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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GILDARDO ROGELIO ESCOBAR SALGADO, *et. al.*,

Petitioners,

vs.

JOHN MATTOS, *et. al.*,

Respondents.

Case No. 2:25-cv-01872-RFB-EJY

Federal Respondents' Response to the Amended Petition for Writ of Habeas Corpus (ECF No. 8)

The Federal Respondents hereby submit this Response to the Amended Petition for Writ of Habeas Corpus (ECF No. 8) filed by Petitioners Gildardo Rogelio Escobar Salgado, Juan José Mena Vargas, and Alejandro Reyes López (collectively, "Petitioners").

I. Introduction

Petitioners ask this Court to override Congress's detention scheme and order either their immediate release or that they receive bond hearings. They are not entitled to that extraordinary relief. As "applicants for admission" who were never admitted, Petitioners are lawfully detained under 8 U.S.C. § 1225(b)(2), which mandates custody through the conclusion of removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 297–99 (2018). Because § 1225 controls, Petitioners are not eligible for bond and any interim release lies, if at all, in DHS's case-by-case parole, 8 U.S.C. § 1182(d)(5)(A).

Recently, this Court has grappled with the United States' reliance on § 1225 such as in *Maldonado Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025). This Court's prior decisions, however, did not have the benefit of recent and subsequent authorities to aid the Court in its statutory analysis of § 1225(b)(2). For example, just ten days ago, on September 30, 2025, the District of Nebraska published a memorandum and order in *Vargas Lopez v. Trump*, No. 8:25-cv-00526-BCB-RCC, denying a habeas petition that challenged the petitioner's continued immigration detention and upholding the United States' authority to detain the petitioner under 8 U.S.C. § 1225(b)(2). There, the court concluded that aliens who entered without inspection are "applicants for admission" subject to mandatory detention throughout removal proceedings, with no entitlement to bond or conditional release. Relying on *Jennings v. Rodriguez* and the BIA's precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the court found that § 1225(b)(2) governs over § 1226(a) when both could apply.

Similarly, just one week after this Court's order in *Maldonado*, the Southern District of California, in *Chavez v. Noem*, No. 3:25-cv-02325 (S.D. Cal. Sept. 24, 2025), inherently adopted the reasoning set forth in *Yajure Hurtado* and held that aliens who entered without inspection fall within § 1225(b)(2), leaving immigration judges without jurisdiction to conduct bond hearings.

The case at bar thus presents an opportunity to refine and reconsider the statutory grounds set forth in this Court's prior decisions. Because other courts have addressed the question differently, the statutory interpretation issue remains live and in need of clarification. Although the BIA's precedential decision in *Yajure Hurtado* is not binding on this Court, the decision is entitled to consideration under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). *Yajure Hurtado* presents the most thorough and reasoned analysis we have to date and captures the *specialized expertise* of the agency that Congress charged with administering the INA. Under *Skidmore*, *Yajure Hurtado* should be accorded significant weight in construing the scope of § 1225(b)(2).

II. Background

A. Statutory and Regulatory Background

1. Applicants for Admission

"The phrase 'applicant for admission' is a term of art denoting a particular legal status." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Section 1225(a)(1) states:

> (1) 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 Act an applicant for admission.

8 U.S.C. § 1225(a)(1).[1] 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. "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).

Before 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) (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*

[1] 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).

Plasencia, 459 U.S. at 25-26. Prior to 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). IIRIRA "replaced deportation and exclusion proceedings with a general removal proceeding." *Hing Sum*, 602 F.3d at 1100.

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.

2. Detention under the INA

i. <u>Detention under 8 U.S.C. § 1225</u>

Section 1225 applies to "applicants for admission," who are defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218 (BIA 2025).

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 documentation." *Jennings*, 583 U.S. at 287; 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," they are detained until removed from the United States. *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 Yajure Hurtado*, 29 I. & N. Dec. at 220 ("[A]liens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings."); *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). However, the Department of Homeland Security (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).

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

Section 1226 provides the general detention authority for aliens in removal proceedings. 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 § 1226(a), the United States may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release aliens 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 a custody redetermination (often called 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.

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). Immigration judges have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006). The IJ should consider the following factors during a custody redetermination: (1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, time since such activity, and the seriousness of the offense; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape authorities; and (9) the alien's manner of entry to the United States. *Id.* at 40. But regardless of these factors, an alien "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38.

iii. Review Before the Board of Immigration Appeals

The Board of Immigration Appeals (BIA) is an appellate body within the Executive Office for Immigration Review (EOIR) "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it." 8 C.F.R. § 1003.1(d)(1). By regulation, it has authority to review IJ custody determinations. 8 C.F.R. §§ 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also "through precedent decisions, 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). Decisions rendered by the BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. § 1003.1(d)(7).

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B. Factual Background

1. Girardo Rogelio Escobar Salgado

Escobar Salgado is a Mexican national by virtue of birth. ECF No. 8-1, at 18. He has one prior arrest by U.S. Border Patrol and was granted voluntary departure to Mexico, on May 31, 2003. *Id.* The date, place, and time of Escobar Salgado's most recent entry into the United States is unknown. *Id.* at 17. However, he has stated that he entered the United States on or about July 2003 at or near Arizona, without inspection by U.S. Immigration Officers at the age of 32. *Id.* at 18.

Escobar Salgado was stopped by ICE in Utah on August 4, 2025. ECF No. 8, ¶ 39. He was detained without bond and transferred to the Nevada Southern Detention Center. *Id.* ¶ 40. He then requested a bond hearing, which was granted on August 28, 2025. *Id.* ¶ 41. The Immigration Judge (IJ) granted Escobar Salgado a bond in the amount of $2,000.00. *Id.* (ECF No. 8-1, at 29–30). After the bond hearing, DHS filed a Notice of ICE Intent to Appeal Custody Redetermination, which automatic stayed Escobar Salgado's release on bond. *Id.* ¶ 42 (citing ECF No. 8-1, at 32). The form stated: "Filing this form on 8/29/2025 automatically stays the Immigration Judge's custody redetermination decision." (citing 8 C.F.R. § 1003.19(i)(2). DHS thereafter appealed the IJ's bond order. *Id.* ¶ 43 (citing ECF No. 8-1, at 33–58).

On September 9, 2025, the IJ who had granted the Escobar Salgado's bond issued a Bond Memorandum, explaining that "The authority of the Immigration Judge to set bond has been superseded by the decision of the Board of Immigration Appeals in *Matter of Ya[]jure Hurtado*, 29 I&N Dec. 216 (BIA 2025)." *Id.* ¶ 47 (citing ECF No. 8-1, at 60).

2. Juan José Mena Vargas

Escobar Salgado is a Mexican national. ECF No. 8-1, at 78. He entered the United States on or about 1997 at or near San Ysidro, California without inspection by U.S. Immigration officers. *Id.* 79. On September 10, 2025, ICE arrested Mena Vargas. *Id.* He was detained and charged as an "alien present without admission or parole." *Id.* He does not have a claim to U.S. citizenship or lawful permanent residency and was

"amenable to removal" because he "is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General." *Id.*

3. Juan Alejandro Reyes López

On or around September 5, 2025, Reyes Lopez was detained by ICE. He was accused of racing with another vehicle. ECF No. 8, at 44. He was detained without bond and transferred to the Nevada Southern Detention Center. *Id.*

III. Argument

A. Petitioners are Lawfully Detained Under 8 U.S.C. § 1225

The Court should reject Petitioners' argument that § 1226(a) governs their detention instead of § 1225. Their detention is statutorily authorized by 8 U.S.C. § 1225(b)(2), which requires detention throughout the entire removal proceedings.

Under 8 U.S.C. § 1225(b)(2)(A), "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a [removal proceedings]." 8 U.S.C. § 1225(b)(2)(A). The Supreme Court has held that 8 U.S.C. § 1225(b)(2)(A) is a mandatory detention statute and that aliens detained pursuant to that provision are not entitled to bond. *Jennings*, 583 U.S. at 287 ("Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens.").

Petitioners fall squarely within the ambit of Section 1225(b)(2)(A)'s mandatory detention requirement as they are "applicant[s] for admission" to the United States. As described above, an "applicant for admission" is an alien present in the United States who has not been admitted. 8 U.S.C. § 1225(a)(1). Congress's broad language here is unequivocally intentional—an undocumented alien is to be "deemed for purposes of this chapter an applicant for admission." *Id.* Regardless of Petitioners' characterization that "an applicant for admission" should only include arriving aliens (*see e.g.*, ECF No. 8, ¶ 58, 74), they are "deemed" applicants for admission based on Petitioners' failure to seek lawful admission to the United States before an immigration officer, which is undisputed. *See*

generally ECF No. 8. And because Petitioners have not demonstrated to an examining immigration officer that Petitioners are "clearly and beyond a doubt entitled to be admitted," Petitioners' detention is mandatory. 8 U.S.C. § 1225(b)(2)(A). Thus, Petitioners are properly detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that Petitioner "shall be" detained.

1. The *Vargas Lopez v. Trump* Recent Decision Is Highly Instructive

The United States District Court for the District of Nebraska's decision denying the habeas corpus petition in *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) is particularly relevant here. In *Vargas Lopez*, the petitioner, an undocumented alien who had been residing in the United States since 2013, sought immediate release from detention. *Id.* at *1. Prior to filing his petition, Vargas Lopez had received a bond hearing, and the immigration judge ordered that he be released from custody under bond of $10,000. *Id.* at *3. DHS however appealed the bond determination, which automatically stayed Vargas Lopez's release on bond. *Id.* Vargas Lopez then filed a petition for habeas corpus alleging that the automatic stay was *ultra vires* and violated his due process rights. *Id.* He also alleged that application of 8 U.S.C. § 1225 in his case was unlawful because 8 U.S.C. § 1226 should control his detention. *Id.*

First, the court denied the petition because Vargas Lopez failed to carry his burden of demonstrating by a preponderance of the evidence that his detention was unlawful. *Id.* at *6. Vargas Lopez argued that he fell under § 1226, not 1225, but his petition and filings failed to provide proof of the "warrant for Vargas Lopez's arrest" that § 1226 requires.

Second, the court concluded that Vargas Lopez was subject to detention without possibility of bond under § 1225(b)(2). To do so, the court analyzed the Supreme Court's decision in *Jennings* to reject the notion that § 1225(b)(2) and § 1226(a) apply to two distinct groups of aliens; the two sections are not mutually exclusive. *Id.* at *6–8. The court then concluded that Vargas Lopez is an alien within the "catchall" scope of § 1225(b)(2), subject to detention without possibility of release on bond through a proceeding on removal under § 1229a. *Id.* at *9. The court found that Vargas Lopez was an "applicant for admission"

because his counsel admitted that Vargas Lopez "wishe[d] to stay in this country." *Id.* That finding, according to the court, was consistent with the conclusions of the BIA in *Hurtado* and *Jennings*.

Pursuant to the language of the statute and the holding of *Jennings*, the court said that "just because Vargas Lopez illegally remained in this country *for years* does not mean that he is suddenly not an 'applicant for admission' under § 1225(b)(2)." *Id.* Even if Vargas Lopez might have fallen within the scope of § 1226(a), he also certainly fit within the language of § 1225(b)(2) as well. The Court thus concludes that the *plain language* of § 1225(b)(2) and the "all applicants for admission" language of *Jennings* permitted the DHS to detain Vargas Lopez under § 1225(b)(2). *Id.*

2. The *Chavez v. Noem* Recent Decision Is Instructive

The United States District Court for the Southern District of California's decision in *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228, at *1 (S.D. Cal. Sept. 24, 2025), is instructive. In *Chavez,* the court denied a motion for a temporary restraining order ("TRO") filed by the petitioners who were detained under 8 U.S.C. § 1225(b)(2). *Chavez*, 2025 WL 2730228, at *1. The *Chavez* petitioners argued they should not have been mandatorily detained and instead they should have received bond redetermination hearings under § 1226(a). *Id.* The *Chavez* petitioners filed a motion for TRO, seeking to "enjoin[] Respondents from continuing to detain them unless [they received] an individualized bond hearing . . . pursuant to 8 U.S.C. § 1226(a) within fourteen days of the TRO." *Id.*

In denying the TRO, the *Chavez* court went no further than the plain language of § 1225(a)(1). *Id.* at *4. Beginning and ending with the statutory text, the *Chavez* court correctly found that because petitioners did not contest that they are "alien[s] present in the United States who ha[ve] not been admitted," then the *Chavez* petitioners are "applicants for admission" and thus subject to the mandatory detention provisions of "applicants for admission" under § 1225(b)(2). *Id*; *see also Yajure Hurtado*, 29 I. & N. Dec. at 221–222 (finding that an alien who entered without inspection is an "applicant for admission" and his argument that he cannot be considered as "seeking admission" is unsupported by the

plain language of the INA, and further stating, "[if]f he is not admitted to the United States . . . but he is not 'seeking admission' . . . then what is his legal status?").

3. *Yajure Hurtado* and Other Principles of Statutory Interpretation Support the United States' Application of § 1225

The issue of statutory interpretation of the INA is complicated by a patchwork of statutes implemented at different times and intended to address different issues. The INA is complex. Where the provisions impact one another, they should not be read in vacuum. The BIA is well-positioned to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225 and 1226. *See Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration detainee was "a question well suited for agency expertise"); *Matter of M-S-*, 27 I&N Dec. 509, 515-18 (2019) (addressing interplay of §§ 1225(b)(1) and 1226).

Here, the BIA has spoken through its precedential decision[2] in *Yajure Hurtado*. While *Loper Bright Enterprises v. Raimondo*, 603 U.S. 726 (2024), eliminated Chevron deference, *Yajure Hurtado* nonetheless should be afforded substantial weight under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). Under *Skidmore*, the weight owed to an agency interpretation depends on "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Id.* at 140. *Yajure Hurtado* scores highly on these factors.

First, the BIA applied its specialized expertise in immigration detention law, the very subject Congress charged it with administering. Its decision addressed the interplay between §§ 1225 and 1226 in detail, relying on statutory text, legislative history, and decades of experience resolving custody questions. Second, the BIA's reasoning is thorough and well supported. It carefully explained why noncitizens who entered without inspection remain "applicants for admission" under § 1225(a)(1), and why reclassifying them under § 1226(a) would create statutory gaps and undermine congressional intent. Third, the BIA's

[2] The BIA's precedential decisions "serve as precedents in all proceedings involving the same issue or issues." 8 CFR § 1003.1(g)(1); *see also id.* § 1003.1(d)(i).

interpretation is consistent with Supreme Court precedent, including *Jennings v. Rodriguez*, 583 U.S. 281 (2018), which recognized that detention under § 1225(b) is mandatory. Finally, adopting *Yajure Hurtado* promotes uniformity and coherence in federal immigration law by preventing detention outcomes from turning on the happenstance of when and where a noncitizen is apprehended.

In short, the Court should accord *Yajure Hurtado* significant persuasive weight under *Skidmore*. And in *Yajure Hurtado*, the BIA's mandate is clear: "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission." *Yajure Hurtado*, 29 I. & N. Dec. at 225. Indeed, this ruling emphasizes that § 1225 applies to aliens like the Petitioners in this case, who also are present in the United States but have not been admitted.

The BIA mandate is also sweeping. The *Hurtado* decision was unanimous, conducted by a three-appellate judge panel. *See id. generally.* It is binding on all immigration judges in the United States. 8 C.F.R. § 1003.1(g)(1) ("[D]ecisions of the Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States."). And because the decision was published, a majority of the entire Board must have voted to publish it, which establishes the decision "to serve as precedent[] in all proceedings involving the same issue or issues." *See* 8 C.F.R. § 1003.1(g)(2)-(3). Indeed, this is the law of the land in immigration court today. *See* also 8 C.F.R. § 1003.1(d)(1) (explaining "the Board, through precedent decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the Act and its implementing regulations."). And in the Board's own words, *Yajure Hurtado* is a "precedential opinion." *Id.* at 216.

In *Yajure Hurtado*, the BIA concluded that aliens like Petitioners in the case at bar, "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer." *Id.* at 228.

"Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an 'admission.'" *Id.*; *see* 8 U.S.C. § 1101(a)(13)(A) (2018) (defining "admission"). To hold otherwise would lead to an "incongruous result" that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for a number of years. *See id.*

In so concluding, the BIA rejected the alien's argument that "because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as 'seeking admission.'" *See id.* at 221. The BIA determined that this argument "is not supported by the plain language of the INA" and creates a "legal conundrum." *Id.* If the alien "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?" *Id.*

Therefore, just as immigration judges have no authority to redetermine the custody of arriving aliens who present themselves at a port of entry, they likewise have no authority to redetermine the custody conditions of an alien who crossed the border unlawfully without inspection, even if that alien has avoided apprehension for more than 2 years.

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); *Yajure Hurtado*, 29 I&N Dec. at 221, 228 ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, *but also those who are present in this country without having formally requested or received such permission* . . . ."). 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 Matter of Lemus-Losa*, 25 I. &

N. Dec. at 743; *Yajure Hurtado*, 29 I. & N. Dec. at 221. 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).

The district court's decision in *Florida v. United States* is also instructive. There, the 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). *See Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023), *appeal dismissed,* No. 23-11528, 2023 WL 5212561 (11th Cir. July 11, 2023). 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, 522 (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 (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.

Petitioners' reliance on the Laken Riley Act is similarly misplaced. 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 v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), declined to extend by *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024); *Chavez*, 2025 WL 2730228, at *4. It "intended to replace certain aspects of the [then] current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Torres*, 976 F.3d at 928 (quoting H.R. Rep. 104-469, pt. 1, at 225); *Chavez*, 2025 WL 2730228, at *4 (The addition of § 1225(a)(1) "ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an 'applicant for admission.' ").

As the pertinent House Judiciary Committee Report explains: "[Before the IIRIRA], aliens who [had] entered without inspection [were] deportable under section 241(a)(1)(B)." H.R. Rep. No. 104-469, pt. 1, at 225 (1996). But "[u]nder the new 'admission' doctrine, such aliens *will not be considered to have been admitted*, and thus, must be subject to a ground of inadmissibility, rather than a ground of deportation, *based on their presence without admission*." *Id.* Thus, applicants for admission remain such unless an immigration officer determines that they are "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *Yajure Hurtado*, 29 I. & N. Dec. at 228. Failing to clearly and beyond a doubt demonstrate that they are entitled to admission, such aliens "shall be detained for a proceeding under section 240." 8 U.S.C. § 1225(b)(2)(A); *see also Jennings*, 583 U.S. at 288.

The Court should thus reject Petitioners' proposition that Petitioners be either granted a bond hearing or released on bond (*see* ECF No. 8, at 19) because it would make aliens who presented at a port of entry subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a).

For the foregoing reasons, Petitioners are properly detained under § 1225.

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4. Under *Loper Bright*, the statute controls, not prior agency practices.

Any argument that prior agency practice applying § 1226(a) to Petitioners is unavailing because under *Loper Bright*, the plain language of the statute and not prior practice controls. *Yajure-Hurtado*, 29 I. & N. Dec. at 225–26. In overturning *Chevron*, the Supreme Court recognized that courts often change precedents and "correct[] our own mistakes" *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)). *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380. Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*. The weight given to agency interpretations "must always 'depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.'" *Loper Bright Enterprises*, 603 U.S. at 432–33 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)).

For example, here Petitioners point to 62 Fed. Reg. at 10323, where the agency provided no analysis of its reasoning. In contrast, the BIA's recent precedent decision in *Yajure-Hurtado* includes thorough reasoning. 29 I. & N. Dec. at 221–22. In *Yajur Hurtado*, the BIA analyzed the statutory text and legislative history. *Id.* at 223-225. It highlighted congressional intent that aliens present without inspection be considered "seeking admission." *Id.* at 224. The BIA concluded that rewarding aliens who entered unlawfully with bond hearings while subjecting those presenting themselves at the border to mandatory detention would be an "incongruous result" unsupported by the plain language "or any reasonable interpretation of the INA." *Id.* at 228.

To be sure, "when the best reading of the statute is that it delegates discretionary authority to an agency," the Court must "independently interpret the statute and effectuate the will of Congress." *Loper Bright Enterprises*, 603 U.S. at 395. But "read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain

proceedings have concluded." *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does not support Petitioners' position that the plain language mandates detention under § 1226(a).

B. Petitioners' Due Process Challenge Fails on the Merits

Detention under § 1225(b)(2) does not violate the constitution. The Supreme Court has held that detention during removal proceedings, even without access to a bond hearing, is constitutional. In *Demore*, the Supreme Court upheld the constitutionality of 8 U.S.C. § 1226(c), which mandates detention during removal proceedings without access to bond hearings. *Demore*, 538 U.S. at 522. The Court "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Id.* at 523. The Court reaffirmed its "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings." *Id.* at 526.

Here, Petitioners are detained for the limited purpose of removal proceedings. Petitioners' detention is not punitive or for other reasons than to address their removability from the United States. Their detention under § 1225(b)(2) is also not indefinite, as it will end upon the conclusion of their removal proceedings. Those proceedings are moving forward. A brief period of detention for the purpose of removal proceedings or to effectuate removal does not violate the constitution. *See Dambrosio v. McDonald, Jr.*, No. 25-CV-10782-FDS, 2025 WL 1070058, at *2 (D. Mass. Apr. 9, 2025) (detention "for a period of less than three months' time … does not amount to an unconstitutional duration."); *Alvarenga Pena,* 2025 WL 2108913, at *2-3 (due process clause prohibits the unduly prolonged detention of an alien, but finding no violation for a detention period of less than a month for an applicant for admission detained under Section 1225(b)(2)); *see also Amanullah v. Nelson*, 811 F.3d 1, 9 (1st Cir. 1987) (detention incident to seeking admission does not violate due process).

Whether framed as a substantive or procedural due process claim, the principles set forth in *Demore* govern this case. Substantive due process protects "only 'those fundamental

rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition.'" *Dep't of State v. Muñoz*, 602 U.S. 899, 910 (2024) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720- 21 (1997)). Petitioners' substantive due process claim fails because "the through line of history" is that the federal government has "sovereign authority to set the terms governing the admission and exclusion of noncitizens." *Id.* at 911-12. And in exercising this "broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Demore*, 538 U.S. at 521. For more than a century, the Supreme Court has recognized that "the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings." *Id.* at 526.

Nor can Petitioners succeed on a procedural due process claim. To establish a procedural due process violation, an individual "must first" show that the government has infringed on a "protected" liberty or property interest. *URI Student Senate v. Town of Narragansett*, 631 F.3d 1, 9 (1st Cir. 2011). Only then should courts consider "whether the process leading to that deprivation passes constitutional muster." *Gonzalez-Droz v. Gonzalez-Colon*, 660 F.3d 1, 13 (1st Cir. 2011). A protected liberty or property interest "may arise from two sources—the Due Process Clause itself and the laws of the states [or federal government]." *Brown v. Hot, Sexy and Safer Prods., Inc.*, 68 F.3d 525, 535 (1st Cir. 1995) *abrogated on other grounds by Depoutot v. Rafaelly*, 424 F.3d 112, 118 n.4 (1st Cir. 2005); *see also Centro Medica del Turabo, Inc. v. Feliciano de Melecia*, 406 F.3d 1, 8 n. 4 (1st Cir. 2005) (noting that to invoke a protected interest, a plaintiff must identify a right recognized by state law).

The procedural due process claim fails because, where Congress has substantively mandated detention pending removal proceedings, Petitioners cannot displace that *substantive* choice with a *procedural* due process claim. As discussed, aliens are not entitled to bond hearings as a matter of substantive due process. *See Demore*, 538 U.S. at 523-29. Under *Demore*, Congress may reasonably determine—as they did here—to subject aliens who were never inspected or admitted to this Country to detention without bond while the

government determines their removability. And "an alien in [Plaintiffs'] position has only those rights regarding admission that Congress has provided by statute." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Congress has not created any procedural rights to a bond hearing for Applicants for Admission (like Petitioner). *See Jennings*, 583 U.S. at 297. "Read most naturally," § 1225 "mandate[s] detention of applicants for admission until certain proceedings have concluded." *Id.* The statute says nothing "whatsoever about bond hearings." *Id.*

C. To the Extent the Court Determines Section 1226(a) Governs, Petitioners May Challenge Their Detention Via a Bond Hearing

Section 1226 "generally governs the process of arresting and detaining [aliens who have already entered the United States] pending their removal." *Jennings*, 583 U.S. at 288. Section 1226(a) 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) (emphasis added). The Attorney General and DHS thus have broad discretionary authority to detain an alien during removal proceedings. *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested alien" during the pendency of removal proceedings); *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (highlighting that "subsection (a) creates authority for *anyone's* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions"). When an alien is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the arrested alien." 8 U.S.C. § 1226(a)(1). "To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). If DHS decides to release the alien, it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). Even after DHS decides to release an alien, it may "at any time revoke such release, "rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b).

If DHS determines that an alien should remain detained during the pendency of his removal proceedings, the alien may request a custody redetermination hearing (*i.e.*, a "bond hearing") before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the alien, based on a variety of factors that account for the alien's ties to the United States and evaluate whether the alien poses a flight risk or danger to the community. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *see also* 8 C.F.R. § 1003.19(d) ("The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].").

Section 1226(a) does not provide an alien with an absolute right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Nor does the Constitution. *Velasco Lopez*, 978 F.3d at 848. Furthermore, Section 1226(a) grants DHS and the Attorney General broad discretionary authority to determine whether to detain or release an alien during his removal proceedings. *See id.* In the exercise of this broad discretion, and consistent with DHS regulations, the BIA—whose decisions are binding on immigration judges—has placed the burden of proof on the alien, who "must establish to the satisfaction of the Immigration Judge . . . that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." *Matter of Guerra*, 24 I. & N. Dec. at 38. The BIA's "to the satisfaction" standard is equivalent to a preponderance of the evidence standard. *See Matter of Barreiros,* 10 I. & N. Dec. 536, 537 (BIA 1964). If, after the bond hearing, the immigration judge concludes that the alien should not be released, or the immigration judge has set a bond amount that the alien believes is too high, the alien may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

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D. Petitioners' Arguments Regarding an Automatic Stay Are Moot Because They Are Currently Detained Under Section 1225, Not By Virtue of 8 C.F.R. § 1003.19(i)(2)

Article III of the Constitution limits the jurisdiction of the federal courts to "Cases" or "Controversies." *See* U.S. Const. art. III, § 2, cl. 1. "The doctrine of mootness, which is embedded in Article III's case or controversy requirement, requires that an actual, ongoing controversy exist at all stages of federal court proceedings." *Pitts v. Terrible Herbst, Inc.*, 653 F. 3d 1081, 1086 (9th Cir. 2011) (citing *Burke v. Barnes*, 479 U.S. 361, 363 (1987)). "[I]f events subsequent to the filing of the case resolve the parties' dispute, we must dismiss the case as moot . . . because '[w]e do not have the constitutional authority to decide moot cases.'" *Id.* at 1086–87 (internal citations omitted).

The issues raised in the petition regarding the "automatic stay," do not concern Mena Vargas and Reyes Lopez because neither of these Petitioners requested or received a bond hearing. However, Petitioner Escobar Salgado previously received a bond hearing, which was granted on August 28, 2025, and which DHS subsequently appealed thus automatically staying Escobar Salgado's release on bond. *See* ECF No. 8-1, at 29–58).

Although the "automatic stay" was once a source of controversy between the Federal Respondents and Escobar Salgado, that is no longer the case. As the Petition itself describes, the Immigration Judge who had granted Escobar Salgado's bond issued a Bond Memorandum stating that "The authority of the Immigration Judge to set bond has been superseded by the decision of the Board of Immigration Appeals in *Matter of Ya[]jure Hurtado*, 29 I&N Dec. 216 (BIA 2025)." ECF No. 8-1, at 60. Indeed, the Petition concedes that "All three Petitioners are presently detained without bond, based on this new government policy and legal interpretation of 8 U.S.C. § 1225(b)(2)(A) mandating that all non-citizens present within the United States without lawful admission be detained without bond." ECF No. 8, ¶ 81.

Escobar Salgado is thus currently detained not by virtue of DHS's appeal of Escobar Salgado's release on bond and the resulting automatic stay; instead, he is detained because he is subject to the mandatory detention provisions of § 1225. Because Escobar Salgado is

no longer subject to detention as a result of the "automatic stay," the Petitioners' arguments relating to the constitutionality and lawfulness of the "automatic stay" are moot.

Even so, to the extent the Court finds that the "automatic stay" issue is not moot, the Federal Respondents hereby incorporate by reference the arguments set forth in their Response to the Petition for Writ of Habeas Corpus in *Rodriguez Cabrera v. Mattos*, Case No. 2:25-cv-01551-RFB-EJY (D. Nev.), which the Federal Respondents filed as ECF No. 23. Specifically, the Federal Respondents point the Court to pages 19 through 23 of their response there, which contain the Federal Respondents' arguments addressing why the "automatic stay" of 8 C.F.R. § 1003.19(i)(2) is neither *ultra vires* nor a violation of a the petitioner's procedural and substantive due process rights.

E. The Court Lacks Jurisdiction to Entertain Petitioners' Action under 8 U.S.C. § 1252

The Federal Respondents hereby incorporate by reference the arguments set forth in their Response to the Petition for Writ of Habeas Corpus in *Rodriguez Cabrera v. Mattos*, Case No. 2:25-cv-01551-RFB-EJY (D. Nev.), which the Federal Respondents filed as ECF No. 23. Specifically, the Federal Respondents point the Court to pages 10 through 13 of their response there, which contain the Federal Respondents' arguments addressing why the court lacks jurisdiction to entertain petitioner's action under 8 U.S.C. § 1252.

IV. Conclusion

For these reasons, Federal Respondents respectfully request that the Petition be denied as a matter of law.

Respectfully submitted this 10th day of October 2025.

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