TIMOTHY COURCHAINE
United States Attorney
District of Arizona
KATHERINE R. BRANCH
Assistant United State Attorney
Arizona State Bar No. 025128
Two Renaissance Square
40 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-4449
Telephone: (602) 514-7500
Facsimile: (602) 514-7760
E-Mail: Katherine.Branch@usdoj.gov
Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Werclain Lopez-Cruz, Petitioner, v. Kristi Noem, et al., Respondents.	No. 2:25-cv-03566-DJH--ASB **RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

Respondents Kristi Noem, Secretary of Homeland Security ("DHS"); Todd M. Lyons, Acting Director of U.S. Immigration and Customs Enforcement ("ICE"); John Cantu, Field Office Director ICE, Enforcement and Removal Operations, Phoenix Field Office; Luis Rosa, Jr., Warden of the Central Arizona Florence Correctional Complex; Sirce Owen, Acting Director of the Executive Office for Immigration Review ("EOIR"), by and through undersigned counsel, respond to the Petition for Writ of Habeas Corpus (Doc. 1), as directed by the Order to Show Cause dated October 20, 2025 (Doc. 7).

Petitioner is an "applicant for admission" who must be detained pending removal proceedings. The plain language of the Immigration and Nationality Act ("INA") establishes that any alien present in the United States without being admitted is indeed an "applicant for admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) ("Read most naturally, §§ 1225(b)(1) and

(b)(2) thus mandate detention of applicants of admission until certain proceedings have concluded."). Accordingly, pursuant to the INA, Petitioner is properly subject to mandatory detention during the pendency of his removal proceedings. For these reasons, Petitioner's request for habeas relief should be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND.

Petitioner is a native and citizen of Mexico. Doc. 1 at ¶¶ 10, 18. He was encountered by United States Border Patrol ("USBP") near Robles Junction, Arizona, on August 31, 2018. Doc. 1-1 at 64.[1] Prior to that encounter, Petitioner had accrued eight (8) voluntary returns to Mexico. Doc. 1-1 at 65. At the August 2018 encounter, Petitioner admitted to having crossed the border surreptitiously on around July 1, 2018. Doc. 1-1 at 65. Petitioner was arrested and was placed in removal proceedings under INA § 212(a)(6)(A)(i) (8 U.S.C. § 1182(a)(6)(A)(i)). Doc. 1-1 at 65. 8 U.S.C. § 1182(a)(6)(A)(i) states "[a]n alien present in the United States without having been admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." Petitioner's removal proceedings are ongoing.

Petitioner initiated this action by filing a Petition for Writ of Habeas Corpus (Doc. 1) on September 29, 2025, and an *Ex Parte* Application for Temporary Restraining Order or Preliminary Injunction (Doc. 6) on October 18, 2025. Petitioner alleges that his detention without a bond hearing violates the procedural and substantive due process clauses of the Fifth Amendment. Doc. 1 at 14-15. He seeks a Court order granting his immediate release from immigration detention. Doc. 1 at Prayer for Relief, ¶ 4.

II. PETITIONER IS SUBJECT TO MANDATORY DETENTION UNDER 8 U.S.C. § 1225(b)(2)(A).

A. Statutory background and detention under the INA.

"The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "The phrase 'applicant for admission' is a term of art denoting a

[1] The page numbers correspond to the page number appended to the top right corner of the page by the CM/ECF filing system.

particular legal status." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024).

Section 1225(a)(1) was added to the INA as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). Pub. L. No. 104-208, § 302, 110 Stat. 3009-546. IIRIRA added Section 1225(a)(1) 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." *Torres*, 976 F.3d at 928; *see also* H.R. Rep. 104-469, pt. 1, at 225 (explaining that § 1225(a)(1) replaced "certain aspects of the current 'entry doctrine,'" under which illegal aliens who entered the United States without inspection gained equities and privileges in immigration proceedings unavailable to aliens who presented themselves for inspection at a port of entry). The provision "places some physically-but-not-lawfully present noncitizens into a fictive legal status for purposes of removal proceedings." *Torres*, 976 F.3d at 928.

The INA authorizes civil detention of aliens during removal proceedings and "[d]etention is necessarily part of this deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see also* 8 U.S.C. § 1225(b), 1226(a), and 1231(a). "Where an alien falls within this statutory scheme can affect whether his detention is mandatory or discretionary, as well as the kind of review process available to him if he wishes to contest the necessity of his detention." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).

1. Detention under 8 U.S.C. § 1225.

The INA mandates the detention of applicants for admission. 8 U.S.C. § 1225(b)(1) and (b)(2). An "applicant[ ] for admission," who is defined 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)(1).[2] Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287.

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid

[2] Admission is the "lawful entry of an alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13).

documentation." *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removed. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). Still, DHS has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

2. Detention under 8 U.S.C. § 1226(a).

Section 1226 provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under section 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.[3] By regulation, immigration officers can

[3] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on

release an alien if the alien 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). An alien can also request custody redetermination (*i.e.*, a bond hearing) by an Immigration Judge at any time before a final order of removal is entered but an alien that "has not been admitted," is treated as "an applicant for admission." 8 U.S.C. § 1225(a)(1); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19; *Jennings*, 583 U.S. at 286-87.

At a custody redetermination, the IJ may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39-40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs consider, an alien "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38.

B. Under the plain text of § 1225, Petitioner must be detained pending the outcome of his removal proceedings.

The Court should reject Petitioner's argument that § 1226(a) governs his detention instead of § 1225. When there is "an irreconcilable conflict in two legal provisions," then "the specific governs over the general." *Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1015 (9th Cir. 2017). Section 1226(a) applies to aliens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). In contrast, § 1225 is narrower. *See* 8 U.S.C. § 1225. It applies only to "applicants for admission"; that is, as relevant here, aliens present in the United States who have not be admitted. *See id.; see also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023). Because Petitioner falls within that category, the specific detention authority under § 1225 governs over the general authority found at § 1226(a).

Under 8 U.S.C. § 1225(a), an "applicant for admission" is defined as an "alien present in the United States who has not been admitted or who arrives in the United States." Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and

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"conditional parole" under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)).

those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(2)—the provision relevant here—is the "broader" of the two. *Id.* It "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Id.* And section 1225(b)(2) mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2); *Matter of Q. Li*, 29 I & N. Dec. at 69 ("[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)."). Section 1225(b) therefore applies because Petitioner is present in the United States without being admitted.

The BIA has long recognized that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012). Statutory language "is known by the company it keeps." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of the definition of "applicant for admission" in § 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under §1225(a)(1). *See Lemus-Losa*, 25 I. & N. Dec. at 743. Congress made that clear in § 1225(a)(3), which requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive–a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013).

One of the most basic interpretative canons instructs that a "statute should be construed so that effect is given to all its provisions." *See Corley v. United States*, 556 U.S. 303, 314 (2009) (cleaned up). The court's decision in *Florida v. United States* is instructive here. The district court held that 8 U.S.C. § 1225(b) mandates detention of applicants for

admission throughout removal proceedings, rejecting the assertion that DHS has discretion to choose to detain an applicant for admission under either section 1225(b) or 1226(a). 660 F. Supp. 3d at 1275. The court held that such discretion "would render mandatory detention under § 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1225(a) and release illegal border crossers whenever the agency saw fit." *Id.* The court pointed to *Demore v. Kim*, 538 U.S. 510, 518 (2003), in which the Supreme Court explained that "wholesale failure" by the federal government motivated the 1996 amendments to the INA. *Florida*, 660 F. Supp. 3d at 1275. The court also relied on, *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G. 2019), in which the Attorney General explained "section [1225] (under which detention is mandatory) and section [1226(a)] (under which detention is permissive) can be reconciled only if they apply to different classes of aliens." *Florida*, 660 F. Supp. 3d at 1275. Petitioner, present in the United States without being admitted, is an applicant for admission and is therefore subject to mandatory detention without bond under 8 U.S.C. § 1225(b). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

C. Congress did not intend to treat individuals who unlawfully enter the United States better than those who appear at a port of entry.

When the plain text of a statute is clear, "that meaning is controlling" and courts "need not examine legislative history." *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed IIRIRA to correct "an anomaly 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*, 976 F.3d at 928. The Court should reject the Petitioner's interpretation because it would put aliens who "crossed the border unlawfully" in a better position than those "who present themselves for inspection at a port of entry." *Id.* Aliens who presented at port of entry would be subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a).

D. The Court should not follow the decision in *Echevarria.*

Respondents are aware of a prior decision in this District rejecting Respondents' position, *see Echevarria v. Bondi, et al.*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), but respectfully maintain that Petitioner has not been deprived of due process, and falls within the definition of an "arriving alien" warranting mandatory detention as the removal process unfolds. Respondents also respectfully maintain that an alien is an "applicant for admission" until an immigration official has inspected that person and determined that he or she is admissible into the United States.

In *Echevarria*, Judge Dominic Lanza determined that the phrase "alien seeking admission" in 8 U.S.C. § 1225(b)(2)(A) implies a present-tense nature to the desire for admission, such that an alien who is already present in the United States cannot be "seeking admission":

> The word "seeking" is the present participle of the verb "seek." It thus has a temporal element—Petitioner must have been in the process of seeking admission at the time of the inspection.
>
> It is hard to see how Petitioner could be deemed to have been "seeking" admission at the time of the encounter on July 2, 2025. By that point, Petitioner had already been present in the United States for 24 years, having arrived and entered in 2001. Moreover, under Respondents' interpretation of § 1225(a)(1), Petitioner became an "applicant for admission" in 2001, upon his arrival and entry. Implicit in Respondents' position, then, is that Petitioner somehow existed in a perpetual state of "seeking" admission during the 24-year period between when he first became an "applicant for admission" in 2001, by virtue of his entry into the country, and when he was encountered and inspected by an immigration officer in 2025.

Echevarria, 2025 WL 2821282, at *6 (internal citations omitted).

However, this analysis fails to consider other pieces of statutory context. Respondents respectfully argue that the phrase "applicants for admission" carves out a subset of those who are "seeking admission." For example, elsewhere in section 1225, the statute says that "[a]ll aliens who are applicants for admission *or otherwise seeking admission* or readmission to or transit through the United States shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3) (emphasis added). In other words, 8 U.S.C.

§ 1225(a)(3) shows that an alien may be "seeking admission" either by being an "applicant for admission," or in some different way. As discussed earlier, the phrase "applicant for admission" unambiguously includes aliens who have already entered the United States. "In all but the most unusual situations, a single use of a statutory phrase must have a fixed meaning." *See Cochise Consultancy, Inc. v. United States ex rel. Hunt*, 587 U.S. 262, 268 (2019) (referring to *Ratzlaf* v. *United States*, 510 U.S. 135, 143 (1994)). "We therefore avoid interpretations that would 'attribute different meanings to the same phrase.'" *Id.* (quoting *Reno* v. *Bossier Parish School Bd.*, 528 U. S. 320, 329 (2000)). Thus, the *Echevarria* decision is not supported by the text of the statute, and Respondents respectfully request this Court reach a different result.

Furthermore, Respondents direct the Court's attention to a decision issued on September 30, 2025, in the United States District Court for the District of Nebraska: *Vargas Lopez v. Trump, et al.*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). In that case, the court denied a similar habeas petition brought by an alien who entered the United States in 2013, and held that the petitioner was properly detained under § 1225(b)(2) as an alien within the "catchall" scope of § 1225(b)(2) subject to detention without possibility of release on bond through § 1229a removal proceedings. 2025 WL 2780351, at *6-9. The court noted that illegally remaining in the country for years did not mean the petitioner, who "wish[ed] to stay in this country," was suddenly not an "applicant for admission." *Id.* at *9. Additionally, "even if Vargas Lopez might fall within the scope of § 1226(a), he certainly fits within the language of § 1225(b)(2) as well." *Id.*

The *Vargas Lopez* decision also noted the "overlapping relationship between § 1225(b) and § 1226(a) is not only consistent with the plain language of the two provisions but consistent with the interpretation of the two provisions under *Jennings*." *Id.* The court determined that § 1226 does not contain language limiting its application "to aliens already present in the United States." *Id.* (comparing *Jennings*' statements that United States immigration law "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)[,]" and that "§ 1226 applies to aliens already present in the United States[,]" 583 U.S. at 289 (first quote) and

303 (second quote), *with* 8 U.S.C. § 1226(a) (containing no reference to aliens "present" or "already present" in the United States) and 8 U.S.C. § 1226(c) (containing no reference to "criminal aliens" "present" or "already present" in the United States). The court determined that "references to 'aliens' in § 1226 must be read to mean 'alien[s] present in the United States who ha[ve] not been admitted' within the meaning of § 1225(a)(1) and within at least the 'catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) in § 1225(b)(2)." 2025 WL2780351, at * 9 (citing *Jennings*, 583 U.S. at 287).

The Southern District of California also denied a temporary restraining order sought by an alien who was detained under § 1225(b)(2) despite having been surreptitiously present in the United States for years. *See Chavez v. Noem*, --F. Supp. 3d --, No. 3:25-cv-02325-CAB, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025). The court noted, among other arguments, that "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.* at *4 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). The court reasoned that, "Petitioners do not contest that they are 'alien[s] present in the United States who ha[ve]not been admitted.' By the plain language of § 1225(a)(1), then, Petitioners are 'applicants for admission' and thus subject to the mandatory detention provisions of 'applicants for admission' under § 1225(b)(2)." *Id.* (cleaned up). Respondents respectfully request this Court find *Lopez v. Trump* and *Chavez v. Noem* persuasive as they are consistent with the plain language of the INA.

III. CONCLUSION.

In light of the above, Respondents respectfully request the Court deny Petitioner's Petition for Writ of Habeas Corpus. If the Court grants the Petition, the Court should order that Petitioner be given a bond hearing by the Immigration Court, not direct Petitioner's immediate release from immigration detention.

Respectfully submitted this 28th day of October, 2025.

TIMOTHY COURCHAINE
United States Attorney
District of Arizona

s/ Katherine R. Branch
KATHERINE R. BRANCH
Assistant United States Attorney
Attorneys for Respondents