UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
(at Covington)

JEIMY HERNANDEZ-GOMEZ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 2:25-150-DCR
	)	
JAMES A. DALEY, et al.	)	
	)	
Defendants.	)	
	)	

*** *** *** ***

RESPONSE TO
PETITION FOR A WRIT OF HABEAS CORPUS

Respondent Russell Hott, in his official capacity as Field Office Director for the U.S. Immigration and Customs Enforcement (ICE) Chicago Field Office,[1] responds to the petition for writ of habeas corpus [R. 1] filed by Petitioner Jeimy Hernandez-Gomez, consistent with this Court's October 1, 2025 Order [R. 4].

Petitioner is a native and citizen of Guatemala who arrived and remained in this country without authorization or inspection. [*See generally* R. 1: Petition at 4 (¶20); *see also* Ex. 1: Decision at 2 (Notice to Appear).] She is currently being detained in this district. [*See* R. 1: Petition at 1 (¶1).] Petitioner bears the burden to show that her detention is unlawful. *Freeman v.*

[1] This response to Petitioner's habeas petition is filed on behalf of Respondent Russell Hott. Title 28 U.S.C. § 517 allows the Office of the United States Attorney to make appearances in court to attend to the United States' interests, and consistent with that statute and *Roman v. Ashcroft*, 340 F.3d 314, 319-20 (6th Cir. 2003), this filing attends to the United States' interests to the extent that the Petition names James D. Daley, the Campbell County Detention Center Jailer, as a respondent. Respondent Daley may file his own response.

Pullen, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (quoting *McDonald v. Feeley*, 535 F. Supp. 3d 128, 135 (W.D.N.Y. 2021)).

Factual Background

Petitioner is a native and citizen of Guatemala. [R. 1: Petition at 4 (¶19).] She entered the United States without authorization or inspection. [*See generally id.* at 4 (¶20); *see also* Ex. 1: Decision at 2 (Notice to Appear).] An immigration judge ordered Petitioner removed in August 2016. [Ex. 1: Decision at 1.]

Petitioner was detained in May 2025. [R. 1: Petition at 4 (¶22).] An immigration judge later granted Petitioner's request to reopen her immigration proceedings. [*See id.*] Her removal proceedings are now active, and she has a hearing scheduled for October 29, 2026. [*See id.* (¶23).] She is currently detained in this district. [*See id.* at 1 (¶1).]

Legal Background

I. Applicants for Admission

Title 8 U.S.C. § 1225(a)(1) states:

> Aliens treated as applicants for admission.— An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival …) shall be deemed for the purposes of this chapter an applicant for admission.[2]

Section 1225(a)(1) was added to the Immigration and Nationality Act (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.

Before the IIRIRA, "immigration law provided for two types of removal proceedings: deportation hearings and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999)

[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).

(en banc). A deportation hearing was a proceeding against an alien already physically present in the United States, whereas an exclusion hearing was against an alien outside of the United States seeking admission *Id.* (quoting *Landon v. Plasencia*, 459 U.S. 21, 25 (1982)). Whether an applicant was eligible for "admission" was determined only in exclusion proceedings, and exclusion proceedings were limited to "entering" aliens—those aliens "coming . . . into the United States, from a foreign port or place or from an outlying possession." *Plasencia*, 459 U.S. at 24 n.3 (quoting 8 U.S.C. § 1101(a)(13) (1982)). "[N]on-citizens who had entered without inspection could take advantage of greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings." *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010); *see also Plasencia*, 459 U.S. at 25-26. Prior to the IIRIRA, aliens who attempted to lawfully enter the United States were in a worse position than aliens who crossed the border unlawfully. *See Hing Sum*, 602 F.3d at 1100; *see also* H.R. Rep. No. 104-469, pt. 1, at 225-229 (1996). The IIRIRA "replaced deportation and exclusion proceedings with a general removal proceeding." *Hing Sum*, 602 F.3d at 1100.

The IIRIRA added § 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 v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc); *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.

II. Expedited Removal Under 8 U.S.C. § 1225

The IIRIRA established distinct types of removal proceedings. Pub. L. 104-208, 110 Stat. 3009, 3009-546 (1996). Removal proceedings under § 1225 are known as "expedited removal proceedings." *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109-13 (2020) (citing provisions). Only two categories of aliens are eligible for expedited removal, rather than full removal proceedings, (1) "arriving aliens" and (2) aliens who "ha[ve] not been admitted or paroled into the United States" and have not been "physically present in the United States" for two years. 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). "Arriving aliens" are defined by regulation as "an applicant for admission coming or attempting to come into the United States at a port-of-entry . . . ." 8 C.F.R. § 1.2.

Expedited removal proceedings are conducted by an immigration officer, not an Immigration Judge ("IJ"). The immigration officer asks the applicant for admission questions to determine (a) "identity, alienage, and inadmissibility," and (b) whether the alien intends to apply for asylum. 8 C.F.R. § 235.3(b)(2)(i), (b)(4). Aliens are not entitled to counsel and no recording or transcript is made. *Id.* § 235.3(b)(2)(i). If the alien is inadmissible and does not intend to apply for asylum, the immigration officer, after supervisory review, issues a Notice and Order of Expedited Removal. *Id.* § 235.3(b)(2)(i). The alien has no right to appeal to an IJ, the Board of Immigration Appeals ("BIA") or any other court. *Id.* § 235.3(b)(2)(ii); 8 U.S.C. § 1252(a)(2)(A)(i). Unlike full removal proceedings, discussed below, which often take place over the course of several months, the expedited removal process is "conducted on a very compressed schedule and can result in deportation in hours or days." *Coal. for Humane Immigrant Rts. v.*

Noem, No. 25-CV-872 (JMC), 2025 WL 2192986, at *4 (D.D.C. Aug. 1, 2025).

III. Removal Proceedings under 8 U.S.C. § 1229a

Removal proceedings under § 1229a are commonly referred to as "full removal proceedings" or "240 removal proceedings" due to the statutory section of the INA in which they appear. 8 U.S.C. § 1229a; INA § 240. The proceedings take place before an IJ, an employee of the Department of Justice. 8 U.S.C. § 1229a(a)(1), (b)(1). Aliens in 1229a proceedings have an opportunity to apply for relief from removal. *See*, *e.g.*, 8 U.S.C. § 1158 (asylum); 8 U.S.C. § 1229b(b) (cancellation of removal for nonpermanent residents); 8 U.S.C. § 1255 (adjustment of status). These are adversarial proceedings in which the alien has the right to hire counsel, examine and present evidence, and cross-examine witnesses. 8 U.S.C. § 1229a(b)(4). Either party may appeal the IJ decision to the BIA. 8 U.S.C. § 1229a(b)(4)(C); *see also* 8 C.F.R. § 1240.15. If the BIA issues a final order of removal, the alien may also seek judicial review at a U.S. court of appeals through a petition for review. 8 U.S.C. § 1252.

IV. Detention under the INA

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).

A. Detention under Section 1225

The INA mandates the detention of applicants for admission. 8 U.S.C. § 1225(b)(1) and (2); *see also Jennings v. Rodriquez*, 583 U.S. 281, 287 (2018) (Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).").

As explained above, arriving aliens and aliens present less than two years are subject to expedited removal. 8 U.S.C. § 1225(b)(1). If an alien "indicates an intention to apply for

asylum," the alien proceeds through the credible fear process and is subject to mandatory detention. 8 U.S.C. § 1225(b)(1)(B)(ii); *see also* 8 U.S.C. § 1225(B)(1)(B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. The Supreme Court recognized that § 1225(b)(2) "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). While section 1225 does not provide for aliens to be released on bond, the Department of Homeland Security (DHS) has the sole discretion to release any applicant for admission on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

B. Detention under Section 1226

Section 1226 provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed. 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during their removal proceedings, release them on bond, or release them on conditional parole.[3] By regulation, immigration officers can release an alien if the alien demonstrates that they "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 IJ at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

[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).

V. Review of custody determinations at the Board of Immigration Appeals (BIA)

The BIA is an appellate body within the Executive Office for Immigration Review (EOIR), which is under the authority of the Attorney General. *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it," including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also "through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." *Id.* § 1003.1(d)(1). "The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General." 8 C.F.R. § 1003.1(d)(7).

Argument

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[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). And § 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.* § 1225(a)(1) (emphasis added). The only requirements to be an applicant for admission, therefore, are to be (1) present in the United States, and (2) have not been admitted. And the INA defines "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13); *see Aremu v. DHS*, 450 F.3d 578, 585 (4th Cir. 2006).

Petitioner is an "alien present in the United States who has not been admitted." *See generally* § 1225(a)(1). [R. 1: Petition at 4 (¶20).] By the plain language of § 1225(a)(1), then, Petitioner is an "applicant for admission." She is not "clearly and beyond a doubt entitled to be admitted." § 1225(b)(2). Therefore, she is subject to the mandatory detention provisions of "applicants for admission" under § 1225(b)(2). *See Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)[4]; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220-21 (BIA 2025)[5]; *see also Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913, at *2-3 (D. Mass. July 28, 2025) Her petition ends there.

Petitioner appears to argue that, since she has been in this country for many years (without authorization), she cannot be considered as "seeking admission" under § 1225(b)(2)(A). [*See* R. 1: Petition at 10 (¶¶43-45).] But courts "interpret the relevant words [in a statute] not in a vacuum, but with reference to the statutory context, 'structure, history and purpose'." *Abramski v. United States*, 573 U.S. 169, 179 (2014) (quoting *Maracich v. Spears*, 570 U.S. 48, 76 (2013)). The BIA has long recognized that "many people who are not actually requesting permission to

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[4] There is no dispute that some courts have disagreed with these decisions, [*see* R. 1: Petition at 12 (¶51)], but the agency contends that the decisions cited here are the correct interpretation of the plain language of the statutes at issue. Contrary to the Petition, it is not true that courts have "consistently" adopted her position, [*see id.*], unless you exclude the cases cited here.

[5] There is no dispute that, as a BIA opinion, *Hurtado* is not binding in this court, [*see, e.g.*, R. 1: Petition at 13 (¶52)], but it is still persuasive authority. Petitioner asks this Court to ignore BIA expertise while also directing the Court to follow prior agency practice. [*See* R. 1: Petition at 4-5 (¶¶24-26), 8 (¶36), 13 (¶52).] Any argument that prior agency practice applying § 1226(a) to Petitioner is unavailing because the plain language of the statute controls. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). Although Petitioner complains that the agency has altered its interpretation, this is not surprising. [*See* R. 1: Petition at 4-5 (¶¶24-26).] Agencies, just like courts, are entitled to change course and "correct[] [their] own mistakes" *See Loper Bright*, 603 U.S. at 411. Moreover, the BIA recognized in *Hurtado* that it was answering a question it had not previously answered in a precedential decision. *See Hurtado*, 29 I. & N. Dec. at 216.

enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012).

The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of "applicant for admission" in § 1225(a)(1). Applicants for admission includes arriving aliens and aliens present without admission. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under §1225(a)(1). *See Lemus*, 25 I. & N. at 743. Congress made clear that all aliens "who are applicants for admission or otherwise seeking admission" are to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3).[6] 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')." *See United States v. Woods*, 571 U.S. 31, 45 (2013). Simply by being in the United States without having been admitted, an alien is actively seeking admission into the United States. *See Lopez-Sorto v. Garland*, 103 F.4th 242, 252 (4th Cir. 2024); *Jimenez-Rodriguez v. Garland*, 996 F.3d 190 (4th Cir. 2021); *see also Cruz-Miguel v. Holder*, 650 F.3d 189, 198 n.13 (2d Cir. 2011) ("If the alien is seeking admission, he is charged in removal proceedings as an inadmissible alien . . . If the alien has been admitted, however, he is charged in removal proceedings as a deportable alien.").

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[6] The INA provides two examples of foreign nationals who are not "seeking admission." The first is someone who withdraws their application for admission and "depart[s] immediately from the United States." 8 U.S.C. § 1225(a)(4); *see also Matushkina v. Nielsen* 877 F.3d 289, 291 (7th Cir. 2017) (providing a relevant example of this phenomenon). The second is someone who agrees to voluntarily depart "in lieu of being subject to proceedings under § 1229a . . . or prior to the completion of such proceedings." 8 U.S.C. § 1229c(a)(1). This means even in removal proceedings, a foreign national can concede removability and accept removal, in which case she will no longer be "seeking admission." 8 U.S.C. § 1229a(d). Foreign nationals present in the United States who have not been lawfully admitted and who do not agree to immediately depart are seeking lawful entry and must be referred for removal proceedings under § 1229a. *See* 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). In removal proceedings, if an unlawfully admitted foreign national does not accept removal, they can seek a lawful admission. *See, e.g.*, 8 U.S.C. § 1229b. Accordingly, Petitioner is still "seeking admission" under § 1225(b)(2) because she has not agreed to depart, she has not yet conceded her removability, or allowed their removal proceedings to play out—she wants to be admitted via their removal proceedings. *See Thuraissigiam*, 591 U.S. at 108-09 (discussing how "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival)" is deemed "an applicant for admission").

As explained in *Hurtado*, to hold otherwise would create a "legal conundrum":

> If he is not admitted to the United States (as he admits) but he is not "seeking admission" (as he contends), then what is his legal status? *The respondent provides no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer "seeking admission," and has somehow converted to a status that renders him or her eligible for a bond hearing* under section 236(a) of the INA, 8 U.S.C.A. § 1226(a).

Hurtado, 29 I. & N. Dec. at 221 (emphasis added) (citation omitted).[7]

Presumably, in her removal proceedings, Petitioner will seek relief from removal and therefore will be seeking admission. *See, e.g.*, *Ocampo-Duran v. Ashcroft*, 254 F.3d 1133, 1134-35 (9th Cir. 2001) (concluding that a post-entry adjustment of status is an admission). Petitioner's reading would create an absurd result where an alien in removal proceedings, not subject to mandatory detention, would then be "seeking admission" and subject to mandatory detention when they filed for relief in immigration court, but not before seeking relief from removal. If Petitioner contests this reading, then there would be no category of alien section 1225(b)(2) would apply to. *See Hurtado*, 29 I & N Dec. at 221 ("The respondent's argument also leaves unanswered which applicants for admission would be covered by section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), if, as he argues, applicants for admission who have been

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[7] Although unclear, Petitioner may also be arguing that § 1225(b)(2) should only be applied to "arriving" aliens. [*See* R. 1: Petition at 12 (¶50).] But Congress did not refer to arriving aliens in § 1225(b)(2), while several sections of the INA use the term "arriving alien." *E.g.*, 8 U.S.C. §§ 1182(a)(9), 1229c, and 1231. "[W]e generally presume that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another." *Intel Corp. Inv. Pol'y Comm. v. Sulyma*, 589 U.S. 178 (2020) (quoting *BFP v. Resol. Tr. Corp.*, 511 U.S. 531, 537 (1994)). Congress further limited expedited removal in § 1225(b)(1) to arriving aliens, both in the text of 1225(b)(1)(A) and in the heading of 1225(b)(1) ("Inspection of aliens arriving"). *See Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) ("'[T]he title of a statute and the heading of a section' are 'tools available for the resolution of a doubt' about the meaning of a statute." (quoting *Bhd. of R. R. Trainmen v. Baltimore & O. R. Co.*, 331 U.S. 519, 528–529 (1947)). By including arriving aliens in § 1225(b)(1), as well as other sections of the INA, but not in § 1225(b)(2)(A), Congress did not intend to use "seeking admission" as meaning "arriving." *See Yajure*, 21 I. & N. Dec. at 228 (explaining that alien is applicant for admission regardless of time in the United States).

living for years in the United States without admission and without lawful status are somehow exempt from section 235(b)(2)(A) and instead fall under section 236.").

The Supreme Court has long held that "the due process rights of an alien seeking initial entry" are no greater than "[w]hatever the procedures authorized by Congress." *Thuraissigiam*, 591 U.S. at 139 (citation omitted). For unadmitted aliens, like the Petitioner here, "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *accord Thuraissigiam*, 591 U.S. at 138-40.[8]

To this end, the Supreme Court has also long applied the so-called "entry fiction" that all "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. Indeed, that is so "even [for] those paroled elsewhere in the country for years pending removal." *Id.* The Supreme Court has applied the entry fiction to aliens with highly sympathetic claims to having "entered" and developed significant ties to this country. *See, e.g., Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (holding that a mentally disabled girl paroled into the care of relatives for nine years must be "regarded as stopped at the boundary line" and "had gained no foothold in the United States"); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 214-15 (1953) (holding that an alien with 25 years' of lawful presence who sought to reenter enjoyed "no additional rights" beyond those granted by "legislative grace"). With the backdrop of these cases, it follows that Congress intended for an unlawful entrant who violates immigration laws and evades detection must, once found, be "treated as if stopped at the border." *See Mezei*, 345 U.S. at 215.

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[8] Congress has chosen to provide aliens present without inspection, despite being applicants for admission, with the due process of full removal proceedings. *See* 8 U.S.C. § 1229a(a)(4). But with those full removal proceedings, Congress indicated that aliens present without inspection "shall be detained." § 1225(b)(2)(A).

Supreme Court precedents indicate that aliens who entered illegally by evading detection while crossing the border should be treated the same as those who were stopped at the border in the first place. *See Thuraissigiam*, 591 U.S. at 138-40. While aliens who have been admitted may claim due-process protections beyond what Congress has provided even when their legal status changes (*e.g.*, an alien who overstays a visa, or is later determined to have been admitted in error), *see Wong Yang Sung v. McGrath*, 339 U.S. 33, 49-50 (1950), the Supreme Court has never held that aliens who have "entered the country clandestinely" are entitled to such additional rights, *The Yamataya v. Fisher*, 189 U.S. 86, 1000 (1903). Congress has codified that distinction by treating all aliens who have not been admitted—including unlawful entrants who evade detection for years—as "applicants for admission." 8 U.S.C. § 1225(a)(1). In line with these cases and the statute, Congress created a detention system where applicants for admission, including those who entered the country unlawfully, are detained for removal proceedings under § 1225 and aliens who have been admitted to the country are detained under § 1226. It does not matter whether an alien was apprehended "25 yards into U.S. territory" or 25 miles, nor does it matter if she was here unlawfully and evades detection for 25 minutes or 25 years; when an alien has never been admitted to the country by immigration officers, their detention is no different from an alien stopped at the border. *See Thuraissigiam*, 591 U.S. at 139.

Interpreting the statute as Petitioner suggests would mean that she obtained more rights, by virtue of staying in the country for many years without authority to do so, than someone who entered lawfully. Congress did not intend this absurd result. *See Gonzalez-Gonzalez v. Ashcroft*, 390 F.3d 649, 652 (9th Cir. 2004) (holding that Congress did not intend to make aliens convicted of domestic violence who entered illegally eligible for cancellation of removal while specifically excluding aliens who had entered lawfully). Instead, the "IIRIRA amendments sought to ensure

sensibly enough, that those who enter the country illegally, without proper inspection, are not treated more favorably under the INA than those who seek admission through proper channels, but are denied access." *Wilson v. Zeithern*, 265 F. Supp. 2d 628, 631 (E.D. Va. 2003). This Court should not adopt Petitioner's reading, which ignores the context and purpose of IIRIRA in the treatment of aliens present without inspection. *See Norfolk & W. Ry. Co. v. Am. Train Dispatchers Ass'n*, 499 U.S. 117, 129 (1991) (noting that interpretive canons must yield "when the whole context dictates a different conclusion); *see also U.S. Nat. Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993) ("In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy."); *see also Lopez*, 2025 WL 2780351, at *9 ("[J]ust because [petitioner] illegally remained in this country for years does not mean that he is suddenly not an 'applicant for admission' under § 1225(b)(2).").

Moreover, Petitioner's interpretation reads "applicant for admission" out of § 1225(b)(2)(A). "[O]ne of the most basic interpretive canons" instructs that a "statute should be construed so that effect is given to all its provisions." *Corley v. United States*, 556 U.S. 303, 314 (2009). "Applicant" is defined as "[s]omeone who requests something; a petitioner, such as a person who applies for letters of administration." Black's Law Dictionary (12th ed. 2024). Applying the definition of "applicant" to "applicant for admission," an applicant for admission is an alien "requesting" admission, defined by statute as "the lawful entry of the alien into the United States after inspection." 8 U.S.C. § 1101(a)(13)(A). In § 1225(b)(2), "an alien who is an applicant for admission" is by definition "an alien seeking admission."

Although Petitioner claims that the Respondent's interpretation renders some of the

provisions superfluous, [*see* R. 1: Petition at 11 (¶47)],[9] that is not the case. She suggests that Congress would not have enacted certain provisions of the Lake Riley Act (LRA), Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025), if those aliens were already subject to mandatory detention under § 1225(b). [*See id.* (¶48).] But, as the BIA explained in *Hurtado*, "nothing in the statutory text of section 236(c), including the text of the amendments made by the Lake Riley Act [LRA], purports to alter or undermine the provisions of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), requiring that aliens who fall within the definition of the statute 'shall be detained for a proceeding under section 240.'" 29 I & N Dec. at 221-222. "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 [LRA] superfluous." *Chavez*, 2025 WL 2730228, at *5. As the *Chavez* court explained:

> Section 1226(c) [regarding "detention of criminal aliens"] 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).

Id.

Moreover, even if there is some overlap between § 1226 and § 1225, that does not mean

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[9] "The canon against surplusage is not an absolute rule." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013); *see also Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 299 n.1 (2006) ("While it is generally presumed that statutes do not contain surplusage, instances of surplusage are not unknown"). "Sometimes drafters *do* repeat themselves and *do* include words that add nothing of substance, either out of a flawed sense of style or to engage in the ill-conceived but lamentably common belt-and-suspenders approach." *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017) (quoting Antonin Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 176–77 (2012) (emphasis in original)). "This is why the surplusage canon of statutory interpretation must be applied with statutory context in mind." *Id.* (citing Scalia & Garner, READING LAW 179); *see also Doe v. Boland*, 698 F.3d 877, 881 (6th Cir. 2012) (recognizing that the U.S. Code is "replete with meaning-reinforcing redundancies" including "null and void:," "arbitrary and capricious," "cease and desist," and "free and clear"). "[A]n alien who is an applicant for admission" and "an alien seeking admission" are functional synonyms. *See Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) ("That principle [that drafters do repeat themselves] carries extra weight where, as already explained, the arguably redundant words that the drafters employed—'rental' and 'lease'—are functional synonyms.").

that § 1225 cannot apply to Petitioner. *See Vargas Lopez*, 2025 WL 2780351, at *7. As one court has explained: "Pursuant to the language of the statute and the holding of *Jennings*,[10] just because [petitioner] illegally remained in this country for years does not mean that he is suddenly not an 'applicant for admission' under § 1225(b)(2). . . . Even if [petitioner] might fall within the scope of § 1226(a), he certainly fits within the language of § 1225(b)(2) as well." *Id.* at *9; *see also Hurtado*, 29 I. & N. Dec. at 222 (holding that overlap of sections is not surprising, given that statutory redundancies are common, and is not a basis to ignore plain language of § 1225(b)(2)).

Redundancies in statutory drafting are "common . . . sometimes in a congressional effort to be doubly sure." *Barton v. Barr*, 590 U.S. 222, 239 (2020). The LRA arose after an inadmissible alien "was paroled into this country through a shocking abuse of that power." 171 Cong. Rec. H278 (daily ed. Jan 22, 2025) (statement of Rep. McClintock). Congress passed it out of concern that the executive branch "ignore[d] its fundamental duty under the Constitution to defend its citizens." 171 Cong. Rec. at H269 (statement of Rep. Roy). "Congress may have simply intended to remove any doubt." *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 226 (2008). One member even expressed frustration that "every illegal alien is currently required to be detained by current law throughout the pendency of their asylum claims." 171 Cong. Rec. at H278 (statement of Rep. McClintock). The LRA reflects a "congressional effort to be doubly sure" that such unlawful aliens are detained. *Barton*, 590 U.S. at 239. The LRA does not change what Congress intended in IIRIRA. *See Almendarez-Torres v. United States*, 523 U.S. 224, 237 (1998) ("These later-enacted laws, however, are beside the point. They do not declare the

[10] Petitioner repeatedly suggests that Respondent's interpretation is inconsistent with *Jennings*. [*See, e.g.*, R. 1: Petition at 13 (¶52).] The opposite is true. The primary cases cited in this brief—*Vargas Lopez*, *Chavez*, and *Hurtado*—all rely on the analysis in *Jennings*. *See, e.g.*, *Vargas Lopez*, 2025 WL 2780351, at *7-8; *Chavez*, 2025 WL 2730228, at *5; *Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025).

meaning of earlier law. . . . or a change in the meaning of an earlier statute."); *see also S. Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 355 (1998) ("'[T]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.'") (quoting *United States v. Philadelphia Nat. Bank*, 374 U.S. 321, 348-49 (1963)). Nothing in the LRA requires that the alien who falls under § 1225(b)(2) be treated as an alien detained under § 1226(a).[11] *Hurtado*, 29 I. & N. Dec. at 221-22.

Agency precedent has long recognized that if an "immigration officer concludes" that an inadmissible alien or conditionally admitted alien[12] "'is not clearly and beyond a doubt entitled to be admitted,' he or she must be detained for a removal proceeding." *See Matter of Jean*, 23 I. & N. Dec. 373, 381 (A.G. 2002) (citing § 1225(b)(2)(A)). Under the plain language of the statute, Petitioner is subject to detention under § 1225(b)(2). *See Vargas Lopez*, 2025 WL 2780351, at *9; *Chavez*, 2025 WL 2730228, at *4; *Hurtado*, 29 I. & N. Dec. at 220-21; *see also Pena*, 2025 WL 2108913, at *2-3.

Conclusion

This Court should deny Petitioner's petition for habeas relief because she is lawfully detained.

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[11] Contrary to Petitioner's statements otherwise, [*see, e.g.*, R. 1: Petition at 8 (¶37)], the legislative history supports Respondent's interpretation, *see Chavez*, 2025 WL 2730228, at *4; *Hurtado*, 29 I. & N. Dec. at 222-26.

[12] *Matter of Jean* involved an alien conditionally admitted as a refugee applying for permanent residency. *See* 8 U.S.C. § 1159.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

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