UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-24535-CIV-ALTONAGA

VICTOR MANUEL ALVAREZ PUGA,

Petitioner,

v.

ASSISTANT FIELD OFFICE DIRECTOR, KROME NORTH SERVICE ROCESSING CENTER, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*,

Respondents.
_____/

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Victor Alvarez Puga is a Mexican national who entered the United States on July 10, 2021, without inspection or authorization from an immigration officer. He was therefore not admitted into the United States on July 10, 2021, and has been in the country illegally for four years. During that time, he has been an applicant for admission. The clear language of 8 U.S.C. §1225(b)(2) mandates that ICE detain applicants for admission (like Petitioner) during their removal proceedings. The Court should deny the petition because Petitioner's immigration detention is lawful.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Mexico. *See* Ex. A, Record of Deportable/Inadmissible Alien (I-213), Sept. 24, 2025; *see also* Ex. B, Declaration of Officer Jocelyn L. Lopez, ¶ 6.

Petitioner first entered the United States on or about January 14, 2021, as a nonimmigrant with authorization to remain in the United States for a temporary period not to exceed July 13, 2021. *See* Ex. A, I-213; *see also* Ex. B, Declaration, ¶ 7.

On July 9, 2021, Petitioner departed the United States for the Bahamas by plane. *See* Ex. A, I-213; *see also* Ex. B, Declaration, ¶ 8. Petitioner was scheduled to return to the United States by plane on July 21, 2021, but did not board. *See* Ex. A, I-213; *see also* Ex. B, Declaration, ¶ 9.

According to an application filed by Petitioner with U.S. Citizenship and Immigration Services ("USCIS"), Petitioner re-entered the United States without inspection on or about July 10, 2021. *See* Ex. C, Notice to Appear; *see also* Ex. A, I-213; *see also* Ex. B, Declaration, ¶ 10.

On September 24, 2025, Petitioner was arrested by U.S. Immigration and Customs ("ICE") Enforcement ("ERO") and taken into ICE custody at the Krome Service Processing Center ("Krome"). *See* Ex. A, I-213; *see also* Ex. B, Declaration, ¶ 11; *see also* Ex. D, Form I-200, Warrant for Arrest of Alien; *see also* Ex. E, Form I-286, Notice of Custody Determination.[1]

On September 24, 2025, ICE served Petitioner with a Notice to Appear ("NTA") charging him with removability pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), as 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. *See* Ex. C, NTA; *see also* Ex. B, Declaration, ¶ 14.

On October 3, 2025, Petitioner requested a custody redetermination before the Executive Office for Immigration Review ("EOIR"). *See* Ex. B, Declaration, ¶ 15.

Petitioner has a master calendar hearing and a bond hearing scheduled before EOIR on October 16, 2025. *See* Ex. E, Master Calendar Hearing Notice; *see also* Ex. F, Bond Hearing Notice; *see also* Ex. B, Declaration, ¶ 16.

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[1] On September 24, 2025, DHS issued Petitioner a Form, I-286, Notice of Custody Determination, along with other documents. *See* Ex. E, Form I-286, Notice of Custody Determination; *see also* Ex. B, Declaration, ¶ 12. On October 7, 2025, ICE ERO cancelled the Form I-286 as improvidently issued, as Petitioner is an applicant for admission who is detained pursuant to INA § 235(b)(2)(A). *See* Ex. B, Declaration, ¶ 13.

ARGUMENT

I. Petitioner failed to exhaust administrative remedies.

The Court should dismiss the Petition and require Petitioner to exhaust his administrative remedies. The general rule is that parties exhaust administrative remedies before seeking relief from courts. *See McCarthy v. Madigan*, 503 U.S. 140, 144-45 (1992). Even where there is no statute requiring a party to exhaust administrative remedies before filing a lawsuit, a court may require exhaustion as a matter of prudence and discretion. *See Harris v. Dep't of Homeland Sec.*, 18 F. Supp. 3d 1349, 1355 (S.D. Fla. 2014) (distinguishing administrative exhaustion requirements); *see also Island Creek Coal Co. v. Bryan*, 937 F.3d 738, 746 (6th Cir. 2019) (describing prudential exhaustion).

Petitioner is detained pursuant to statute: 8 U.S.C. §1225(b). Petitioner has the right to appeal that detention decision to the Board of Immigration Appeals (BIA). *See* 8 U.S.C. §§1003.3, 1003.38. As a matter of prudence, the Court should require Petitioner to exhaust that administrative avenue before litigating this case. *See Monroy Villalta v. Greene,* 2025 WL 2472886, Case No. 4:25-cv-01594 (N.D. Ohio August 5, 2025) (applying prudential exhaustion and dismissing habeas case; finding that petitioner should exhaust remedies by appealing to the BIA the immigration court's finding that it lacked jurisdiction to enter a bond because alien was an applicant for admission under §1225(b) and not eligible for release pending proceedings).

For this reason, the Court should deny the Petition.

II. Petitioner's immigration detention is legal.

Petitioner is in the United States illegally. He is an alien who entered the United States on or about July 10, 2021, without inspection or admission. Therefore, he is an "applicant for

admission" under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), subject to mandatory detention, and ineligible for a bond hearing.

The clear language of 8 U.S.C. § 1225(b) authorizes Petitioner's detention. Indeed, it mandates it. *See Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) ("As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute."). When statutory language is clear and unambiguous, courts must give it effect. *See Owens v. Samkle Automotive Inc.,* 425 F.3d 1318, 1321 (11th Cir.2005) (citation omitted). That is why statutory construction often ends where it begins, with the words of the statute. *See Silva–Hernandez v. U.S. Bureau of Citizenship & Immigration Servs.,* 701 F.3d 356, 361 (11th Cir. 2012).

Section 1225(a)(1) clearly and unambiguously says that an "alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." Next, section 1225(b)(2)(A) clearly and unambiguously says that ". . . in the case of alien who is an applicant for admission, if the examining officer determines that an alien seeking admission is not clearly and beyond doubt entitled to be admitted, the alien shall be detained for [removal proceedings]." Accordingly, by its very definition, the term "applicant for admission" includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'" (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("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 . . . ."); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that "the broad category of

applicants for admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted" (citing 8 U.S.C. § 1225(a)(1))).

The INA defines the admission of an alien as "the lawful entry of the alien into the United States after inspection or authorization by an immigration officer." 8 U.S.C. §1101(a)(13)(A). All aliens who are applicants for admission "shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a) ("Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection . . . ."). An applicant for admission seeking admission at a United States POE "must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States." 8 C.F.R. § 235.1(f)(1); *see* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in removal proceedings). "An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated [POE] . . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a]." 8 C.F.R. § 235.1(f)(2).

Here, Petitioner did not present himself at a POE but instead entered the United States on July 10, 2021, between POEs and without having been admitted or inspected by an immigration officer. Petitioner was scheduled to fly from the Bahamas to the United States on July 21, 2021. Traveling by airplane would have required Petitioner to go through an Immigration and Customs inspection at the airport, at which time U.S. Customs and Border Protection would have decided whether the respondent was admissible to the United States. Rather than coming through the airport on his scheduled flight, Petitioner entered the United States—unannounced—by boat on a

different day. On July 10, 2021, Petitioner did not present himself to an immigration officer for inspection, as he admits in his Petition. Since no immigration officer inspected Petitioner or authorized him to enter the country on that day, he has been an applicant for admission to the United States since July 10, 2021. Under §1225(b)(2)(A), because Petitioner is an applicant for admission, ICE must detain Petitioner during his removal proceedings.

That Petitioner is physically present in the United States does not change this result. An alien can enter the United States by surreptitiously crossing the border. Entry does not equal admission. Rather, an admission requires more: lawful entry permitted by an immigration officer after the officer inspects the alien. Petitioner was not admitted on July 10, 2025. He is an applicant for admission, regardless of how long he has been in the country illegally. Therefore, ICE must detain him pending removal proceedings under the clear language of 8 U.S.C. §1225(b)(2).

That Petitioner believes this result is unfair does not blur the language. Nor does any prior misreading of the statute. *See* INA § 235(b)(1), (2), 8 U.S.C. § 1225(b)(1), (2). *See Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (stating that "no amount of policy-talk can overcome a plain statutory command.").

The BIA's persuasive decision in *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025) brings home the point. The alien in *Hurtado* crossed the border into the United States without inspection in November 2022, near El Paso, Texas. In 2024, USCIS granted the alien (Yajure Hurtado) temporary protected status ("TPS"), which expired on August 2, 2025. On August 8, 2025, immigration officials apprehended him. DHS issued Hurtado a notice to appear (NTA), charging him as inadmissible under section 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i), for being "[a]n alien present in the United States without being admitted or

paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General."

Hurtado requested a bond hearing before the immigration judge, who determined that he had no jurisdiction to set bond under the facts of the case. Hurtado appealed this determination (plus an alternative basis for bond denial) to the BIA. The question before the BIA was one of statutory construction: "Does the INA require that all applicants for admission, even those like [Hurtado] who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings, and thus the Immigration Judge lacks authority over a bond request filed by an alien in this category?" In answering **yes** to that question, the BIA focused on the plain language of 8 U.S.C. §1225, as the Court should do here.

In *Hurtado,* the BIA also considered the interplay between 8 U.S.C. §1225 (which requires mandatory detentions for applicants for admission) and 8 U.S.C. §1226 (which generally governs the process of arresting and detaining aliens who are *deportable* under 8 U.S.C. §1227(a) and allows, with certain restrictions, some bond jurisdiction). As the Supreme Court explained, 8 U.S.C. § 1226(a) "applies to aliens already present in the United States" and "creates a default rule for those aliens by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings." *Jennings v. Rodriguez,* 583 U.S. 281, 289, 303 (2018); *Q. Li*, 29 I&N Dec. 66, 70 (BIA 2025); *see also Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019) (describing 8 U.S.C. § 1226(a) as a "permissive" detention authority separate from the "mandatory" detention authority under 8 U.S.C. § 1225).

Rejecting the same argument that Petitioner appears to make in our case, the BIA panel in Hurtado ruled that §1226 does not purport to override the mandatory detention requirements for

arriving aliens and applicants for admission explicitly set forth in 8 U.S.C. § 1225 and that §1226 did not apply to aliens such as Hurtado who was an applicant for admission subject to mandatory detention under the plain language of the INA – just like Petitioner in our case.

In addition, the BIA rejected Hurtado's argument that because he had been living in the interior of the United States for almost three years (since his November 2022 entry without inspection), he could not be considered as "seeking admission" as the phrase is used in section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A). The BIA found that there was no legal authority for the proposition that after some undefined time residing in the interior of the United States without lawful status, an "applicant for admission" is no longer "seeking admission," somehow converting the alien's status into one that allows for bond under section 236(a) of the INA, 8 U.S.C. § 1226(a). *See also Matter of Lemus,* 25 I&N Dec. 734, 743 & n.6 (BIA 2012) (noting that "many people who are not actually requesting permission to enter the United States in the ordinary sense [including aliens present in the United States who have not been admitted] are nevertheless deemed to be 'seeking admission' under the immigration laws.").

III. Section 1225(b) is consistent with other INA provisions.

In analyzing 8 U.S.C. § 1225(b)(2)(A), the Supreme Court in *Jennings* equated "applicants for admission" with aliens "seeking admission." *See Jennings*, 583 U.S. at 289. As noted above, the Supreme Court stated that 8 U.S.C. § 1225(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* at 287. In doing so, it specifically cited 8 U.S.C. § 1225(b)(2)(A)—and thus did not appear to consider aliens "seeking admission" to be a subcategory of applicants for admission. *Id.* The Supreme Court also stated that "[a]liens who are instead covered by § 1225(b)(2) are detained pursuant to a different process . . . [and] 'shall be detained for a [removal] proceeding' . . . ." *Id.* at 288 (quoting 8

U.S.C. § 1225(b)(2)(A)). The Supreme Court considered all aliens covered by 8 U.S.C. § 1225(b)(2) to be subject to detention under subparagraph (A)—not just a subset of such aliens. Moreover, *Jennings* found that 8 U.S.C. § 1225(b) "applies primarily to aliens *seeking entry* into the United States (*'applicants for admission' in the language of the statute*)." *Id.* at 297 (emphases added). The Court therefore considered aliens seeking admission and applicants for admission to be virtually indistinguishable; it did not consider them to be merely a subcategory of applicants for admission. Indeed, the Supreme Court explicitly stated that aliens seeking admission are subject to 8 U.S.C. § 1225(b) detention: "In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2)." *Id.* at 289.

The structure of the statutory scheme prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (1996) bolsters the understanding that under the current statutory scheme, all applicants for admission are subject to detention under 8 U.S.C. § 1225(b). The broad definition of applicants for admission was added to the INA in 1996. Before 1996, the INA only contemplated inspection of aliens arriving at POEs. *See* 8 U.S.C. § 1225(a) (1995) (discussing "aliens arriving at ports of the United States"); *id.* § 1225(b) (1995) (discussing "the examining immigration officer at the port of arrival"). Relatedly, any alien who was "in the United States" and within certain listed classes of deportable aliens was deportable. *Id.* § 1231(a) (1995). One such class of deportable aliens included those "who entered the United States without inspection or at any time or place other than as designated by the Attorney General." *Id.* § 1231(a)(1)(B) (1995) (former deportation ground relating to entry without inspection). Aliens were excludable if they were "seeking admission" at a POE or had been paroled into the United States. *See id.* §§ 1182(a),

1225(a) (1995). Deportation proceedings (conducted pursuant to former 8 U.S.C. § 1252(b) (1995)) and exclusion proceedings (conducted pursuant to former 8 U.S.C. § 1226(a) (1995)) differed and began with different charging documents. *See Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 175 (1993) (explaining the "important distinction" between deportation and exclusion); *Matter of Casillas*, 22 I&N Dec. 154, 156 n.2 (BIA 1998) (noting the various forms commencing deportation, exclusion, or removal proceedings). The placement of an alien in exclusion or deportation proceedings depended on whether the alien had made an "entry" within the meaning of the INA. *See* 8 U.S.C. § 1101(a)(13) (1995) (defining "entry" as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession"); *see also Rosenberg v. Fleuti*, 374 U.S. 449, 462 (1963) (concluding that whether a lawful permanent resident has made an "entry" into the United States depends on whether, pursuant to the statutory definition, he or she has intended to make a "meaningfully interruptive" departure).

Former 8 U.S.C. § 1225 provided that aliens "seeking admission" at a POE who could not demonstrate entitlement to be admitted ("excludable" aliens) were subject to mandatory detention, with potential release solely by means of parole under 8 U.S.C. § 1182(d)(5) (1995). 8 U.S.C. § 1225(a)-(b) (1995). "Seeking admission" in former 8 U.S.C. § 1225 appears to have been understood to refer to aliens arriving at a POE.[2] *See id.* The legacy Immigration and

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[2] Given Congress's overhaul of the INA, including wholesale revision of the definition of which aliens are considered applying for or seeking admission, Congress clearly did not intend for the former understanding of "seeking admission" to be retained in the new removal scheme. Generally, "[w]hen administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates . . . the intent to incorporate its administrative and judicial interpretations as well." *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998). However, the prior construction canon of statutory interpretation "is of little assistance here because, . . . this is not a case in which 'Congress re-enact[ed] a statute without change.'" *Public Citizen Inc. v. U.S. Dep't of Health and Human Servs.*, 332 F.3d 654, 668 (D.C. Cir. 2003) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 382 n.66 (1982)). Rather, the presumption "of congressional ratification" of a prior statutory interpretation "applies only when Congress reenacts a statute without relevant change." *Holder v. Martinez Gutierrez*, 566 U.S. 583, 593 (2012) (citing *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 349 (2005)).

Naturalization Service ("INS") regulations implementing former 8 U.S.C. § 1225(b) provided that such aliens arriving at a POE had to be detained without parole if they had "no documentation or false documentation," 8 C.F.R. § 235.3(b) (1995), but could be paroled if they had valid documentation but were otherwise excludable, *id.* § 235.3(c) (1995). Regarding aliens who entered without inspection and were deportable under former 8 U.S.C. § 1231, such aliens were taken into custody under the authority of an arrest warrant, and like other deportable aliens, could request bond. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995); 8 C.F.R. § 242.2(c)(1) (1995).

As a result, "'[aliens] who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' while [aliens] who actually presented themselves to authorities for inspection were restrained by 'more summary exclusion proceedings.'" *Martinez v. Att'y Gen.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012) (quoting *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010)). "To remedy this unintended and undesirable consequence, the IIRIRA substituted 'admission' for 'entry,' and replaced deportation and exclusion proceedings with the more general 'removal' proceeding." *Id.* Consistent with this dichotomy, the INA, as amended by IIRIRA, defines *all* those who have not been admitted to the United States as "applicants for admission." IIRIRA § 302.

Moreover, Congress's use of the present participle—seeking—in 8 U.S.C. § 1225(b)(2)(A) should not be ignored. *United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."). By using the present participle "seeking," 8 U.S.C. § 1225(b)(2)(A) "signal[s] present and continuing action." *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). The phrase "seeking admission" "does not include something in the past that has ended or something

yet to come." *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019) (concluding that "having" is a present participle, which is "used to form a progressive tense" that "means presently and continuously" (citing Bryan A. Garner, *Garner's Modern American Usage* 1020 (4th ed. 2016))).

When, pursuant to 8 U.S.C. § 1225(b)(2)(A), an "examining immigration officer determines" that an alien "is not clearly and beyond a doubt entitled to be admitted" the officer does so contemporaneously with the alien's present and ongoing action of seeking admission. Interpreting the present participle "seeking" as denoting an ongoing process is consistent with its ordinary usage. *See, e.g.*, *Samayoa v. Bondi*, 146 F.4th 128, 134 (1st Cir. 2025) (alien inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) but "seeking to remain in the country lawfully" applied for relief in removal proceedings); *Garcia v. USCIS*, 146 F.4th 743, 746 (9th Cir. 2025) ("USCIS requires all U visa holders seeking permanent resident status under 8 U.S.C. § 1255(m) to undergo a medical examination . . ."). Accordingly, just as the alien in *Samayoa* is not only an alien present without admission but also seeking to remain in the United States, Petitioner in this case is not only an alien present without admission, and therefore an applicant for admission as defined in 8 U.S.C. § 1225(a)(1), but also an alien seeking admission under 8 U.S.C. § 1225(b)(2)(A).

Lastly, Congress's significant amendments to the immigration laws in IIRIRA support DHS's position that such aliens are properly detained pursuant to 8 U.S.C. § 1225(b)—specifically, 8 U.S.C. § 1225(b)(2)(A). Congress, for example, eliminated certain anomalous provisions that favored aliens who illegally entered without inspection over aliens arriving at POEs. A rule that treated an alien who enters the country illegally, such as Petitioner, more favorably than an alien detained after arriving at a POE would "create a perverse incentive to

enter at an unlawful rather than a lawful location." *Gambino-Ruiz*, 91 F.4th at 990 (quoting *Thuraissigiam*, 591 U.S. at 140) (rejecting such a rule as propounded by the defendant). Such a rule reflects "the precise situation that Congress intended to do away with by enacting" IIRIRA. *Id.* "Congress intended to eliminate the anomaly '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 [POE]'" by enacting IIRIRA. *Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020) (quoting *Torres*, 976 F.3d at 928); *see also* H.R. Rep. No. 104-469, pt. 1, at 225–29 (1996).

As discussed by the BIA in *Matter of Yajure Hurtado*, 29 I&N Dec. at 222-24, during IIRIRA's legislative drafting process, Congress asserted the importance of controlling illegal immigration and securing the land borders of the United States. *See* H.R. Rep. 104-469, pt. 1, at 107 (noting a "crisis at the land border" allowing aliens to illegally enter the United States). As alluded to above, one goal of IIRIRA was to "reform the legal immigration system and facilitate legal entries into the United States . . . ." H.R. Rep. No. 104-828, at 1 (1996). Nevertheless, after the enactment of IIRIRA, the DOJ took the position—consistent with pre-IIRIRA law—that "despite being applicants for admission, aliens who are present without being admitted or paroled . . . will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10,323. Affording aliens present without admission, who have evaded immigration authorities and illegally entered the United States bond hearings before an IJ, but not affording such hearings to arriving aliens, who are attempting to comply with U.S. immigration law, is anomalous with and runs counter to that goal. *Cf.* H.R. Rep. No. 104-469, pt. 1, at 225 (noting that IIRIRA replaced the concept of "entry" with "admission," as aliens who illegally enter the United States "gain

equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a [POE]").

Accordingly, for the reasons discussed above, Petitioner, as an alien present without admission in 8 U.S.C. § 1229a removal proceedings, is an applicant for admission and an alien seeking admission and is therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a bond redetermination hearing before an IJ.

Similarly, the enactment of the *Laken Riley Act*, 8 U.S.C. § 1226(c)(1)(E), which makes individuals that entered without inspection and who have been charged, arrested, or convicted of enumerated crimes subject to mandatory detention, is consistent with, and does not negate, §1225(b), rather it merely reflects a "congressional effort to be doubly sure" that certain aliens are detained, *Barton v. Barr*, 590 U.S. 222, 239 (2020).. As the BIA stated in *Matter of Yahure Hurtado*:

> [N]othing in the statutory text of section 236(c), including the text of the amendments made by the Laken Riley Act, 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."
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> The respondent's interpretation would, in fact, render section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), superfluous. Interpreting the provisions of section 236(c) as rendering null and void the provisions of section 235(b)(2)(A) (or even the provisions of section 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1)), would be in contravention of the "cardinal principle of statutory construction," which is that courts are to "'give effect, if possible, to every clause and word of a statute,' rather than to emasculate an entire section." *United States v. Menasche*, 348 U.S. 528, 538–39 (1955) (citations omitted).
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> Further, the fact that section 236(c) of the INA, 8 U.S.C.A. § 1226(c), mandates detention of a subset of the category of aliens that are also subject to mandatory detention under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), is not a basis on which to determine that section 235(b)(2)(A) is null and void. *See Barton v. Barr*, 590 U.S. 222, 239 (2020) (holding that because "redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human

> communication,"—"[r]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text").
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> *Matter of Yajure Hurtado*, 29 I&N Dec. at 222 (citations in original).

To reiterate, to interpret 8 U.S.C. § 1225(b)(2)(A) as not applying to all applicants for admission would render it meaningless. As explained above, Congress expanded 8 U.S.C. § 1225(b) in 1996 to apply to a broader category of aliens, including those aliens who crossed the border illegally. IIRIRA § 302. There would have been no need for Congress to make such a change if 8 U.S.C. § 1226 was meant to apply to aliens present without admission. Thus, 8 U.S.C. § 1226 does not have any controlling impact on the directive in 8 U.S.C. § 1225(b)(2)(A) that "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 [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

CONCLUSION

For these reasons, the Court should deny the Petition.

Respectfully submitted,

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