMANDA L. MAXFIELD
UNITED STATES MAGISTRATE JUDGE

advisory committee's note to 1983 addition (noting that rule establishing 14-day response time "does not extend to habeas corpus petitions, which are covered by the specific rules relating to proceedings under Sections 2254 and 2255 of Title 28."); *see also Whitmore v. Parker,* 484 F. App'x 227, 231, 231 n.2 (10th Cir. 2012) ("The Rules Governing § 2254 Cases may be applied discretionarily to habeas petitions under § 2241" and that "while the Federal Rules of Civil Procedure may be applied in habeas proceedings, they need not be in every instance – particularly where strict application would undermine the habeas review process.").

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

RIGOBERTO SANTILLAN QUIROZ,	)	
	)	
Petitioner,	)	
	)	CIV-25-1349-PRW
v.	)	
	)	
KRISTI NOEM, et al.,	)	
	)	
Respondents.	)	

RESPONDENTS' OBJECTION TO REPORT AND RECOMMENDATION

Respectfully submitted,
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RESPONDENTS' OBJECTION TO REPORT AND RECOMMENDATION

Respondents respectfully object to the Report and Recommendation (R&R) entered on December 11, 2025 (Doc. 10).

This objection expressly reasserts and does not waive the arguments set forth in the Response (Doc. 8), but focuses on two particular points: (1) the R&R misapplied the jurisdiction stripping and channeling provisions of the INA; and (2) the R&R failed to properly apply the plain language of § 1225(b)(2)(A) and instead engaged in a broader structural analysis that that is inconsistent with the text, title, and purpose of § 1225 and that creates more ambiguity than it purports to resolve.

I. Petitioner's Statutory Claim (Count One) Is Barred by the INA's Jurisdiction Channeling and Stripping Provisions

Section 1252(g) states that 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." As the R&R correctly notes, the bar should be read narrowly. In the Tenth Circuit, the test is whether a challenged decision or action is "directly and immediately" connected to an enumerated action (commencing, adjudicating, or executing). *See Tsering v. U.S. Immigr. & Customs Enf't*, 403 F. Appx 339, 343 (10th Cir. 2010); *Mochama v. Zwetow*, 2017 WL 36363, at *8 (D. Kan. Jan. 3, 2017) ("The Tenth Circuit reviews whether claims are connected directly and immediately with a decision or action by the Attorney General to commence proceedings.").[1]

[1] The R&R fails to address *Tsering*.

Here, the immigration officer's examination of Petitioner and subsequent determination under § 1225(b)(2)(A) directly and immediately effected the *commencement* of the proceedings against Petitioner. 8 U.S.C. § 1225(b)(2)(A) ("if the examining immigration officer determines … the alien shall be detained for a proceeding under section 1229a"). The charges filed are based on the discretionary determinations of the officer. If Petitioner contends that the immigration officer's examination and "determination" under § 1225 is not the basis of DHS's discretionary decision to commence removal proceedings, it is not stated in the Petition. Nor is it addressed or explained in the R&R. The application of § 1225(b)(2)(A) is an integral part of DHS's discretionary choice to commence proceedings and seek the deportation.

Petitioner's assertion that DHS should have used § 1226 instead of § 1225 underscores this point. Specifically, in § 1226(e), Congress made clear that the decision whether to use any of § 1226's provisions is itself an unreviewable discretionary act. *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."). And critically, "§ 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.* [AADC], 525 U.S. 471, 485 n. 9 (1999)).

The R&R cites to *Jennings* for the proposition that the Court's *AADC* decision "did not interpret [§ 1252(g)] to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General." R&R at 8. Putting aside that the quote is from the three-judge plurality *not* adopted by other members of the Court, Respondents'

assertion of § 1252(g) for the discretionary determinations of an immigration officer is not just "any claim." It is an act intimately tied to the commencement of proceedings. And it bears repeating that Petitioner's and R&R's assertion that a § 1226 warrant should have been used instead *is expressly protected by that very provision as discretionary*—which is what § 1252(g) is intended to protect. *AADC*, 525 U.S. at 487 (characterizing § 1252(g) as a "discretion-protecting provision"). Indeed, protected discretion includes the option to be both more forgiving or more exacting. Here, DHS has made the determination to more fully utilize § 1225(b)(2)(A). That is a form of protected discretion under § 1252(g). *See Aguilar-Alvarez v. Holder*, 528 F. App'x 862, 870–71 (10th Cir. 2013) (applying § 1252(g) to the re-assertion of removal proceedings). Moreover, such a statutory challenge can be reviewed later, by the court of appeals pursuant to channeling provision of § 1252(b)(9). *Cf. Ba v. Dir. of Detroit Field Off., ICE*, 2025 WL 3264535, at *2 (N.D. Ohio Nov. 24, 2025) ("Put another way, a constitutional challenge to detention pending removal and entitlement to a bond hearing pending removal collapse into analysis of the statutory and regulatory regime—something Congress has made clear a district court may not do, even on a habeas petition under Section 2241.").

The R&R also attempts to recast Count I as merely challenging the legal basis of Petitioner's detention. R&R at 8-9. But that conflates Counts I (statutory challenge) and II (constitutional challenge). Petitioner's due process claim (Count II) challenges his detention as a due process violation. But the statutory argument of Count I is different. It challenges the *means* DHS selected to initiate review and commence proceedings against Petitioner. Specifically, Petitioner contends DHS should have used a § 1226 warrant

instead of the authority provided in § 1225. But critically, there is no detention element to that debate. For example, detention plays no role in deciding whether Petitioner is an "applicant for admission" or "seeking admission" under § 1225. The availability of a bond determination for Petitioner is a *collateral* consequence of that debate. Thus, the crux of the challenge in Count I is *not* detention—it is to the discretionary enforcement authority.

The R&R also cites to several recent district court opinions that are not binding on this court. Those opinions assert that § 1252(g) does not bar the review of purely legal determinations that require no factual development. *See* R&R at 8-9 (citing, for example, *Gutierrez v. Baltasar*, 2025 WL 2962908, at *3 (D. Colo. Oct. 17, 2025), which is grounded in the assertion that "[t]hese 'purely legal' questions fit the exception to § 1252(g)'s jurisdiction-stripping provision, as they can be decided in the abstract on an undisputed factual record"). But the Tenth Circuit has not adopted a "purely legal" or "abstract" non-factual exception to § 1252(g). And, as noted below, the application of § 1225 *does* involve factual issues regarding Petitioner's "seeking admission" by filing for asylum.

In short, Petitioner asks the court to construe DHS to have exercised its discretion in a manner (and to have issued a warrant) it did not. That is barred by § 1252(g). *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."); *Acxel S.Q.D.C. v. Bondi*, 2025 WL 2617973, at *3 (D. Minn. Sept. 9, 2025) ("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.").[2]

II. The Report's Statutory Analysis Is Inconsistent with the Text, Title, and Purpose of the INA

The R&R starts by asserting that the language of § 1225 is ambiguous as to whether it applies to someone present in the country without admission. Based on that conclusion, the R&R then departs from the language of the statute to review its title, structure, recent legislative history, and prior regulatory statements to ultimately conclude that § 1225 only applies to arriving noncitizens. The R&R is wrong at each step.

A. The Plain Language of § 1225 Applies to Petitioner

Section 1225(a)(1) 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). Petitioner concedes that he is *present in the United States* and *has not been admitted*. In short, he is plainly an "applicant for admission." The R&R's suggestion of ambiguity cannot be squared with the plain language of the statute. *See, e.g.*, *P.B. v. Bergami*, No. 3:25-CV-02978-O, 2025 WL 3632752, at *3 (N.D. Tex. Dec. 13, 2025) ("To start, it is undisputed that Petitioner clearly meets the statutory definition of an applicant for admission. Petitioner does not hide that she is present in the country illegally

[2] In a footnote, the R&R asserts that *Alvarez* is factually distinguishable. R&R at 9 n.5. While *Alvarez* addressed Bivens claims, it nonetheless applied § 1252(g) to the discretionary acts of electing to bring charges under particular provisions rather than others. The fact that the holding occurs in the Bivens context (which implicates constitutional issues, like this case) does not meaningfully distinguish the holding. Likewise, the assertion that some district courts have "recently disagreed," without more, does not provide a reason to disregard *Alvarez*.

and does not contend that she has been admitted. Thus, Petitioner is plainly an applicant for admission[.]").

Next, § 1225(b)(2)(A) provides that:

> [I]n the case of an alien that 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.

Petitioner was detained and proceedings commenced against him pursuant to this provision. The R&R finds that "seeking admission" requires present action and concludes that passive residency in the United States is insufficient. R&R at 15. But that conclusion contravenes ordinary language, the deeming provision of the INA, and Petitioner's efforts to remain in the United States since 2006. Indeed, if Petitioner was not seeking to remain in the United States (i.e., "seeking admission"), he would voluntarily self-deport.

As an initial matter, crafting a distinction between an "applicant" and one who is "seeking" defies common understandings of language. It is akin to saying an "applicant for college admission" is not "seeking admission to college"; or that an "applicant for a job" is not "seeking the job." In each instance, the individuals are "seeking" by virtue of being an applicant. If it were otherwise, they would not be an "applicant" in the first instance.

A review of the definitions of these terms is instructive. Merriam-Webster defines "seeking" as "asking for" or "trying to acquire or gain." Seeking, Merriam-Webster, https://www.merriam-webster.com/dictionary/seeking (last visited December 18, 2025). Moreover, Merriam-Webster defines "applicant" as "one who applies." Applicant, Merriam-Webster, https://www.merriam-webster.com/dictionary/applicant (last visited

December 18, 2025). Thus, an "applicant for admission" is one who *applies* for admission. Again, that accords with common understandings of plain language. The college applicant and the job applicant are *seeking* admission to college and a job, respectively. Here, Petitioner is *deemed* to be an applicant for admission. *Cabanas v. Bondi*, 2025 WL 3171331, at *5 (S.D. Tex. Nov. 13, 2025) ("There is no material disjunction—by the terms of the statute or the English language—between the concept of 'applying' for something and 'seeking' something. That Petitioner has resided in the United States without valid permission for years thus doesn't render § 1225(b)(2)(A) inapplicable." (cleaned up)); *Coronado v. Sec'y, Dep't of Homeland Sec.*, No. 1:25-CV-831, 2025 WL 3628229, at *8 (S.D. Ohio Dec. 15, 2025) ("the Court concludes that the more natural reading is that the phrase 'alien seeking admission' is just another way of saying 'alien who is an applicant for admission.' After all, in normal usage, someone who is an "applicant for admission" is also necessarily "seeking admission." Indeed, that is what it means to apply for admission.").

The R&R resists this straight-forward application by suggesting "the terms 'applicant for admission' and 'seeking admission' in § 1225(b)(2) do not cleanly apply to aliens like Petitioner." R&R at 15. But the INA's deeming provision *conclusively* resolves that question. Section 1225(a)(1) provides that noncitizens residing in the country are "deemed" an applicant for admission; meaning there is no need to inquire as to subjective intent or whether a noncitizens actions are sufficient to suggest an intent to apply. To the contrary, Congress included the deeming provision to obviate any such inquiry. As a matter of law, by being "present in the country" without being "admitted," Petitioner *is* deemed

an "applicant for admission." *Olalde v. Noem*, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025) ("[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."); *Valencia v. Chestnut*, 2025 WL 3205133, at *3 (E.D. Cal. Nov. 17, 2025) ("The statutory language may cover a pro-active engagement with the process of becoming a lawful entrant, but courts both in this circuit and elsewhere have recognized that the term also functions as a legal designation -- describing an individual's legal status for purposes of the statutory removal scheme -- rather than a description of present conduct."); *Sandoval v. Acuna*, 2025 WL 3048926, at *5 n.5 (W.D. La. Oct. 31, 2025) ("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 v. Patterson*, 2025 WL 3095972, at *5 n.4 (W.D. La. Nov. 4, 2025) (same); *Vargas Lopez v. Trump*, 2025 WL 2780351, at *9 (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)"). The Court need not—and should not—look further.[3]

[3] Section 1225(a)(3) further underscores this point. That section provides that "[a]ll aliens … who are applicants for admission *or otherwise seeking admission* … shall be inspected." (emphasis added)). Because "applicants for admission" (a subset of noncitizens) are deemed to be "seeking admission," the catchall additional phrase "or otherwise seeking admission" is intended to sweep *even further* to all noncitizens seeking admission. *See Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963 (11th Cir. 2016) (en banc) ("By using 'or otherwise' to join the verbs in this section, Congress made [the preceding verbs] a subset of [the succeeding verbs]."). A reading that renders "applicants for admission"

But if the Court does look further, the immigration officer's determination that, *when confronted*, Petitioner was seeking a form of admission is confirmed by the fact that Petitioner has failed to voluntarily self-deport. *See Rojas v. Olson*, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025) ("Indeed, one suspects that upon apprehension most unadmitted aliens promptly seek admission and permission to stay; their alternative is to elect to remove themselves voluntarily."). Resisting removal is a step towards seeking a form of admission.

Moreover, the R&R's construction 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 at that time (a standard not identified or defined in the INA). Put differently, the R&R creates more statutory ambiguity than it purports to resolve. Instead, the proper standard for the immigration officer is that which is stated in the INA; namely, whether the noncitizen is "entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A).

In summary, given the plain language of § 1225(b)(2)(A) clearly applies to Petitioner, the Court need not go further. The Petition should be denied. But the remaining steps in the R&R's analysis are also wrong.

B. The Title of § 1225 Is Consistent with Respondents' Reading and Inconsistent with the R&R's Construction

Having decided that ambiguity exists, the R&R next evaluates the title of the section

somehow not seeking admission makes no sense in the context of the provision and the clear intent of the 1996 amendment that created it.

and concludes that it limits the application of the section to "arriving aliens." R&R 13. That conclusion suffers several infirmities, including the failure to review *the remainder of the title* and the resulting incongruence with the text of the provision if accepted.

Before addressing those points, it is worth pausing to recognize that the resort to a statutory title is unnecessary unless there is ambiguity not found here and that a title should not limit the plain text. *Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008) ("To be sure, a subchapter heading cannot substitute for the operative text of the statute."); *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998) ("The title of a statute cannot limit the plain meaning of the text." (cleaned up)).

In any event, the title of § 1225 reads:

> Inspection by immigration officers, *expedited removal of inadmissible arriving aliens,* **referral for hearing.**

The R&R focuses (and italicizes) only the reference to "*arriving aliens*." R&R at 13. But that ignores the rest of the title. 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 **bolded** portion references full removal proceedings under (b)(2)(A) for noncitizens present in the country. That is because "arriving aliens" under (b)(1) are subject to *expedited* removals and do *not* get full removal hearings pursuant to § 1229a. In contrast, noncitizens present in the country with arguably more established due process interests are provided *full* removal hearings. *See* § 1225(b)(2)(A) ("detained for a proceeding under section 1229a"); *Sandoval*, 2025 WL 3048926, at *4 ("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."). In short, the bolded portion of the title does not support the R&R's reading of an "arriving" limitation.

That same conclusion is also apparent from the subtitles within § 1225. 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." Critically, the use of "arriving" in (b)(1) but not (b)(2) must be given effect. The R&R's interpretation renders the "arriving" in (b)(1) superfluous if all of § 1225 only applies to "arriving aliens."

More generally, 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. Or it could have included a general provision that the section only applies to arriving noncitizens. *Cabanas*, 2025 WL 3171331, at *5 ("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."). But Congress did not and that election to selectively use "arriving" must be given effect. *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.").

The R&R's interpretation also cannot be squared with other parts of § 1225 and recent enforcement initiatives thereunder. Pursuant to § 1225, DHS has exercised its unreviewable authority to designate noncitizens that have entered illegally and been present in the country *for up to two years* (i.e., not "arriving") for expedited removal. *See* 8 U.S.C. § 1225(b)(1)(A)(iii); Designating Aliens for Expedited Removal, 90 FR 8139 (Jan. 24, 2025). The R&R's conclusion that "noncitizens who are just present in the country, who have been here for years upon years and never proceeded to obtain any form of citizenship, are not seeking admission under § 1225(b)(2)(A)" (R&R at 15, quotation and citation omitted) is inconsistent with that statutory provision (and the new authorized initiative thereunder).

C. The R&R's Conclusion that § 1225 Is Limited to "Arriving" Noncitizens Is Inconsistent with the Purpose of the IIRIRA

The R&R's interpretation effectively repeals a statutory fix Congress enacted with IIRIRA. Specifically, prior to the 1996 passage of 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'").

The R&R's interpretive insertion of an "arriving" limitation into *all* of § 1225 undoes that fix and incentivizes 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*, 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.").

Importantly, the R&R does not address the purpose behind the fix to § 1225. Instead, the R&R addresses the *amendment to § 1226*. Specifically, the R&R block quotes a district court case explaining that the amendment to § 1226(a) restated the detention authority

previously found in its predecessor provision to detain and release on bond a noncitizen. R&R at 15-16. From that citation, the R&R seems to suggest—but not state—that the amendment to § 1226(a) somehow addresses § 1225. But to state the obvious, that quote is about § 1226—not the amendment to § 1225 intended to put arriving and residing noncitizens on equal footing.

D. Discretionary Past Practice Is Consistent with Respondents' Reading

Next, the R&R points to the contemporaneous commentary to the implementing regulations for the IIRIRA to suggest that the Executive understood § 1225 to only apply to arriving aliens. Specifically, it quotes from 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), which states, "**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." R&R at 19 (emphasis added). But the R&R does not address and in fact *omits* the bolded introductory phrase. That is critical for two reasons. First, the opening refrain "Despite being applicants for admission" acknowledges the plain language of the statute that noncitizens in the country *are* "applicants for admission" under § 1225, but then announces the *discretionary* choice to use § 1226 for detentions and thus permit bond hearings. A new administration has deviated from that discretionary choice, as it is permitted to do. Thus, the R&R (and the decisions it cites) erroneously conflates prior enforcement discretion with statutory interpretation. Second, the R&R's reading cannot account for the introductory phrase. If § 1225 only applies to arriving noncitizens, then the

opening phrase makes no sense. In short, the cited commentary is inconsistent with the R&R's reading and consistent with the Respondents' reading.

E. The Laken Riley Act Does Not Render § 1225(b)(2)(A) Superfluous

Finally, the R&R asserts that the Laken Riley Act "renders the government's interpretation of § 1225(b)(2)(A) superfluous." R&R at 16. But that assertion suffers several problems more fully discussed in the Response (at 18-22) and not addressed in the R&R.

First, Section 1226(a)'s general detention authority, which permits the issuance of warrants to detain all noncitizens for their removal proceedings, must be read alongside § 1225, which specifically addresses the detention of applicants for admission which is a subset of noncitizens 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 noncitizens present in the United States who have not been admitted. *See* 8 U.S.C. § 1225(a)(1).

To be sure, as amended by the LRA, § 1226(c)(1)(E) mandates detention for a group of noncitizens that includes a narrow subset of applicants for admission that may also be subject to § 1225(b)(2)(A) detention; namely, those who both entered without inspection and were arrested for, committed, or have admitted to committing one of a list of enumerated crimes. But § 1226(c)(1)(E) applies to *all* noncitizens who meet the criminal

criteria and is thus broader. Conversely, the mandatory detention provisions of § 1226(c)(1)(E) do not reach the rest of applicants for admission under § 1225(b)(2)(A) who do *not* meet the criminal criteria. Put simply, the two enforcement provisions have overlap much like a Venn diagram, but they are not perfectly overlapping so as to make a provision superfluous. *See Jennings v. Rodriguez*, 583 U.S. 281, 305 (2018) (rejecting a claim of superfluity in the INA context by observing "[a]lthough the two provisions overlap in part, they are by no means congruent" and "apply to different categories of aliens in different ways"); *cf. Am. Car Rental Ass'n v. Humphreys*, 2025 WL 1758898, at *5 (D. Colo. May 29, 2025) ("There is, to be sure, significant overlap between the two. But the canon against superfluity only requires what its name implies; it does not require that each provision have entirely distinct coverage—just that total superfluity be avoided.").

As the Supreme Court has acknowledged, some overlap and redundancies "are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton v. Barr*, 590 U.S. 222, 239 (2020). "Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.*; *Rimini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019) ("Sometimes the better overall reading of the statute contains some redundancy."). Section 1225(b)(2)(A) allows detention upon encountering an immigration agent and § 1226(c) provides for detention by the issuance of a warrant; two *different* routes to detention, in addition to two *different* (albeit with some overlap) groups of noncitizens affected.

Second, even if there is some overlap in the class of noncitizens between § 1225(b)(2)(A) and the LRA, the two provisions provide different means, procedures, and obligations that independently demonstrate a lack of superfluity. Section 1225(b)(2)(A) requires a personal examination of the noncitizen by an immigration officer and then, based on determinations drawn from the examination, potential detention. But § 1226 is different. It permits a warrant to be issued and a noncitizen detained in order to facilitate the later examination and determinations regarding admission. Further, while examination of any particular applicant for admission under § 1225 is subject to discretion as encountered, § 1226 imposes a mandate of arrest for certain noncitizens regardless of other enforcement priorities. As such, the two provisions use different means, have different obligations, and invert the order of detention and examination. Those differences independently undercut the R&R's assertion of superfluity.

And finally, the R&R's reliance on the LRA suffers from a basic chronology problem. The Laken Riley Act passed on January 22, 2025, and was signed by the President on January 29, 2025. But as noted in the Petition, the more expanded use of § 1225 was not announced by ICE and DOJ until July 8, 2025. Doc. 1 at ¶ 4. Further, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 216 (BIA 2025) was decided later, in September of 2025. As such, Congress did not have the benefit of knowing the Executive's expanded use of § 1225 when it passed the Laken Riley Act. It was legislating against the backdrop of a more restrained enforcement strategy of the prior administration. That is significant:

> When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect. Here, at the time of enactment, the Laken Riley Act *did* have such effect, given that it *required* mandatory detention for criminal,

> inadmissible aliens who had not been subject to it—under either § 1225 or § 1226—by longstanding practice of prior Administrations. But this means only that Congress determined to narrow aspects of the discretion available to any Administration prioritizing removal proceedings toward § 1226. It doesn't follow that the Laken Riley Act undercuts the more fulsome, executive authority that Congress provided to exist independently under the text of § 1225(b)(2)(A). Simply put, amendment by the recent Laken Riley Act to § 1226 isn't superfluous.

Cabanas, 2025 WL 3171331, at *6 (cleaned up); *see also Valencia*, 2025 WL 3205133, at *4 ("This argument reverses the order of events. The Laken Riley Act was passed before the new interpretation of Section 1225 was issued. The Laken Riley Act could not therefore 'perform the work' of the expansive reading of Section 1225, because that work had not yet been done.").

CONCLUSION

The Respondents respectfully request that the Court overrule the Report and Recommendation, deny the Petition, and dismiss the case.

Dated: December 18, 2025

Respectfully submitted,
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

RIGOBERTO SANTILLAN QUIROZ, Petitioner, v. SCARLET GRANT, *et al.*, Respondents.	)))))))))	Case No. CIV-25-1349-PRW

ORDER

Before the Court is a Report and Recommendation (Dkt. 10), which recommends that the Court grant in part Petitioner's Petition for Writ of Habeas Corpus (Dkt. 1) and order Respondents to either provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) or release him. Respondents timely objected (Dkt. 11). For the reasons given below, the Court declines to adopt the Report and Recommendation (Dkt. 10) and **DENIES** the Petition (Dkt. 1).

Background

This is a habeas claim, filed pursuant to 28 U.S.C. § 2241(c)(3).[1] Petitioner illegally entered the United States in or about 2006 without first being inspected or admitted.[2] Petitioner represents that his residency in the United States has continued uninterrupted for

[1] "Challenges to immigration detention are properly brought directly through habeas." Report and Recommendation (Dkt. 10), at 4 (quoting *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004)).

[2] R&R (Dkt. 10), at 3.

approximately nineteen years.[3] On November 2, 2025, ICE arrested Petitioner and placed him in removal proceedings pursuant and detained him pursuant to 8 U.S.C. § 1225(b)(2)(A) because he entered the country without inspection.[4] Petitioner, however, believes he is detained pursuant to 8 U.S.C. § 1226(a), which doesn't require detention and permits bond when detention occurs, and thus he requests that he either receive a detention hearing or be released.

Legal Standard

The Court must "determine de novo any part of the magistrate judge's disposition that has been properly objected to."[5] An objection is "proper" if it is both timely and specific.[6] A specific objection "enables the district judge to focus attention on those issues—factual and legal—that are at the heart of the parties' dispute."[7] Additionally, "[a]n 'objection' that merely reargues the underlying motion is little different than an 'objection' that simply refers the District Court back to the original motion papers; both are insufficiently specific to preserve the issue for de novo review."[8] In the absence of a proper

[3] Pet. (Dkt. 1), ¶22.

[4] R&R (Dkt. 10), at 3.

[5] Fed. R. Civ. P. 72(b)(3).

[6] *United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1059 (10th Cir. 1996).

[7] *Id.* (citation and internal quotation marks omitted).

[8] *Vester v. Asset Acceptance, L.L.C.*, No. 1:08-cv-01957-MSK-LTM, 2009 WL 2940218, at *8 (D. Colo. Sept. 9, 2009) (citing *One Parcel of Real Prop.*, 73 F.3d at 1060).

objection, the district court may review a magistrate judge's recommendation under any standard it deems appropriate.[9]

Analysis

I. Petitioner is detained under 8 U.S.C. § 1225(b)(2).

For the reasons given in the Court's Order in *Sosa v. Holt*, the Court finds that, because Petitioner entered the United States without admission or inspection, he is properly detained pursuant to 8 U.S.C. § 1225(b)(2).[10]

II. Petitioner has failed to show a due process violation.

Petitioner has been in ICE custody since November 2, 2025.[11] As in *Sosa,* "Petitioner's half-hearted due process claim merely quotes the Fifth Amendment, points to a short, non-doctrinal snippet from *Zadvydas v. Davis*, and then quite conclusory states that he has a fundamental liberty interest in 'being free from official restraint[,]'" and that he suffers a violation of his right to due process in not receiving a bond redetermination hearing.[12] *Zadvydas* states that a six-month detention period is presumptively constitutional before the government must release a removable alien who shows "that there is no significant likelihood of removal in the reasonably foreseeable future[.]"[13] The Court accordingly denies Petitioner's premature due process claim.

[9] *Summers v. State of Utah*, 927 F.2d 1165, 1167–68 (10th Cir. 1991).

[10] *See Sosa v. Holt*, Case No. CIV-25-1257-PRW, 2026 WL 36344 (W.D. Okla. Jan. 6, 2026).

[11] Pet. (Dkt. 1), ¶22.

[12] *Sosa*, at *5.

[13] *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Conclusion

Accordingly, the Court declines to adopt the Report and Recommendation (Dkt. 10) and **DENIES** the Petition (Dkt.1). A separate judgment will follow.

IT IS SO ORDERED this 13th day of January 2026.

PATRICK R. WYRICK
UNITED STATES DISTRICT JUDGE

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

RIGOBERTO SANTILLAN QUIROZ, Petitioner, v. SCARLET GRANT, *et al.*, Respondents.	)	Case No. CIV-25-1349-PRW

JUDGMENT

In accordance with the Court's Order entered this date, the Petition for Writ of Habeas Corpus is **DENIED**. This judgment fully and finally resolves all claims and terminates this civil action.

ENTERED this 13th day of January 2026.

PATRICK R. WYRICK
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

Rigoberto SANTILLAN QUIROZ Petitioner, v. 1. KRISTI NOEM, in her official as Secretary, U.S. Department of Homeland Security; 2. Pamela BONDI, in her official capacity as U.S. Attorney General; 3. Joshua JOHNSON, in his official capacity as Field Office Director of Enforcement and Removal Operations, ICE Dallas Field Office Immigration and Customs Enforcement; 4. Scarlett GRANT, Warden of Cimarron Correctional Facility Respondents.	Case No. CIV-25-1349-PRW

NOTICE OF APPEAL

Please take notice that Petitioner, Rigoberto Santillan Quiroz, appeals to the U.S. Court of Appeals for the Tenth Circuit from the Judgment denying Petitioner's Petition for Writ of Habeas Corpus (ECF No. 12) entered on January 13, 2026.

DATED this 28th of January 2026,

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2026, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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s/Kelli J. Stump
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