UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

VICTOR BUENROSTRO-MENDEZ, Petitioner, v. PAMELA JO BONDI, Attorney General of the United States, *et al.*, Respondents.	§	CIVIL NO. 4:25-CV-3726

REPLY IN SUPORT OF GOVERNMENT'S RESPONSE SEEKING DISMISSAL, AND ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT

The Government[1] files this reply in support of its motion to dismiss, and alternatively, motion for summary judgment. (Dkt. 12).

I. ARGUMENT

Although DHS/ICE is applying the mandatory detention provision under 8 U.S.C. § 1225(b)(2) in a different manner than it has been applied historically, the fact remains that the agency's application of Section 1225(b)(2) is in accordance with the plain language of the statute. Further, the agency's application is in accord with legislative intent, and it does not render other statutory provisions superfluous.

[1] As the Court has noted, there is generally only one proper respondent in a habeas petition, that being the person with custody over the petitioner. Dkt. 3 ¶ 6; 28 U.S.C. §§ 2242 and 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004). However, it is the named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

A. The Plain Language of Section 1225 Supports Petitioner's Mandatory Detention

In *Chavez v. Noem*, a district court in the Southern District of California recently applied reasoning in support of the Government's position that the Petitioner is subject to mandatory detention. No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228, at *1 (S.D. Cal. Sept. 24, 2025). The petitioner in that case argued that his mandatory detention without bond under § 1225(b)(2), in accordance with Matter of YAJURE HURTADO, 29 I&N Dec. 216 (BIA 2025), was in violation of 8 U.S.C. § 1226(a), the Administrative Procedure Act, 5 U.S.C. § 706(2), and his procedural due process rights. *Id.* "As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)).

The court in *Chavez* considered the plain language of the statutory text and noted that Section 1225(b)(2)(A) requires mandatory detention of "an alien who is *an applicant for admission*, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted[.]" *Id.* (citing 8 U.S.C. § 1225(b)(2)(A)) (emphasis added). Section 1225(a)(1) expressly defines that "[a]n alien present in the United States who has not been admitted … shall be deemed for purposes of this Act *an applicant for* admission." *Id.* (citing § 1225(a)(1)). Thus, by the plain language of 1225(a)(1), they are subject to mandatory detention under 1225(b)(2)(A)." 8 U.S.C. § 1225(b)(2)(A).

B. Congressional Intent Supports Mandatory Detention Under § 1225

There is a "'strong presumption' that the plain language of the statute expresses congressional intent [and that] is rebutted only in 'rare and exceptional circumstances,' . . . ." *Ardestani v. INS*, 502 U.S. 129, 135–36 (1991) (quoting *Rubin v. United States*, 449 U.S. 424, 430

(1981)); *see Lamie*, 540 U.S. at 534 ("It is well established that when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." (quotation marks omitted)).

During the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)'s legislative drafting process, Congress asserted the importance of controlling illegal immigration and securing the land borders of the United States. *See* H.R. Rep. 104-469, pt. 1, at 107 (noting a "crisis at the land border" allowing aliens to illegally enter the United States). The court in *Chavez* also considered that Congress intended to "fix" the statute by enacting the IIRIRA in 1996 to correct the prior anomaly that put immigrants who were attempting to lawfully enter the United States in a worse position than persons who had crossed the border unlawfully. *Id* (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). As the Ninth Circuit also noted, Section 1225(a)(1) was added to ensure 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 applicants for admission. *Id.* (citing *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024)).

C. A Plain Language Reading of § 1225 Does Not Render Other Statutory Provisions Superfluous

The *Chavez* court further noted that "[h]eeding the plain language of the statute also does not contradict or render superfluous § 1226. *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228, at *5 (S.D. Cal. Sept. 24, 2025).

> Section 1226(a) provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States."8 USC § 1101(a)(3) defines an alien as "any person not a citizen or national of the United States." As the *Jennings* court explained, § 1226 "generally governs the process of arresting and

> detaining" certain aliens, namely "aliens who were inadmissible at the time of entry *or who have been convicted of certain criminal offenses since admission.*" 583 U.S. at 288, 138 S.Ct. 830 (emphasis added). For example, the named petitioner in *Jennings* was a lawful permanent resident of the United States. *Id.* at 290, 138 S.Ct. 830. As long as such individuals have not been charged with the specific crimes listed in § 1226(c), they remain subject to the discretionary detention provisions of § 1226(a).
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> Nor does § 1225's explicit definition of "alien[s] present in the United States who ha[ve] not been admitted" as "applicants for admission" render the addition of § 1226(c) by the Riley Laken Act superfluous. Section 1226(c) simply removed the Attorney General's detention discretion for aliens charged with specific—but not all—crimes. The Attorney General may still exercise her detention discretion under § 1226(a) for any other aliens falling under that subsection who are not charged with the specific crimes carved out by § 1226(c).

Chavez, 2025 WL 2730228, at *5. This Court should apply the reasoning of the *Chavez* court, follow the plain language of the INA, find that Petitioner is subject to mandatory detention under Section 1225(b)(2), and thus, cannot show entitlement to the habeas relief sought.

D. Petitioner's Position is Not Supported by Binding Case Law

The Petitioner's reliance on *Loper Bright Enterprises v. Raimondo* is misplaced. In that case, the Supreme Court held that "courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous." 603 U.S. 269, 413 (2024). The statute at issue here is not ambiguous; therefore, *Loper Bright* does not support Petitioner's position. *See Wards Cove Packing Corp. v. Nat'l Marine Fisheries Serv.*, 307 F.3d 1214, 1219 (9th Cir.2002) ("[T]he plain meaning of a regulation governs and deference to an agency's interpretation of its regulation is warranted only when the regulation's language is ambiguous." (citing *Christensen v. Harris County*, 529 U.S. 576, 588 (2000))); *see also Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (providing that "no amount of policy-talk can overcome a plain statutory command") According to a plain language reading of the applicable statutory provisions,

Section 1225 of the INA is the applicable immigration detention authority for all applicants for admission. Section 1226 of the INA is the applicable detention authority for aliens who are already present in the United States after an admission and are deportable.

In *Jennings*, the Supreme Court equated "applicants for admission" with aliens "seeking admission" and stated that § 1225(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by [INA § 235(b)(1)][2]." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). In doing so, it specifically cited INA § 235(b)(2)(A)—and thus did not appear to consider aliens "seeking admission" to be a subcategory of applicants for admission. *Id.* The Supreme Court considered all aliens covered by INA § 1225(b)(2) to be subject to detention under subparagraph (A)—not just a subset of such aliens.

Contrary to Petitioner's assertions, Congress's use of the present participle—seeking—in INA § 1225(b)(2)(A) "signal[s] present and continuing action." *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). The phrase "seeking admission" "does not include something in the past that has ended or something yet to come." *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019) (concluding that "having" is a present participle, which is "used to form a progressive tense" that "means presently and continuously" (citing Bryan A. Garner, *Garner's Modern American Usage* 1020 (4th ed. 2016))). The present participle "expresses present action in relation to the time expressed by the finite verb in its clause," *Present Participle*, Merriam-Webster, http://www.merriam-webster.com/dictionary/present%20participle (last visited Sept. 29, 2025), with the finite verb in the same clause of INA

[2] Codified as 8 U.S.C. §1225(b).

§ 235(b)(2)(A) being "determines." Thus, when pursuant to INA § 235(b)(2)(A) an "examining immigration officer determines" that an alien "is not clearly and beyond a doubt entitled to be admitted" the officer does so contemporaneously with the alien's present and ongoing action of seeking admission. Interpreting the present participle "seeking" as denoting an ongoing process is consistent with its ordinary usage. *See, e.g., Samayoa v. Bondi*, No. 24-1432, 2025 WL 2104102, at *2 (1st Cir. July 28, 2025) (alien inadmissible under INA § 212(a)(6)(A)(i) but "seeking to remain in the country lawfully" applied for relief in removal proceedings); *Garcia v. USCIS*, No. 23-35267, 2025 WL 2046176, at *2 (9th Cir. July 22, 2025) ("USCIS requires all U visa holders seeking permanent resident status under [INA § 245(m)] to undergo a medical examination . . ."). A rule that treated an alien who enters the country illegally, such as the respondent, more favorably than an alien detained after arriving at a POE would "create a perverse incentive to enter at an unlawful rather than a lawful location." *Gambino-Ruiz*, 91 F.4th at 990 (quoting *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 140 (2020)) (rejecting such a rule as propounded by the defendant). Such a rule reflects "the precise situation that Congress intended to do away with by enacting" IIRIRA. *Id.*

To the extent the Petitioner asserts constitutional claims regarding the application of Section 1225(b), "[j]udicial review of determinations under section 1225(b)," including "whether such section ... is constitutional", "is available in an action instituted *in the United States District Court for the District of Columbia.*" *Brumme v. I.N.S.*, 275 F.3d 443, 449 (5th Cir. 2001) (citing 8 U.S.C. § 1252(e)(3)(A)).

II. CONCLUSION

For the reasons stated above and in the Government's response seeking dismissal, or alternatively, summary judgment, (Dkt. 12), the Court should deny the relief sought by the Petitioner.

Dated: September 29, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 29, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

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