

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

|                     |   |                               |
|---------------------|---|-------------------------------|
| TEJINDER SINGH,     | ) |                               |
|                     | ) |                               |
| Plaintiff,          | ) |                               |
|                     | ) |                               |
| v.                  | ) | Civil Action No. 2:25-157-DCR |
|                     | ) |                               |
| KRISTI NOEM, et al. | ) |                               |
|                     | ) |                               |
| Defendants.         | ) |                               |
|                     | ) |                               |

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**RESPONSE TO  
PETITION FOR A WRIT OF HABEAS CORPUS**

Respondents Kristi Noem, in her official capacity as the Secretary of the Department of Homeland Security; Pamela Bondi, in her official capacity as Attorney General of the United States; Todd Lyons, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; and Samuel Olson, in his official capacity as Field Office Director for the U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations,<sup>1</sup> respond to the petition for writ of habeas corpus [R. 1]

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<sup>1</sup> This response to Petitioner’s habeas petition is filed on behalf of Respondents identified above. 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 Marc Fields, in his official capacity as County Jailer of Kenton Count Detention Center. Respondent Fields may file his own response.

and memorandum in support/motion for temporary restraining order [R. 2<sup>2</sup>] filed by Petitioner Tejinder Singh, consistent with this Court's October 1, 2025 Order [R. 6].

Petitioner is a native and citizen of India who arrived and remained in this country without authorization or inspection. [See R. 1: Petition at 22 (Notice to Appear); *see also generally* R. 1: Petition at 5 (¶19).] He is currently being detained in this district. [See R. 1: Petition at 7 (¶28).] Petitioner bears the burden to show that his detention is unlawful. *Freeman v. 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 India. [See R. 1: Petition at 22 (Notice to Appear).] He entered the United States in 2017 without authorization or inspection. [See *id.*; *see also generally* R. 1: Petition at 5 (¶19).]

Petitioner's documentation indicates that Indiana police responded to the scene of a vehicle crash in February of 2022 and found Petitioner, intoxicated, having driven off the road and collided with a residence. [See *id.* at 28 (Probable Cause Affidavit), 50-51 (Original Narrative).] A witness stated that Petitioner has passed her at a high rate of speed and, while he was attempting to pass another vehicle, he had to return to his lane to keep from colliding with oncoming traffic, before he "lost control and ran off the roadway where he came to rest after colliding with a house." [*Id.* at 50-51 (Original Narrative).]

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<sup>2</sup> Docket Entry No. 2 has two titles in separate places: Motion for Temporary Restraining Order and Memorandum of Law in Support of Petition for Habeas Corpus Relief. [See R. 2: Motion at 111.] The Motion appears to be copied from another matter, such that it is not clear what is being sought. [See, e.g., *id.* at 71 (seeking not to be moved from New Mexico and referencing a T Visa for human trafficking victims.)] Given this, it is not always clear what is being sought. Respondent has made every attempt here to respond to the applicable substance of the Motion to the extent it affects his habeas request, specifically, his request for a bond hearing/release. [See R. 1: Petition at 16 (Prayer for Relief, subparagraphs (5), (6)).]

His records indicate that Petitioner later pleaded guilty to Count 1 of the charges against him: “Operating a Vehicle While Intoxicated Endangering a Person,” in violation of Indiana state law. [See *id.* at 33.<sup>3</sup>] The court sentenced Petitioner to service 365 days in jail, with credit of 2 days and 363 days suspended with “suspended time to be served on probation.” [See *id.*; see also *id.* at 46 (Sentencing Order).]

Petitioner was taken into custody in July 2025. [See R. 1: Petition at 7 (¶22).] On September 5, 2025, Petitioner, through counsel, filed a motion for a bond hearing. [See *id.* at 7 (¶29).] The immigration judge considered his evidence and denied his bond request. [See Ex. 1: Order at 1-3.] Although the immigration judge found that they did not have authority to grant release under the “plain language” of the immigration laws at issue, they nevertheless determined that release on bond was not appropriate:

In the alternative, Respondent is a danger. “CRIMINAL HISTORY 09/26/2022 subject convicted in the Shelby Superior Court for the offense of operating while intoxicated endangering a person. Sentenced to 365 days confinement. Case number 73D02-2208-CM-000585.” Exh. 2. The Court considers not only the nature of Respondent’s criminal offense, but “also the specific circumstances surrounding [Respondent’s] conduct.” Matter of Siniauskas, 27 I&N Dec. 207, 208–09 (BIA 2018); Matter of Guerra, 24 I&N Dec. 37, 40 (BIA 2006) (stating that relevant factors in determining whether an alien should be released from immigration custody include how extensive, recent, and serious the alien’s criminal activity is). Driving under the influence “represents a grave danger to the community and is a significant adverse consideration in bond proceedings.” Matter of Choc-Tut, 29 I&N Dec. 48, 50 (BIA 2025). Indeed, “[d]runk driving is an extremely dangerous crime” that takes “a grisly toll on the Nation’s roads, claiming thousands of lives, injuring many more victims, and inflicting billions of dollars in property damage every year.” Matter of Siniauskas, 27 I&N Dec. 207, 208 (BIA 2018). “[T]he very nature of the crime of [driving while intoxicated] presents a ‘serious risk of physical injury’ to others[.]” *Id.*;

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<sup>3</sup> Count 1 is a Class A misdemeanor under Indiana law. [See *id.* at 35.] It appears that Count 2, “Oper Veh w/ Alcohol Concentration Equivalent to .15 or More” was dismissed. [See *id.* at 33.]

see also *Marmolejo-Campos v. Holder*, 558 F.3d 903, 913 (9th Cir. 2009) (noting that “the dangers of drunk driving are well established”). Thus, driving under the influence “is a significant adverse consideration in bond proceedings.” *Matter of Siniauskas*, 27 I&N Dec. 207, 209. The Court may not “look behind the fact of conviction and relitigate the ultimate question of an alien’s guilt or innocence.” *Matter of C-M-M-*, 29 I&N Dec. 141, 142 (BIA 2025) (citing *Matter of Roberts*, 20 I&N Dec. 294, 301 (BIA 1991)).

In the alternative, Respondent is a flight risk. Respondent’s “eligibility for relief is speculative” especially in light of his criminal history. *Matter of C-M-M-*, 29 I&N Dec. 141, 143–44 (BIA 2025); *Matter of E-Y-F-G-*, 29 I&N Dec. 103, 104–05 (BIA 2025) (finding an alien a flight risk despite relief being granted); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 806 (BIA 2020) (“Even for aliens who are found to have a credible fear, a grant of asylum is uncertain, in part because the legal standard for establishing eligibility for asylum is higher than that for a credible fear.”); see also *Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987) (“A[n alien] with a greater likelihood of being granted relief from deportation has a greater motivation to appear for a deportation hearing than one who, based on a criminal record or otherwise, has less potential of being granted such relief.”).

[*Id.* at 1-2.] Petitioner reserved the right to appeal. [*See id.* at 3.] The immigration judge’s order indicates Petitioner’s appeal is due October 29, 2025. [*See id.*]

Petitioner is currently detained in this district. [*See* R. 1: Petition at 7 (¶28).] His immigration proceedings are ongoing. [*See, e.g.*, R. 2: Motion at 92 (indicating hearing on I589 application on Oct. 16, 2025).]

### **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.<sup>4</sup>

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) (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.

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<sup>4</sup> 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).

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. Rodriguez*, 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.<sup>5</sup> 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.

### **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).

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<sup>5</sup> 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).

## Argument

### **I. This Court should deny the habeas petition.**

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 22 (Notice to Appear); *see also generally* R. 1: Petition at 5 (¶19).] By the plain language of § 1225(a)(1), then, Petitioner is an “applicant for admission.” He is not “clearly and beyond a doubt entitled to be admitted.” § 1225(b)(2). Therefore, he 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)<sup>6</sup>; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220-21 (BIA 2025)<sup>7</sup>;

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<sup>6</sup> There is no dispute that some courts have disagreed with these decisions, [*see* R. 2: Motion at 18], but the agency contends that the decisions cited here are the correct interpretation of the plain language of the statutes at issue.

<sup>7</sup> There is no dispute that, as a BIA opinion, *Hurtado* is not binding in this court, [*see, e.g.*, R. 2: Motion at 88], but it is still persuasive authority. Petitioner asks this Court to ignore BIA expertise while also directing the Court to prior agency practice. [*See* R. 2: Motion at 78-79.] 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,

see also *Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913, at \*2-3 (D. Mass. July 28, 2025) His petition ends there.

Petitioner appears to argue that, since he has been in this country for many years (without being lawfully admitted), he cannot be considered as “seeking admission” under § 1225(b)(2)(A). [See R. 2: Motion at 85-76.] 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 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

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411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). 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. To the extent Petitioner argues he should be released because of Administrative Procedure Act violations, [see R. 1: Petition at 16 (subparagraph (4))], this is not an APA case, and Petitioner cannot challenge his conditions of confinement. See *Wilson v. Williams*, 961 F.3d 829, 838 (6th Cir. 2020); *Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004). As a prudential matter, courts in this circuit have not permitted “combined habeas corpus and other civil claims to proceed together in one case.” *J.O.B. v. United States*, No. 3:23-CV-217, 2024 WL 4011825, at \*7 (S.D. Ohio Aug. 30, 2024) (collecting cases), *R. & R. adopted*, No. 3:23-CV-217, 2024 WL 4223636 (S.D. Ohio Sept. 18, 2024); *Ruza v. Michigan*, No. 1:20-CV-504, 2020 WL 4670556, at \*2 (W.D. Mich. Aug. 12, 2020), *aff’d*, No. 20-1841, 2021 WL 3856305 (6th Cir. Apr. 7, 2021) (same). Habeas petitions and civil actions “have distinct purposes and contain unique procedural requirements that make a hybrid action difficult to manage.” *Ruza*, 2020 WL 4670556, at \*2. Thus, Petitioner’s APA claims improperly are pleaded, and the Court should not consider them alongside his petition for writ of habeas corpus. In addition, APA claims are unavailable where habeas relief presents an adequate alternative remedy. *Trump v. J.G.G.*, 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring). Habeas relief would be an adequate remedy for Petitioner’s claims, by addressing whether he is entitled to release from unlawful custody. That “fall[s] within the ‘core’ of the writ of habeas corpus and thus must be brought in habeas.” *Id.* at 672 (per curium).

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).<sup>8</sup> 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.”).

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).*

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<sup>8</sup> 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 he 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 he has not agreed to depart, he has not yet conceded his removability, or allowed his removal proceedings to play out—he 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”).

*Hurtado*, 29 I. & N. Dec. at 221 (emphasis added) (citation omitted).<sup>9</sup>

Presumably, in his 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). He indicates he is currently seeking admission. [See R. 2: Motion at 84 (discussing pathway to legal permanent status).] Petitioner's statutory 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 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 held that the due process rights of an alien seeking initial entry

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<sup>9</sup> Although unclear, Petitioner may also be arguing that § 1225(b)(2) should only be applied to "arriving" aliens. [See R. 2: Motion at 84, 87.] 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).

are no greater than whatever the procedures authorized by Congress. *See 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.<sup>10</sup>

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.

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

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<sup>10</sup> 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).

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 he obtained more rights, by virtue of staying in the country for many years, 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. 2: Motion at 82-83],<sup>11</sup> that is not the case. He suggests that

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<sup>11</sup> “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*

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.*] 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 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*,<sup>12</sup> just

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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.”).

<sup>12</sup> Petitioner repeatedly suggests that Respondent’s interpretation is inconsistent with *Jennings*. [See, e.g., R. 2: Motion at 84.] 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).

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 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).<sup>13</sup> *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<sup>14</sup> “‘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.<sup>15</sup>

## **II. This Court should deny the preliminary injunction request.**

“A preliminary injunction is ‘an extraordinary remedy.’” *Moms for Liberty - Wilson Cnty., Tennessee v. Wilson Cnty. Bd. of Educ.*, No. 24-5056, 2025 WL 2599923, at \*4 (6th Cir. Sept. 9, 2025) (quoting *L. W. ex rel. Williams v. Skrmetti*, 83 F4th 460, 470-71 (6th Cir. 2023)). “It is ‘never awarded as of right.” *Id.* (quoting *A.C.L.U. Fund of Mich. v. Livingston County*, 796 F.3d 636, 642 (6th Cir. 2015)). And Petitioner bears the burden of justifying his request. *Id.* (citing *Livingston County*, 796 F.3d at 642). To qualify, Petitioner must “establish that [h]e is

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<sup>13</sup> To the extent Petitioner suggests otherwise, [*see, e.g.*, R. 2: Motion at 88], the legislative history supports Respondent’s interpretation, *see Chavez*, 2025 WL 2730228, at \*4; *Hurtado*, 29 I. & N. Dec. at 222-26.

<sup>14</sup> *Matter of Jean* involved an alien conditionally admitted as a refugee applying for permanent residency. *See* 8 U.S.C. § 1159.

<sup>15</sup> In the alternative, should this Court determine that Petitioner’s detention is subject to § 1226, the only appropriate remedy is a bond hearing before an Immigration Judge, during which an immigration judge can properly determine in the first instance whether Petitioner is a flight risk or danger to the community. *See, e.g., Doe v. Moniz*, No. 1:25-CV-12094-IT, 2025 WL 2576819, at \*11 (D. Mass. Sept. 5, 2025) (ordering bond hearing); *Elias Escobar v. Hyde*, No. 1:25-CV-12620-IT, 2025 WL 2823324, at \*3 (D. Mass. Oct. 3, 2025) (same); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*8-9 (D. Mass. July 7, 2025) (finding the proper remedy is a bond hearing); *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at \*13 (D. Mass. Aug. 19, 2025) (same). This is particularly apt in this case where Petitioner has prior criminal conduct. It is appropriate for an immigration judge to determine whether Petitioner is a flight risk or a danger to the community.

likely to succeed on the merits, that [h]e is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest.” *Id.* (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

Petitioner is not entitled to a preliminary injunction because he is not “likely to succeed on the merits,” for the reasons stated above, specifically, that he is subject to mandatory detention under § 1225(b) and that an immigration judge already evaluated and denied the merits of his release request. Petitioner received an evaluation of the merits of his request for bond, as if he had been detained under § 1226. [*See generally* Ex. 1: Order at 1-3] *See also* 8 C.F.R. § 1003.19 (regarding custody status redeterminations).

Further, Petitioner has not established that he will be unable to pursue an I-130 petition while detained or removed. [*See* R. 2: Motion at 76-77, 92.] *See generally* U.S. Citizenship and Immigration Services, I-130, Petition for Alien Relative, <https://www.uscis.gov/i-130> (noting form available for individuals whose relative “wishes to come to or stay in the United States”) (last visited Oct. 29, 2025).

To the extent Petitioner argues he is entitled to a preliminary injunction to prevent his transfer to another district, he provides no support for his claim that a transfer would automatically deprive this Court of jurisdiction. [*See* R. 2: Motion at 92.] “A district court’s jurisdiction generally is not defeated when a prisoner who has filed a § 2241 petition while present in the district is involuntarily removed from the district while the case is pending.” *White v. Lamanna*, 42 F. App’x 670, 671 (6th Cir. 2002); *see also Rumsfeld v. Padilla*, 124 S. Ct. 2711, 2721 (2004); *but see White v. Gilley*, Civil Action No. 6:23-CV-110-CHB, 2023 WL 5987206, at \*3 (E.D. Ky. Sept. 13, 2023) (explaining that “the habeas court’s ability to retain jurisdiction over a petition after the prisoner is transferred hinges upon the continued within-district presence

of an official who could grant habeas relief”) (citing *Ex parte Endo*, 65 S. Ct. 208 (1944)).

Petitioner’s immigration proceedings should be allowed to move forward in an orderly fashion.

**Conclusion**

This Court should deny Petitioner’s petition for habeas relief because he is lawfully detained.

Respectfully submitted,

PAUL C. MCCAFFREY  
ACTING UNITED STATES ATTORNEY

By: s/Kyle M. Melloan  
Kyle M. Melloan  
Assistant United States Attorney  
260 West Vine Street, Suite 300  
Lexington, Kentucky 40507-1612  
(859) 685-4828  
[kyle.melloan@usdoj.gov](mailto:kyle.melloan@usdoj.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on October 29, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

/s/Kyle M. Melloan  
Kyle M. Melloan  
Assistant United States Attorney