

1 CRAIG H. MISSAKIAN (CABN 125202)
United States Attorney
2 PAMELA T. JOHANN (CABN 145558)
Chief, Civil Division
3 MICHAEL J. STARRETT (NYBN 5444575)
Special Assistant United States Attorney

4 450 Golden Gate Avenue, Box 36055
5 San Francisco, California 94102-3495
6 Telephone: (415) 436-7073
michael.starrett@usdoj.gov

7 Attorneys for Respondents

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 HENRY EDUARDO BASTIDAS MENDOZA)
13 et al.,)

14 Petitioners,)

15 v.)

16 SERGIO ALBARRAN, et al.,)

17 Respondents.)
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No. 3:25-cv-08205-VC

**RESPONDENTS' RETURN TO WRIT OF
HABEAS CORPUS**

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1 **I. INTRODUCTION**

2 Respondents respectfully request that the Court deny Petitioners' petition for writ of habeas corpus
3 because under the applicable immigration statutes, Petitioners Bastidas Mendoza and Giraldo Munoz fall
4 within the category of "applicants for admission" who are subject to mandatory detention under 8 U.S.C. §
5 1225(b)(2). *See* 8 U.S.C. § 1225(a)(1); 8 U.S.C. § 1182(a)(6)(A)(i) (categorizing certain classes of
6 noncitizens as inadmissible, and therefore ineligible to be admitted to the United States, including those
7 "present in the United States without being admitted or paroled"). Petitioners remain "applicants for
8 admission" subject to mandatory detention despite being encountered after unlawfully crossing the border
9 between ports of entry and released into the country. *See* Dkt. No. 11-1 (Declaration of Thomas Auer) ¶ 5,
10 Dkt. No. 11-2 (Declaration of Julio Razalan) ¶ 5, Dkt. No. 11-3 (Declaration of Vincent Miers) ¶ 5.
11 Petitioners' release was not an "admission" or "parole"; instead, it was expressly conditioned on appearing
12 in removal proceedings based on their *unlawful* entry. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591
13 U.S. 103, 138–40 (2020) (a noncitizen who is neither admitted nor paroled, nor otherwise lawfully present
14 in this country, remains an "applicant for admission" who is "on the threshold" of initial entry, even if
15 released into the country "for years pending removal," and continues to be "treated" for due process
16 purposes "as if stopped at the border"); *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (such individuals
17 are "treated as 'an applicant for admission'").

18 Additionally, Petitioner Wagane's petition for writ of habeas corpus should be denied as moot, as
19 the Department of Homeland Security ("DHS") can no longer assert detention authority over Petitioner
20 due to the dismissal of his removal proceedings. *See Cook Inlet Treaty Tribes v. Shalala*, 166 F.3d 986,
21 989 (9th Cir.1999) ("Mootness can be characterized as the doctrine of standing set in a time frame: The
22 requisite personal interest that must exist at the commencement of the litigation (standing) must continue
23 throughout its existence (mootness).") (internal quotation marks omitted). On October 15, 2025,
24 Petitioner Wagane's removal proceedings were dismissed by an immigration judge, and Petitioner did
25 not appeal this decision. *See* Suppl. Decl. of Thomas Auer ("Auer Suppl. Decl.") at ¶ 5. As such,
26 Petitioner is no longer in removal proceedings under 8 U.S.C. § 1229a and DHS cannot currently assert
27 detention authority over Petitioner.

28 "Applicants for admission" like Petitioners are subject to mandatory detention under the Illegal

1 Immigration Reform and Immigration Responsibility Act of 1996 (“IIRIRA”). Illegal Immigration Reform
2 and Immigration Responsibility Act, Pub.L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Before 1996,
3 federal immigration laws required the detention of noncitizens who presented at a port of entry, but
4 allowed those who had entered between ports of entry and were already unlawfully present in the United
5 States when encountered to obtain release pending removal proceedings. Congress overhauled the
6 immigration system by passing IIRIRA, which included the specific objective of ending preferential
7 treatment of noncitizens who attempted to evade inspection by entering the United States unlawfully
8 between ports of entry.

9 Relevant here, Congress enacted what is now codified at 8 U.S.C. § 1225. That provision
10 “deem[s]” any “alien present in the United States who has not been admitted or who arrives in the United
11 States” to be “an applicant for admission.” 8 U.S.C. § 1225(a)(1). And it mandates the detention of any
12 “applicant for admission” who cannot show that they are “clearly and beyond a doubt entitled to be
13 admitted.” *Id.* § 1225(b)(2)(A). The statute makes no exception for how far into the country a noncitizen
14 has traveled or how long he or she manages to avoid detection. Unless the Secretary exercises narrow and
15 discretionary parole authority not applicable here, mandatory detention is the rule for individuals who have
16 never been lawfully admitted.

17 Here, Petitioners entered the country without inspection, were never “admitted,” and
18 unambiguously remain “applicants for admission” subject to mandatory detention despite their prior
19 conditional release. *Thuraissigiam*, 591 U.S. at 138–40. Further, while courts in this district have
20 concluded that § 1225(b) is not applicable to individuals who were conditionally released under 8 U.S.C. §
21 1226(a), several courts in other districts in this Circuit have recently denied motions for temporary
22 restraining orders or for preliminary injunctive relief for individuals like Petitioners who are detained
23 under 8 U.S.C. § 1225(b)(2) after prior conditional release. These courts have upheld, at least
24 preliminarily, mandatory detention under § 1225(b)(2). *See Altamirano Ramos v. Lyons*, No. 25-cv-
25 9785, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025) (acknowledging that the court had previously
26 rejected the government’s interpretation of § 1225(b)(2), but “after additional research and analysis, the
27 court has concluded that Petitioner is subject to mandatory detention under § 1225(b)(2)(a), and that
28 Petitioner is not eligible for a bond hearing under 8 U.S.C. § 1226(a)”); *Sixtos Chavez v. Noem*, No. 25-

1 cv-2325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), *appeal docketed*, No. 25-7077 (9th Cir. Nov. 7,
2 2025); *Valencia v. Chestnut*, No. 25-cv-1550, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025); *Alonzo v.*
3 *Noem*, No. 25-cv-01519, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025); *see also Matter of Yajure*
4 *Hurtado*, 29 I & N Dec. 216, 225 (B.I.A. 2025) (examining the plain language of § 1225, the INA’s
5 statutory scheme, Supreme Court and BIA precedent, the legislative history of IIRIRA, and DHS’s prior
6 practices before holding that “under a plain language reading of section 235(b)(2)(A) of the INA, 8
7 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to
8 aliens, like the respondent, who are present in the United States without admission”).

9 Likewise here, Petitioners Bastidas Mendoza and Giraldo Munoz are subject to mandatory
10 detention and are not entitled to a custody redetermination hearing prior to re-detention. Despite their
11 conditional release, Petitioners remain “applicants for admission” “on the threshold” of initial entry for
12 due process purposes, and subject to mandatory detention under § 1225(b)(2).

14 II. FACTUAL AND PROCEDURAL BACKGROUND

15 On March 19, 2024, Petitioner Henry Eduardo Bastidas Mendoza—a native and citizen of
16 Venezuela—entered the U.S. without inspection, admission, or parole. Decl. of Julio Razalan (“Razalan
17 Decl.”) (Dkt. No. 11-2) at ¶ 5. DHS Customs and Border Protections (“CBP”) officers encountered him
18 between designated ports of entry within 100 miles of the border in the El Paso, Texas Border Patrol
19 Sector where he was apprehended. *Id.* ¶ 6. CBP issued a Notice to Appear, charging Petitioner with
20 removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) [8 U.S.C. §
21 1182(a)(6)(A)(i)], as an alien present without admission or parole, and released Petitioner on his own
22 recognizance pending removal proceedings due to, among other things, a lack of detention space. *Id.* ¶ 7.
23 On September 26, 2025, Petitioner appeared for a master calendar hearing; at the hearing U.S.
24 Immigration and Customs Enforcement (“ICE”) made a motion to dismiss removal proceedings seeking
25 to pursue expedited removal. *Id.* ¶ 9. The immigration judge gave Petitioner until October 10, 2025 to
26 respond to ICE’s motion. *Id.* Following the hearing, ICE detained Petitioner pursuant to 8 U.S.C. §
27 1225(b)(2). *Id.*

28 On July 17, 2023, Petitioner Gustavo Giraldo Munoz—a native and citizen of Colombia—

1 entered the U.S. without inspection, admission or parole. Decl. of Vincent Miers (“Miers Decl.”) (Dkt.
2 No. 11-3) at ¶ 5. CBP officers encountered him outside of designated ports of entry within 100 miles of
3 the border near Lukeville, *Id.* ¶ 6. CBP issued a Notice to Appear, charging Petitioner with removability
4 under INA § 212(a)(6)(A)(i) [8 U.S.C. § 1182(a)(6)(A)(i)], as an alien present without admission or
5 parole, and released Petitioner on his own recognizance pending removal proceedings due to, among
6 other things, a lack of detention space. *Id.* ¶ 7. On September 26, 2025, Petitioner appeared for a master
7 calendar hearing; at the hearing ICE made a motion to dismiss removal proceedings seeking to pursue
8 expedited removal. *Id.* ¶ 9. The immigration judge gave Petitioner ten days to respond to ICE’s motion.
9 *Id.* Following the hearing, ICE detained Petitioner pursuant to 8 U.S.C. § 1225(b)(2). *Id.*

10 On August 5, 2023, Petitioner Faye Wagane—a native and citizen of Senegal—entered the U.S.
11 without inspection, admission or parole. Decl. of Thomas Auer (“Auer Decl.”) (Dkt. No. 11-1) at ¶ 5.
12 CBP officers encountered him outside of designated ports of entry within 100 miles of the border near
13 San Ysidro, California. *Id.* ¶ 6. CBP issued a Notice to Appear, charging Petitioner with removability
14 under INA § 212(a)(6)(A)(i) [8 U.S.C. § 1182(a)(6)(A)(i)], as an alien present without admission or
15 parole, and released Petitioner on his own recognizance pending removal proceedings due to, among
16 other things, a lack of detention space. *Id.* ¶ 7. On September 26, 2025, Petitioner appeared for a master
17 calendar hearing; at the hearing ICE made a motion to dismiss removal proceedings seeking to pursue
18 expedited removal. *Id.* ¶ 9. The immigration judge gave Petitioner ten days to respond to ICE’s motion.
19 *Id.* Following the hearing, ICE detained Petitioner pursuant to 8 U.S.C. § 1225(b)(2). *Id.*

20 On September 26, 2025, ICE Enforcement and Removal Operations (“ERO”) released all three
21 Petitioners after this Court issued a temporary restraining order requiring their release. Razalan Decl. ¶
22 10, Miers Decl. ¶ 10, Auer Decl. ¶ 10; Dkt. No. 4. Following additional briefing and a hearing, this
23 Court, on October 10, 2025, granted a preliminary injunction requiring Petitioner’s continued release
24 pending these proceedings. Dkt. No. 14.

25 On October 15, 2025, the immigration judge granted DHS’s motion to dismiss removal
26 proceedings in the case of Petitioner Faye Wagane. Auer Suppl. Decl. at ¶ 5. Petitioner did not appeal
27 this decision. *Id.* Petitioner is no longer in removal proceedings under 8 U.S.C. § 1229a. *Id.*

28 On October 15, 2025, the immigration judge granted DHS’s motion to dismiss removal

1 proceedings in the case of Petitioner Gustavo Giraldo Munoz. Suppl. Decl. of Jesse Cruz (“Cruz Suppl.
2 Decl.”) at ¶ 5. Petitioner appealed this decision and the appeal is currently still pending before the Board
3 of Immigration Appeals. *Id.* Petitioner is still in removal proceedings under 8 U.S.C. § 1229a. *Id.*

4 On October 29, 2025, the immigration judge granted DHS’s motion to dismiss removal
5 proceedings in the case of Petitioner Henry Eduardo Bastidas Mendoza. Suppl. Decl. of Calvin Choi
6 (“Choi Suppl. Decl.”) at ¶ 5. Petitioner appealed this decision and the appeal is currently still pending
7 before the Board of Immigration Appeals. *Id.* Petitioner is still in removal proceedings under 8 U.S.C. §
8 1229a. *Id.*

10 III. STATUTORY BACKGROUND

11 A. The Pre-IIRIRA Framework Gave Preferential Treatment to Noncitizens Who 12 Unlawfully Entered and Were Present in the United States

13 The Immigration and Nationality Act (“INA”), as amended, contains a comprehensive framework
14 governing the regulation of noncitizens, including the creation of proceedings for the removal of
15 individuals who unlawfully enter the United States or are otherwise removable and requirements for when
16 the Executive is obligated to detain aliens pending removal.

17 Prior to 1996, the INA treated aliens differently based on whether he or she had presented at a port
18 of entry or avoided inspection and entered the United States. *Hurtado*, 29 I. & N. Dec. at 222–23 (citing 8
19 U.S.C. §§ 1225(a), 1251 (1994)); see *Hing Sum v. Holder*, 602 F.3d 1092, 1099–1100 (9th Cir. 2010)
20 (same). “Entry” referred to “any coming of an alien into the United States,” 8 U.S.C. § 1101(a)(13) (1994),
21 and whether an individual had physically entered the United States (or not) “dictated what type of
22 [immigration] proceeding applied” and whether he or she would be detained pending those proceedings.
23 *Hing Sum*, 602 F.3d at 1099.¹

24 At the time, the INA “provided for two types of removal proceedings: deportation hearings and
25 exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). A noncitizen who arrived
26 at a port of entry would be placed in “exclusion proceedings and subject to mandatory detention, with

27 ¹ Noncitizens who arrive at a port of entry have physically “entered” the United States, but under
28 the longstanding “entry fiction” doctrine, “aliens who arrive at ports of entry . . . are ‘treated’ for due
process purposes as if stopped at the border.” *Thuraissigiam*, 591 U.S. at 139.

1 potential release solely by means of a grant of parole.” *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C.
 2 §§ 1225(a)–(b) (1995), 1226(a) (1995). In contrast, a noncitizen who evaded inspection and physically
 3 entered the United States would be placed in deportation proceedings. *Hurtado*, 29 I. & N. Dec. at 223;
 4 *Hing Sum*, 602 F.3d at 1100. Noncitizens in deportation proceedings, unlike those in exclusion
 5 proceedings, “were entitled to request release on bond.” *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. §
 6 1252(a)(1) (1994)).

7 Thus, the INA’s prior framework distinguishing between aliens based on “entry” had the
 8 ‘unintended and undesirable consequence’ of having created a statutory scheme where aliens
 9 who entered without inspection ‘could take advantage of the greater procedural and
 10 substantive rights afforded in deportation proceedings,’ *including the right to request release
 on bond*, while aliens who had ‘actually presented themselves to authorities for inspection’
 . . . were subject to mandatory custody.

11 *Hurtado*, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y General of U.S.*, 693 F.3d
 12 408, 413 n.5 (2012)); *see Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225
 13 (1996) (“House Rep.”) (“illegal aliens who have entered the United States without inspection gain equities
 14 and privileges in immigration proceedings that are not available to aliens who present themselves for
 15 inspection”).

16 **B. IIRIRA Eliminated the Preferential Treatment of Noncitizens Who Unlawfully
 17 Entered the United States and Mandated Detention of “Applicants for Admission”**

18 Congress discarded that prior regime through enactment of IIRIRA, Pub. L. 104-208, 110 Stat. 3009
 19 (Sept. 30, 1996). Among other things, that law sought to “ensure[] that all immigrants who have not been
 20 lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in
 21 removal proceedings under the INA.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

22 To that end, IIRIRA replaced the prior focus on physical “entry” and instead made lawful
 23 “admission” the touchstone. IIRIRA defined “admission” to mean “the *lawful* entry of the alien into the
 24 United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A)
 25 (emphasis added). In other words, the immigration laws no longer distinguish between noncitizens based on
 26 whether they manage to avoid detection and enter the country without permission. Instead, the “pivotal factor
 27 in determining an alien’s status” is “whether or not the alien has been *lawfully* admitted.” House Rep. 225
 28 (emphasis added); *Hing Sum*, 602 F.3d at 1100 (similar). IIRIRA also eliminated the exclusion/ deportation

1 dichotomy and consolidated both sets of proceedings into “removal proceedings.” *Hurtado*, 29 I. & N. Dec.
2 at 223.

3 IIRIRA effected these changes through several provisions codified in Section 1225 of Title 8.

4 **1. Section 1225(a)**

5 Section 1225(a) codifies Congress’s decision to make lawful “admission,” rather than physical entry,
6 the touchstone. That provision states that “[a]n alien present in the United States who has not been admitted
7 or who arrives in the United States” “shall be deemed . . . an applicant for admission”:

8 An alien present in the United States who has not been admitted or who arrives in the United
9 States (whether or not at a designated port of arrival and including an alien who is brought to
10 the United States after having been interdicted in international or United States waters) shall
be deemed for purposes of this chapter an applicant for admission.

11 8 U.S.C. § 1225(a)(1). “All aliens (including alien crewmen) who are applicants for admission or otherwise
12 seeking admission or readmission to or transit through the United States shall be inspected by immigration
13 officers.” *Id.* § 1225(a)(3). The inspection by the immigration officer is designed to determine whether the
14 immigrant may be lawfully “admitted” to the country or, instead, must be referred to removal proceedings.

15 **2. Section 1225(b)**

16 IIRIRA also provided for expedited removal and non-expedited “Section 240” proceedings and
17 mandated that applicants for admission be detained pending either of those proceedings. 8 U.S.C. §
18 1225(b)(1)–(2).

19 Section 1225(b)(1) provides for so-called “expedited removal proceedings,” *Thuraissigiam*, 591 U.S.
20 at 109–113, which may be applied to a subset of aliens: those who (1) are “arriving in the United States,” or
21 (2) have “not been admitted or paroled into the United States” and have “not affirmatively shown, to the
22 satisfaction of an immigration officer, that the alien has been physically present in the United States
23 continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8
24 U.S.C. § 1225(b)(1)(A)(i)–(iii). As to these individuals, the immigration officer shall “order the alien
25 removed from the United States without further hearing or review unless the alien indicates either an
26 intention to apply for asylum . . . or a fear of persecution.” *Id.* § 1225(b)(1)(A)(i). In that event, the alien
27 “shall be detained pending a final determination of credible fear or persecution and, if found not to have such
28 fear, until removed.” *Id.* § 1225(b)(1)(B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(4)(ii). An individual processed for

1 expedited removal who does not indicate an intent to apply for asylum or a fear of persecution or who is
2 determined not to have a credible fear is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i),
3 (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

4 Section 1225(b)(2) is a “catchall provision that applies to all applicants for admission not covered by
5 [subsection (b)(1)].” *Jennings*, 583 U.S. at 287.² It requires that those individuals be detained pending
6 Section 240 removal proceedings:

7 Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission,
8 if the examining immigration officer determines that an alien seeking admission is not clearly
9 and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under
10 section 1229a of this title [Section 240].

11 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see* 8 C.F.R. § 235.3(b)(1)(ii) (mirroring Section 1225(b)(2)’s
12 detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention of
13 aliens throughout the completion of applicable proceedings and not just until the moment those proceedings
14 begin”).

15 While Section 1225(b)(2) does not allow for detainees to be released on bond, the INA grants DHS
16 discretion to exercise its parole authority to temporarily release an applicant for admission, but “only on a
17 case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A).
18 However, parole “shall not be regarded as an admission of the alien.” *Id.*; *Jennings*, 583 U.S. at 288
19 (discussing parole authority). Moreover, when the Secretary determines that “the purposes of such parole . . .
20 have been served,” the “alien shall . . . be returned to the custody from which he was paroled” and be “dealt
21 with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. §
22 1182(d)(5)(A).

23 3. Section 1226

24 IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens
25 generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This provision governs the
26 detention of individuals who were admitted to the country but later become removable — for example,

27 ² Section 1225(b)(2)(A) also does not apply to (1) crewmen or (2) stowaways. 8 U.S.C.
28 § 1225(b)(2)(B). In addition, the Executive has discretion to return aliens who have arrived on land from
a contiguous territory to that territory pending removal proceedings. *Id.* § 1225(b)(2)(C).

1 admitted noncitizens who overstay or otherwise violate the terms of their visas, engage in conduct that
2 renders them removable despite having permanent resident status, or are later determined to have been
3 improperly admitted. *See* 8 U.S.C. § 1227(a).

4 The statute provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested
5 and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. §
6 1226(a). Detention under this provision is generally discretionary. The Attorney General “may” either
7 “continue to detain the arrested alien” or release the individual on bond or conditional parole. *Id.* §
8 1226(a)(1)–(2).³ In practice, DHS makes the initial custody determination. 8 C.F.R. § 236.1(d)(1). The
9 detainee may seek custody redetermination (a bond hearing) before an immigration judge and can appeal an
10 immigration judge’s custody determination to the Board of Immigration Appeals. 8 C.F.R. §§ 236.1(c)(8),
11 (d), 1236.1(d)(1), 1003.19.

12 This “default rule” does not apply to certain criminal aliens who are being released from the custody
13 of another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c). Section 1226(c)
14 provides that “[t]he Attorney General shall take into custody” certain classes of criminal aliens — those who
15 are inadmissible or deportable because the alien (1) “committed” certain offenses delineated in 8 U.S.C. §§
16 1182 and 1227; or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The Executive must
17 detain these criminal aliens after “the alien is released, without regard to whether the alien is released on
18 parole, supervised release, or probation, and without regard to whether the alien may be arrested or
19 imprisoned again for the same offense.” *Id.* Such individuals may be released only if DHS determines “that
20 release of the alien from custody is necessary” to protect a witness to a “major criminal activity” or similar
21 person, and then only if the alien “will not pose a danger” to public safety and is not a flight risk. *Id.* §
22 1226(c)(4).

23 Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2,
24 139 Stat. 3 (2025), which additionally requires detention of (and prohibits parole for) criminal aliens who (1)
25 are inadmissible because they are physically present in the United States without admission or parole (8
26 U.S.C. § 1182(a)(6)(A)), have committed a material misrepresentation or fraud, (*id.* § 1182(a)(6)(C)), or lack

27 _____
28 ³ Conditional parole under Section 1226(a) is distinct from parole under Section 1182(d)(5)(A).
See Ortega-Cervantes v. Gonzalez, 501 F.3d 1111, 1116 (9th Cir. 2007).

1 required documentation, (*id.* § 1182(a)(7); and (2) are “charged with, [] arrested for, [] convicted of, admit[]
2 having committed, or admit[] committing acts which constitute the essential elements of” certain listed
3 offenses. 8 U.S.C. § 1226(c)(1)(E).

4 **C. DHS Concludes that Section 1225(b)(2)(A) Requires Detention of All Applicants for
5 Admission**

6 For many years after IIRIRA, DHS and most immigration judges treated aliens who entered the
7 United States without admission as being subject to discretionary detention under 8 U.S.C. § 1226(a), rather
8 than mandatory detention under 8 U.S.C. § 1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6. Until this
9 year, however, the Board of Immigration Appeals had not issued any precedential opinion on the appropriate
10 detention authority for such individuals.

11 On July 8, 2025, DHS “revisited its legal position on detention and release authorities” and issued
12 interim guidance that brought the Executive’s practices in line with the statute’s plain text. Memorandum
13 from Commissioner Rodney S. Scott (July 10, 2025), available at [https://www.cbp.gov/sites/default/files/
14 2025-09/intc-46100_-_c1_signed_memo_-_07.10.2025.pdf](https://www.cbp.gov/sites/default/files/2025-09/intc-46100_-_c1_signed_memo_-_07.10.2025.pdf) (last visited Dec. 16, 2025). Specifically, DHS
15 concluded that all noncitizen who enter the country without being admitted are “subject to detention under
16 INA § 235(b) [8 U.S.C. § 1225(b)] and may not be released from ICE custody except by INA § 212(d)(5) [8
17 U.S.C. § 1182(d)(5)] parole.” *Id.* As a result, the “only aliens eligible for a custody determination and release
18 on recognizance, bond, or other conditions under the INA § 236(a) [8 U.S.C. § 1226(a)] are aliens admitted
19 to the United States and chargeable with deportability under INA § 237 [8 U.S.C. § 1227].” *Id.*

20 The BIA also adopted this interpretation in *Hurtado*. The Board concluded that Section 1225(b)(2)’s
21 mandatory detention regime applies to *all* noncitizens who entered the United States without inspection and
22 admission:

23 Aliens . . . who surreptitiously cross into the United States remain applicants for admission
24 until and unless they are lawfully inspected and admitted by an immigration officer. Remaining
25 in the United State for a lengthy period of time following entry without inspection, by itself,
26 does not constitute an “admission.”

27 29 I. & N. Dec. at 228. Thus, under Board precedent, “Immigration Judges lack authority to hear bond
28 requests or to grant bond to aliens . . . who are present in the United States without admission.” *Id.* at 225.

1 **IV. ARGUMENT⁴**

2 **A. Petitioner Faye Wagane’s Petition for Writ of Habeas Corpus Is Moot As DHS Can**
 3 **No Longer Assert Detention Authority Over Petitioner**

4 “Mootness is a jurisdictional issue, and ‘federal courts have no jurisdiction to hear a case that is
 5 moot, that is, where no actual or live controversy exists.’” *Foster v. Carson*, 347 F.3d 742, 745 (9th Cir.
 6 2003) (citing *Cook Inlet Treaty Tribes*, 166 F.3d at 989). If an individual is released while a habeas petition is
 7 pending, the petition may “continue to present a live controversy” if there remain some “collateral
 8 consequence that may be redressed by success on the petition.” *Abdala v. I.N.S.*, 488 F.3d 1061, 1064 (9th
 9 Cir. 2007). An immigration judge’s decision becomes final if an appeal is not filed with the Board of
 10 Immigration Appeals (“BIA”) within thirty calendar days. *See* 8 C.F.R. §§ 1003.38(b), 1003.39.

11 On October 15, 2025, the immigration judge granted DHS’s motion to dismiss removal proceedings
 12 pursuant to 8 U.S.C. § 1229a. Petitioner Wagane did not appeal the immigration judge’s decision, so it
 13 became final when the appeal period expired on November 14, 2025. As Petitioner Wagane is no longer in
 14 removal proceedings pursuant to 8 U.S.C. § 1229a, or any immigration proceedings, DHS can no longer
 15 assert any detention authority over him.

16 Additionally, Petitioner Wagane has not presented any possible collateral consequences that can be
 17 redressed by the habeas petition. *See Abdala*, 488 F.3d at 1064. A Court in this district has already found that
 18 a habeas petition filed by an individual in a similar position to this Petitioner was moot when she “has not
 19 been re-detained by DHS, and her underlying removal proceedings have been terminated.” *Meza v. Bonnar*,
 20 No. 18-CV-2708, 2022 WL 2954333, at *1 (N.D. Cal. July 26, 2022). In *Meza*, the Court found that the
 21 relief sought through the habeas petition was “tethered to [Meza’s] removal proceedings”. *Id.* at *5.
 22 Similarly, in *Meza*, the Court found that the collateral consequences exception did not apply as “the
 23 possibility of future immigration proceedings is too speculative” and “does not present a concrete legal
 24 disadvantage sufficient to implicate the collateral consequences exception.” *Id.* at *6.

25 Here, Petitioner Wagane’s requested relief in his habeas petition is based on his ongoing removal
 26 proceedings. Dkt. No. 1 at 15. Although Petitioner Wagane’s removal proceedings were dismissed so that
 27

28 ⁴ In addition to the argument contained below, Respondents reassert and incorporate the arguments contained in their Opposition To Preliminary Injunction Motion. See Dkt. No. 11 at 16–31.

1 ICE could pursue Expedited Removal pursuant to 8 U.S.C. § 1225(b)(1), ICE has declined to do so in the
2 more than three months since the immigration judge granted dismissal. Choi Supp. Decl. at ¶ 5. Therefore,
3 Petitioner has not presented any “legal disadvantage sufficient to implicate the collateral consequences
4 exception” and her habeas petition is moot. *Meza*, 2022 WL 2954333, at *6.

5
6 **B. Section 1225(b)(2) Mandates Detention of Noncitizens, Like Petitioners Bastidas**
7 **Mendoza and Giraldo Munoz, Who Are Present in the United States Without**
8 **Having Been Admitted**

9 Under the plain language of Section 1225(b)(2), DHS is required to detain all individuals, like
10 Petitioners⁵, who are present in the United States without admission and are subject to removal proceedings
11 — regardless of how long they have been in the United States or how far from the border they traveled. That
12 unambiguous language resolves this case. *See Little Sisters of the Poor Saints Peter & Paul Home v.*
13 *Pennsylvania*, 591 U.S. 657, 676 (2020) (“Our analysis begins and ends with the text.”). While Respondents
14 recognize that the Court concluded otherwise in granting the motion for preliminary injunction, Respondents
15 provide a more developed analysis for the Court’s consideration, and submit that Petitioners fall squarely
16 within the § 1225(b)(2) framework. *Cf. Altamirano Ramos*, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12,
17 2025) (“after additional research and analysis, the court has concluded that Petitioner is subject to
18 mandatory detention under § 1225(b)(2)(a), and that Petitioner is not eligible for a bond hearing under 8
19 U.S.C. § 1226(a)”).

19 **1. The Plain Language of Section 1225(b)(2) Mandates Detention of Applicants**
20 **for Admission**

21 Section 1225(a) deems all individuals who are “present in the United States [and] ha[ve] not been
22 admitted or who arrive[] in the United States” to be “applicant[s] for admission.” 8 U.S.C. § 1225(a)(1). And
23 “admission” under the INA means not mere physical entry, but “lawful entry . . . after inspection” by
24 immigration authorities. 8 U.S.C. § 1101(a)(13)(A). Thus, an alien who enters the country without inspection
25 and admission is and remains an applicant for admission, regardless of the duration of the individual’s
26 presence in the United States or distance traveled from the border. *See Mejia Olalde v. Noem*, No. 25-CV-

27
28 ⁵ All references to “Petitioners” in Section IV.B-D refer only to Petitioners Bastidas Mendoza
and Giraldo Munoz.

1 168, 2025 WL 3131942, at *2–3 (E.D. Mo. Nov. 10, 2025).

2 In turn, Section 1225(b)(2) provides that “an alien who is an applicant for admission” “shall be
3 detained” pending removal proceedings if the “alien seeking admission is not clearly and beyond a
4 doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). The statute’s use of the term “shall” denotes
5 that detention is mandatory. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26,
6 35 (1998); *see Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention”). And
7 the statute makes no exception for the duration of the alien’s presence in the country or how far the alien
8 traveled into the country. Therefore, except for those aliens expressly exempted, the statute’s plain text
9 mandates that DHS detain all “applicants for admission” who are not “clearly and beyond a doubt
10 entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A).

11 Petitioners fall squarely within the statutory definition. They were “present in the United States,”
12 there is no dispute that they have “not been admitted,” and they do not fall within any of the exceptions
13 to Section 1225(b)(2)(A). 8 U.S.C. § 1225(a), (b)(2)(B). Moreover, they cannot — and did not —
14 establish that they are “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A).
15 Therefore, Petitioners “shall be detained for a proceeding under [8 U.S.C. § 1229a].” 8 U.S.C. §
16 1225(b)(2)(A).

17 **2. Attempts to Construe Section 1225(b)(2) Narrowly Ignore the Plain**
18 **Language of the Statute.**

19 **a. Section 1225 Is Not Limited to “Arriving Aliens”**

20 At least one court in this district has concluded that § 1225(b)(2) applies narrowly to “arriving aliens.”
21 *See Salcedo Aceros v. Kaiser*, No. 25-CV-6924, 2025 WL 2637503 at *10, 11 (N.D. Cal. Sept. 12,
22 2025).⁶ Yet Section 1225’s text makes clear that it applies to individuals who are already physically
23 present in the United States, not just to those who are “arriving.” Section 1225(a)(1) deems noncitizens
24 already “present in the United States who ha[ve] not been admitted” to be applicants for admission, and
25 it differentiates those individuals from noncitizens who are “arriv[ing] in the United States.” 8 U.S.C. §
26 1225(a)(1). And nothing in Section 1225(b)(2)(A) refers to “arriving aliens.” The same goes for the

27 _____
28 ⁶ The petitioners’ bar in this district has also referred to § 1225(b)(2) as an “arriving alien statute.” *See Salcedo Aceros*, 2025 WL 2637503, ECF No. 24 (Sept. 4, 2025 H’rg Tr.) at 14:10, 23:4–5, 25:1–2.

1 neighboring subsection (b)(1): It extends expedited removal procedures not just to “arriving” aliens but
 2 also to aliens who have been “physically present in the United States” for up to two years. 8 U.S.C. §
 3 1225(b)(1)(A)(i), (iii)(II). If Congress had wished for § 1225(b)(2) to apply exclusively to “arriving
 4 aliens,” it would have used that term and not “applicants for admission.” Reading § 1225(b)(2) to apply
 5 narrowly to “arriving aliens” itself violates the rule against surplusage.

6 **b. Section 1225(b)(2)’s Reference to Aliens “Seeking Admission” Does Not**
 7 **Narrow the Statute’s Scope**

8 At least one court in this district has also found that “applicant for admission” is broader than “seeking
 9 admission” because it covers “someone who is not ‘admitted’ but is not *necessarily* ‘seeking admission.’” *See*
 10 *Salcedo Aceros*, 2025 WL 2637503 at *11 (emphasis in original). As the argument goes, § 1225(b)(2) covers
 11 only a smaller set of aliens “actively seeking admission” — not individuals who are residing unlawfully in the
 12 United States *without* making any effort to gain admission. That is wrong. The statute itself makes clear that
 13 an alien who is an “applicant for admission” *is* necessarily “seeking admission.”

14 *First*, Section 1225(b)(2) requires the detention of an “applicant for admission, if the examining
 15 officer determines that [the] alien *seeking admission* is not clearly and beyond a doubt entitled to be
 16 admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory text and context show that being an
 17 “applicant for admission” is a means of “seeking admission”; no additional affirmative step is necessary. In
 18 other words, every “applicant for admission” is inherently and necessarily “seeking admission,” at least
 19 absent a choice, not applicable here, to pursue voluntary withdrawal or voluntary departure.

20 Section 1225(a) provides that “[a]ll aliens . . . who are applicants for admission *or otherwise* seeking
 21 admission or readmission . . . shall be inspected.” 8 U.S.C. § 1225(a)(3) (emphasis added). The word
 22 “[o]therwise” means “in a different way or manner[.]” *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive*
 23 *Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster’s Third New International Dictionary
 24 1598 (1971)); *see also Att’y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same);
 25 *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) (“or otherwise”
 26 means “the first action is a subset of the second action”); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482–83
 27 (7th Cir. 2019). Being an “applicant for admission” is thus a particular “way or manner” of seeking
 28 admission, such that any alien who is an “applicant for admission” *is* “seeking admission” for purposes of

1 Section 1225(b)(2)(A).

2 “Seeking admission” is thus “a term of art” that includes not only aliens who “entered the United
3 States with visas or other entry documents before their presence became lawful,” but also aliens who
4 “entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for
5 admission by operation of section 235(a)(1) of the Act [8 U.S.C. § 1225(a)(1)].” *Matter of Lemus-Losa*, 25 I
6 & N. Dec. 734, 743 n.6 (BIA 2012) (emphases omitted). As a result, “many people who are not *actually*
7 requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking
8 admission’ under the immigration laws.” *Id.* at 743 (emphasis in original). For example, an alien who
9 previously unlawfully entered the United States and is never admitted, departs, and subsequently submits a
10 literal application for admission to the United States — e.g., applies for a visa — is deemed to be “*again*
11 seek[ing] admission” to the United States. *Id.* at 743–44 & n.6 (emphasis added) (quoting and discussing 8
12 U.S.C. § 1182(a)(9)(B)(i)(I)-(II)). Mere presence without admission *is* seeking admission “by operation of
13 law.” *Id.*

14 Neither the duration of an individual’s unlawful presence in the United States nor her distance
15 from the border alters the legal reality that an “applicant for admission” is “seeking admission.”
16 “Congress knows how to limit the scope” of the INA “geographically and temporally when it wants to.”
17 *Mejia Olalde*, 2025 WL 3131942, at *4. For example, Section 1225(b)(1) may apply to aliens “arriving
18 in the United States” or who “ha[ve] been physically present in the United States continuously for [a] 2-
19 year period.” 8 U.S.C. § 1225(b)(1). So, “[i]f Congress meant to say that an alien no longer is ‘seeking
20 admission’ after some amount of time in the United States, Congress knew how to do so.” *Mejia Olalde*,
21 2025 WL 3131942, at *4. It did not. To the contrary, Section 1225(a)(1)’s inclusion of *both* aliens “arriving”
22 and those “present in the United States” confirms that *all* aliens who are not admitted are “applicants for
23 admission,” regardless of the length of their presence in the country. 8 U.S.C. § 1225(a)(1).

24 None of this is to say, however, that “seeking admission” has no meaning beyond “applicant for
25 admission.” As Section 1225(a)(3) shows, being an “applicant for admission” is only *one* “way or manner”
26 of “seeking admission” — not the exclusive way. For example, lawful permanent residents returning to the
27 United States are not “applicants for admission” but they still may be deemed to be “seeking admission” in
28 some circumstances. *See* 8 U.S.C. § 1101(a)(13)(C). But for purposes of Section 1225(b)(2) and its

1 regulation of “applicants for admission,” the statute unambiguously provides that an alien who is an
2 “applicant for admission” is “seeking admission,” even if the alien is not engaged in some separate,
3 affirmative act to obtain admission.

4 The government previously operated under a narrower application of Section 1225(b)(2)(A), such
5 that aliens present in the United States who had entered without admission were instead detained under
6 Section 1226(a). But past practice does not justify disregard of clear statutory language. *See* 8 C.F.R. §
7 235.3(b)(1)(ii) (requiring detention of applicants for admission pending removal proceedings “in accordance
8 with section 235(b)(2) of the Act”); *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015).
9 Indeed, the Supreme Court has rejected longstanding government interpretations that it has deemed
10 incompatible with the INA specifically. *See Pereira v. Sessions*, 585 U.S. 198, 204–05, 208–09 (2018).
11 Therefore, a court must always interpret the statute “as written,” *Henry Schein, Inc. v. Archer & White Sales,*
12 *Inc.*, 586 U.S. 63, 68 (2019), and here the statute as written requires detention of *any* applicant for admission,
13 regardless of whether the applicant is taking affirmative steps toward admission. *See Mejia Olalde*, 2025 WL
14 3131942, at *5 (rejecting the prior interpretation of Section 1225(b)(2) as “nontextual” and unsupported by
15 any “thorough, reasoned analysis”).

16 **Second**, the government’s reading does not render the term “seeking admission” redundant of the
17 phrase “applicant for admission” in Section 1225(b)(2)(A); the structure of Section 1225(b)(2)(A) gives each
18 independent meaning. Section 1225(b)(2)(A) is composed of a primary (operative) clause, which is modified
19 by two prefatory clauses offset by commas. The operative clause requires detention of aliens “seeking
20 admission” who cannot show their admissibility (“if the examining immigration officer . . . , [then] the alien
21 shall be detained”). That clause’s mandate is modified by two prefatory clauses. The first excludes aliens
22 covered by subparagraphs (B) and (C). 8 U.S.C. § 1225(b)(2)(A) (“[s]ubject to . . .”). Like the first, the
23 second prefatory clause narrows the operative clause to a subset of “case[s]” — namely, “in the case of an
24 alien who is an applicant for admission” *Id.* (emphasis added). Section 1225(b)(2) thus lays out a
25 general command (the operative clause), and then qualifies that directive: “[I]f an alien seeking admission is
26 not clearly and beyond a doubt entitled to be admitted,” then “the alien shall be detained” — but only if the
27 alien (1) is seeking admission by being “an applicant for admission” under Section 1225(a)(1); and (2) is not
28 covered by subparagraphs (B) or (C). No portion of the statute is redundant.

1 Even if it were otherwise, the canon against surplusage “is not a silver bullet.” *Rimini St., Inc. v.*
2 *Oracle USA, Inc.*, 586 U.S. 334, 346 (2019). “Redundancies are common in statutory drafting — sometimes
3 in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of
4 foresight, or sometimes simply because of the shortcomings of human communication.” *Barton v. Barr*, 590
5 U.S. 222, 239 (2020). Thus, “[t]he Court has often recognized: Sometimes the better overall reading of a
6 statute contains some redundancy.” *Id.* (quoting *Rimini St., Inc.*, 586 U.S. at 346) (internal quotations
7 omitted). For that reason, “the surplusage canon . . . must be applied with statutory context in mind,” *United*
8 *States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017), and “redundancy in one portion of a statute is not
9 a license to rewrite or eviscerate another portion of the statute contrary to its text,” *Barton*, 590 U.S. at 239.

10 That is the case here. Under a straightforward reading of the statute, being an “applicant for
11 admission” is “seeking admission.” Although that reading may lead to some redundancy in Section
12 1225(b)(2)(A), that is “not a license to rewrite” Section 1225 “contrary to its text.” *Barton*, 590 U.S. at 239;
13 *see Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) (“Th[e] principle [that drafters do repeat
14 themselves] carries extra weight where . . . the arguably redundant words that the drafters employed . . . are
15 functional synonyms.”). And that is especially true where that re-writing would be so clearly contrary to
16 Congress’s objective in passing the law.

17 **Third**, even if “seeking admission” required some separate affirmative conduct by the alien, an
18 applicant for admission who attempts to avoid removal from the United States, rather than trying to
19 voluntarily depart, is by any definition “seeking admission.”

20 Section 1225(b)(2)(A) applies to a noncitizen who is present in the United States without admission,
21 even for years. Although the individual may not have been affirmatively seeking admission during those
22 years of illegal presence, Section 1225(b)(2) is not concerned with the noncitizen’s pre-inspection conduct.
23 Rather, the statute’s use of present tense language (“seeking” and “determines”) shows that its focus is a
24 specific point in time — when “the examining immigration officer” is making a “determin[ation]” regarding
25 the alien’s admissibility. 8 U.S.C. § 1225(b)(2)(A). At *that* point, the alien is “seeking” — i.e., presently
26 “endeavor[ing] to obtain,” American Heritage Dictionary of the English Language 1174 (1980) — admission
27 into the United States; if it were otherwise, the applicant would seek to voluntarily “depart immediately from
28 the United States” in lieu of removal proceedings. *See* 8 U.S.C. § 1225(a)(4). An applicant who, like

1 Petitioners here, forgoes that statutory option and instead endeavors to remain in the United States by
2 participating in Section 240 removal proceedings — proceedings in which the alien has the “burden of
3 establishing that [he] is clearly and beyond a doubt entitled to be admitted” or satisfies the criteria for “relief
4 from removal,” 8 U.S.C. § 1229a(c)(2)(A), (c)(4) — is plainly “endeavor[ing] to obtain” admission to the
5 United States. American Heritage Dictionary, at 1174

6 **3. The Overlap Between Section 1226(c) and Section 1225(b)(2) Does Not**
7 **Support Re-Writing Section 1225(b)(2) to Eliminate Mandatory Detention**

8 At least one court in this district has found that redundancies between the government’s interpretation
9 of § 1225(b)(2) and § 1226(c)’s mandatory detention provisions is problematic given conventional rules of
10 statutory interpretation. *See Salcedo Aceros*, 2025 WL 2637503 at *11. However, although Section 1226(c)
11 and Section 1225(b)(2) do overlap for some noncitizens, each provision has independent effect. Mere
12 overlap is no basis for re-writing unambiguous statutory text.

13 As an initial matter, the government’s interpretation of Section 1225(b)(2)(A) does not render
14 Section 1226(a)’s discretionary detention authority superfluous. Section 1226(a) authorizes the Executive to
15 “arrest[] and detain[]” any “alien” pending removal proceedings but provides that the Executive also “may
16 release the alien” on bond or conditional parole. 8 U.S.C. § 1226(a). That provision provides the detention
17 authority for the significant group of aliens who are *not* “applicants for admission” subject to Section
18 1225(b)(2)(A), *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (“the
19 specific governs the general”) — that is, aliens who have already been admitted to the United States but are
20 now removable. For example, the detention of any of the multitude of noncitizens who overstay their visas or
21 are lawful permanent residents is governed by Section 1226(a), because those aliens (unlike Petitioner) *were*
22 previously admitted to the United States.

23 Likewise, the government’s reading of Section 1225(b)(2)(A) does not render Section 1226(c)
24 superfluous. As described above, Section 1226(c) is the exception to Section 1226(a)’s discretionary
25 detention regime, and it requires the Executive to detain “any alien” who is deportable or inadmissible for
26 having committed specified offenses or engaged in terrorism-related actions “when the alien is released”
27 from the custody of another law enforcement entity. *See* 8 U.S.C. § 1226(c)(1)(A)–(E). Like Section
28 1226(a), subsection (c) applies to significant groups of criminal aliens *not* encompassed by Section

1 1225(b)(2). Most obvious, Section 1226(c)(1) requires the Executive to detain aliens who *have been*
2 *admitted* to the United States and are now “deportable.” *See* 8 U.S.C. § 1226(c)(1)(B). By contrast, Section
3 1225(b)(2) has no application to admitted noncitizens who, owing to their prior admission, are necessarily
4 not applicants for admission. Next, Section 1226(c)(1) requires detention of aliens who are “inadmissible” on
5 certain grounds. *See* 8 U.S.C. § 1226(c)(1)(A), (D), (E). Here, too, Section 1226(c) sweeps more broadly
6 than Section 1225(b)(2), because the referenced grounds cover aliens who are inadmissible but were
7 erroneously admitted. *See* 8 U.S.C. § 1227(a), (a)(1)(A) (providing for the removal of “[a]ny alien . . . in *and*
8 *admitted* to the United States,” including “[a]ny alien who at the time of entry or adjustment of status was
9 within one or more of the classes of aliens *inadmissible* by the law existing at the time” (emphasis
10 added)). Finally, as noted above, Section 1225(b)(2)(A) does “not apply to an alien . . . who is a crewman” or
11 “a stowaway.” 8 U.S.C. 1225(b)(2)(B)–(C). Section 1226(c) applies to those aliens who are inadmissible or
12 deportable on one of the specified grounds.

13 Section 1226(c) also differs from Section 1225(b)(2) in another crucial way: Section 1226(c) narrows
14 the circumstances under which aliens may be *released* from mandatory detention. Section 1226(a)(2)(B)
15 permits the release of noncitizens on bond or conditional parole. Section 1226(c)(1) takes that option off the
16 table for admitted noncitizens who have committed the offenses or engaged in the conduct specified in
17 Section 1226(c)(1)(A)–(E). As to those aliens, Section 1226(c) *prohibits* their release except if “necessary to
18 provide protection to” a witness or similar person “and the alien satisfies the Attorney General that the alien
19 will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled
20 proceeding.” 8 U.S.C. § 1226(c)(4).

21 Finally, the Government’s reading does not render superfluous Congress’s recent amendment of
22 Section 1226(c) through the Laken Riley Act. That law requires mandatory detention of criminal aliens who
23 are “inadmissible” under 8 U.S.C. § 1182(a)(6)(A), (a)(6)(C), or (a)(7). *See* 8 U.S.C. § 1226(c)(E)(i)–(ii). As
24 with the other grounds of “inadmissibility” listed in Section 1226(c), both (a)(6)(C) and (a)(7) may apply to
25 inadmissible aliens who were admitted in error, as well as those never admitted. *See Mejia Olalde*, 2025 WL
26 3131942, at *4 (noting that “the Laken Riley Act may apply to situations where § 1225 might not” (citing 8
27 U.S.C. § 1182(a)(6)(C)(i))). Again, Section 1225(b)(2) has no application to aliens admitted in error.

28 To be sure, the Laken Riley Act’s application to aliens who are inadmissible under § 1182(a)(6)(A)

1 — for being “present . . . without being admitted or paroled” — overlaps with Section 1225(b)(2)(A). But
2 again, “[r]edundancies are common in statutory drafting,” and are “not a license to rewrite or eviscerate
3 another portion of the statute contrary to its text.” *Barton*, 590 U.S. at 239; *see Mejia Olalde*, 2025 WL
4 3131942, at *4 (“even assuming there were surplusage, that cannot trump the plain meaning of [Section]
5 1225(b)(2)”). That is especially true where, as here, there is overlap under *any* possible reading of the statute.
6 *See Microsoft Corp. v. I4I Ltd. P’ship*, 564 U.S. 91, 106 (2011) (“[T]he canon against superfluity assists only
7 where a competing interpretation gives effect to every clause and word of a statute”) (internal quotation
8 omitted).

9 In any event, Section 1226(c) still does independent work, despite the overlap, by preventing the
10 Executive from releasing the specified criminal aliens who were previously admitted. In fact, Congress’s
11 desire to further limit the release power with respect to criminal aliens was one reason it enacted the Laken
12 Riley Act. The Act was adopted in the wake of a murder committed by an inadmissible alien who was
13 “paroled into this country through a shocking abuse of that power,” 171 Cong. Rec. at H278 (daily ed. Jan.
14 22, 2025) (Rep. McClintock). Congress passed it out of concern that the executive branch “ignore[d] its
15 fundamental duty under the Constitution to defend its citizens.” *Id.* at H269 (statement of Rep. Roy). The Act
16 thus reflects a “congressional effort to be double sure,” *Barton*, 590 U.S. at 239, that criminal aliens are not
17 paroled or otherwise released from detention.

18 4. Failing to Uphold Mandatory Detention Would Subvert Congressional Intent

19 Failing to uphold mandatory detention here would not only violate the statutes’ plain text, but also
20 subvert IIRIRA’s express goal of eliminating preferential treatment for aliens who enter the country
21 unlawfully. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to result
22 “that Congress designed the Act to avoid”); *New York State Dep’t of Soc. Servs. v. Dublino*, 413 U.S. 405,
23 419–20 (1973) (“We cannot interpret federal statutes to negate their own stated purposes.”).

24 One of IIRIRA’s express objectives was to dispense with the pre-1996 regime under which aliens
25 who entered the United States unlawfully were given “equities and privileges in immigration proceedings
26 that [were] not available to aliens who present[ed] themselves for inspection” at the border, including the
27 right to secure release on bond. House Rep. at 225. Failing to uphold Petitioner’s mandatory detention here
28 would restore the regime Congress sought to discard: It would require detention for those who present

1 themselves for inspection at the border in compliance with law, yet grant bond hearings to aliens who evade
2 immigration authorities, enter the United States unlawfully, and remain here unlawfully for years or even
3 decades. That is exactly the “perverse incentive to enter” unlawfully, *Thuraissigiam*, 591 U.S. at 140, that
4 IIRIRA sought to eradicate. The Court should reject any interpretation that is so subversive of Congress’s
5 stated objective. *King*, 576 U.S. at 492.

6 The government’s reading, by contrast, not only adheres to the statute’s text and congressional intent,
7 but it also brings the statute in line with the longstanding “entry fiction” that courts have employed for well
8 over a century to avoid giving favorable treatment to aliens who have not been lawfully admitted. Under that
9 doctrine, all “aliens who arrive at ports of entry . . . are treated for due process purposes as if stopped at the
10 border,” including aliens “paroled elsewhere in the country for years pending removal” who have developed
11 significant ties to the country. *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy v. United States ex rel.*
12 *Mezei*, 345 U.S. 206, 215 (1953)). For example, *Kaplan v. Tod* held that an alien who was paroled for nine
13 years into the United States was still “regarded as stopped at the boundary line” and “had gained no foothold
14 in the United States.” *Kaplan v. Tod*, 267 U.S. 228, 230 (1925); *see also Mezei*, 345 U.S. at 214–15. The
15 “entry fiction” thus prevents favorable treatment of aliens who have not been admitted — including those
16 who have “entered the country clandestinely.” *Yamataya v. Fisher*, 189 U.S. 86, 100 (1903). IIRIRA sought
17 to implement that same principle with respect to detention. The government’s reading is true to that purpose.

18 **5. The Government’s Reading Is Consistent with *Jennings***

19 The government’s interpretation is also consistent with the Supreme Court’s decision in *Jennings*,
20 583 U.S. 281. *Jennings* reviewed a Ninth Circuit decision that applied constitutional avoidance to “impos[e]
21 an implicit 6-month time limit on an alien’s detention” under Sections 1225(b) and 1226. 583 U.S. at 292.
22 The Court held that neither provision is so limited. *Id.* at 292, 296–306. In reaching that holding, the Court
23 did not — and did not need to — resolve the precise groups of aliens subject to Section 1225(b) or Section
24 1226. Nonetheless, consistent with the government’s reading, the Court recognized in its description of
25 Section 1225(b) that “Section 1225(b)(2) . . . serves as a catchall provision that applies to all applicants for
26 admission not covered by §1225(b)(1).” *Id.* at 287.

27 It is true that in describing the detention authorities in Section 1225(b) and Section 1226, the Court
28 summarized Section 1226 as applying to aliens “already in the country”:

1 In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking
2 admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government
3 to detain certain aliens already in the country pending the outcome of removal proceedings
4 under §§ 1226(a) and (c).

5 583 U.S. at 289; *see also id.* at 288 (characterizing Section 1226 as applying to aliens “once inside the United
6 States”). But “[t]he language of an opinion is not always to be parsed [like the] language of a statute,” and
7 instead “must be read with a careful eye to context.” *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356,
8 373–74 (2023) (quotation omitted). When describing the scope of Section 1226 in particular, *Jennings* refers
9 to aliens “present in the country” who are removable under 8 U.S.C. § 1227(a) — a provision that applies *only*
10 to admitted aliens. *See Jennings*, 583 U.S. at 288. The government’s interpretation here is consistent with that
11 understanding: it allows that Section 1226 is the exclusive source of detention authority for the substantial
12 category of aliens who were admitted into the United States but are now removable or deportable.

13 Moreover, nothing in the quoted language from *Jennings* suggests that Section 1226 is the *sole*
14 detention authority for *every* “alien[] already in the country,” and the passage’s use of the word “certain”
15 conveys the opposite. At a minimum, the quoted language is ambiguous and such uncertain language is
16 insufficient to displace the statute’s plain text and the manifest congressional purpose; that is especially so, as
17 no part of the holding in *Jennings* required resolution of the precise scope of Sections 1225(b) and 1226.

18 **C. Petitioners Are Not Entitled to a Pre-Detention Hearing Under § 1226(a) or a
19 Reversed Burden of Proof**

20 Finally, even if this Court finds that § 1226(a) applies here, Petitioners would still not be entitled to a
21 pre-detention hearing. For aliens detained under § 1226(a), “an ICE officer makes the initial custody
22 determination” *post*-detention, which the alien can later request to have reviewed by an immigration judge.
23 *Rodriguez Diaz*, 53 F.4th at 1196. The Supreme Court has long upheld the constitutionality of the basic
24 process of immigration detention. *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due
25 process claim that “the INS procedures are faulty because they do not provide for automatic review by an
26 immigration judge of the initial deportability and custody determinations”); *Abel v. United States*, 362 U.S.
27 217, 233–34 (1960) (noting the “impressive historical evidence of acceptance of the validity of statutes
28 providing for administrative deportation arrest from almost the beginning of the Nation”); *Carlson v.*
Landon, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong*

1 *Wing v. United States*, 163 U.S. 228, 235 (1896) (“We think it clear that detention or temporary confinement,
2 as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would
3 be valid.”). Under § 1226(a), aliens are not guaranteed *pre*-detention review and may instead only seek
4 review of their detention by an ICE official once they are in custody — a process the Ninth Circuit has found
5 constitutionally sufficient in the prolonged-detention context. *Rodriguez Diaz*, 53 F.4th at 1196–97.⁷

6 Moreover, at any bond hearing, Petitioners should have the burden of demonstrating that they are not
7 a flight risk or danger. That is the ordinary standard applied in bond hearings. *Matter of Guerra*, 24 I&N
8 Dec. 37, 40 (B.I.A. 2006) (“The burden is on the alien to show to the satisfaction of the Immigration Judge
9 that he or she merits release on bond.”). It would be improper to reverse the burden of proof and place it on
10 the government in these circumstances. *See Rodriguez Diaz*, 53 F.4th at 1210–12 (“Nothing in this record
11 suggests that placing the burden of proof on the government was constitutionally necessary to minimize the
12 risk of error, much less that such burden-shifting would be constitutionally necessary in all, most, or many
13 cases.”). While the Ninth Circuit previously held that the government bears the burden by clear and
14 convincing evidence that an alien is not a flight risk or danger to the community for bond hearings in certain
15 circumstances, *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011) (bond hearing after allegedly
16 prolonged detention), following intervening Supreme Court decisions, the Ninth Circuit has explained that
17 “*Singh’s* holding about the appropriate procedures for those bond hearings . . . was expressly premised on the
18 (now incorrect) assumption that these hearings were statutorily authorized.” *Rodriguez Diaz*, 53 F.4th at
19 1196, 1200–01 (citing *Jennings*, 583 U.S. 281, and *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022)).
20 Thus, prior Ninth Circuit decisions imposing such a requirement are “no longer good law” on this issue,
21 *Rodriguez Diaz*, 53 F.4th at 1196, and the Court should follow *Rodriguez Diaz* and the Supreme Court.

22 **D. Any Ruling On This Habeas Petition Must Allow For Re-Detention Upon a Final**
23 **Administrative Removal Order.**

24 Petitioners’ habeas petition asks this Court to categorically enjoin their re-detention without a
25 pre-detention hearing before a neutral arbiter. Dkt. No. 1 at 15. But any indefinite injunction would

26 _____
27 ⁷ Although *Rodriguez Diaz* did not arise in the pre-detention context, the Ninth Circuit noted the
28 petition’s argument that the § 1226(a) framework was unlawful “for any length of detention” and
concluded that the claims failed “whether construed as facial or as-applied challenges to § 1226(a).” 53 F.4th
at 1203.

1 interfere with Respondents' ability to execute a valid order of removal and would both exceed the
2 Court's jurisdiction and contravene the Supreme Court's unambiguous holding in *Zadvydas v. Davis* that
3 mandatory detention without a bond hearing during the removal period is constitutionally permitted.
4 *Zadvydas v. Davis*, 533 U.S. 678 (2001) (upholding mandatory detention under 8 U.S.C. § 1231(a)(2)
5 for the 90-day removal period).

6 Petitioners' immigration proceedings will continue even after the Court rules on their habeas
7 petition. At some point, Petitioners may be subject to a final order of removal. Assuming Petitioners
8 becomes subject to a final order of removal, their detention is mandatory under the INA. *See* 8 U.S.C. §
9 1231(a)(2)(A) ("During the removal period, the Attorney General shall detain the alien. Under no
10 circumstance during the removal period shall the Attorney General release an alien who has been found
11 inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section
12 1227(a)(2) or 1227(a)(4)(B) of this title"). The Supreme Court has upheld the constitutionality of both
13 the mandatory 90-day detention during the removal period and the presumptively reasonable six-month
14 discretionary detention period following the removal period, both without the requirements of any bond
15 hearing. *See Zadvydas*, 533 U.S. at 701. Thus, if Petitioners become subject to a future final order of
16 removal, their detention will be both constitutionally permissible and statutorily required. Any ruling by
17 this Court, therefore, must allow for the detention of Petitioners to execute a final removal order. *See*
18 *Aguilar Garcia v. Kaiser*, No. 25-cv-05070-JSC, 2025 WL 2998169, at *4 (N.D. Cal. Oct. 24, 2025)
19 (denying motion for preliminary injunction in petition seeking pre-detention hearing after petitioner's
20 detention authority shifted to § 1231(a)(2)).

21 22 **V. CONCLUSION**

23 Petitioners are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Accordingly,
24 Respondents respectfully request that the Court deny Petitioners' habeas petition. To the extent the Court
25 grants Petitioners relief, it must limit any injunction to permit the execution of a future final order of
26 removal.

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Respectfully submitted,

CRAIG H. MISSAKIAN
United States Attorney

/s/ Michael J. Starrett
MICHAEL J. STARRETT
Special Assistant United States Attorney

Attorneys for Respondents