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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 Victor Kalid JACOBO RAMIREZ,
 16 Petitioners,
 17 v.
 18 Kristi NOEM et al.,
 19 Respondents.

Case No. 2:25-cv-02136-RFB-MDC

**Federal Respondents' Response to
Verified Petition for a Writ of Habeas
Corpus and Class Action Complaint,
ECF No. 1**

20
21 The Federal Respondents hereby submit this Response to the Verified Petition for a
22 Writ of Habeas Corpus and Class Action Complaint (ECF No. 1).

23 **INTRODUCTION**

24 Before 1996, the federal immigration laws required the detention of aliens who
25 presented at a port of entry but allowed aliens who were already unlawfully present in the
26 United States to obtain release pending removal proceedings. Congress passed the Illegal
27 Immigration Reform and Immigration Responsibility Act ("IIRIRA") specifically to stop
28

1 conferring greater privileges and benefits on aliens who enter the United States unlawfully as
2 compared to those who lawfully present themselves for inspection at a port of entry.

3 As relevant here, Congress enacted what is now 8 U.S.C. § 1225, which requires the
4 detention of any alien “who is an applicant for admission” and defines that term to encompass
5 any “alien present in the United States who has not been admitted” following inspection by
6 immigration authorities. 8 U.S.C. § 1225(a), (b)(2)(A). The statute makes no exception for
7 how far into the country the alien traveled or how long the alien managed to evade detection.
8 Unless the Secretary exercises the narrow and discretionary parole authority, mandatory
9 detention is the rule for aliens who have never been lawfully admitted.

10 There is no dispute that Petitioners are “applicant[s] for admission” under Section
11 1225(a). That provision specifically provides that any “alien present in the United States who
12 has not been admitted ... shall be deemed for purposes of this chapter an applicant for
13 admission.” § 1225(a)(1). Because Petitioners entered the country without inspection,
14 however, they were never “admitted” and thus unambiguously remain “applicant[s] for
15 admission.” Nor do Petitioners contest that they were never admitted into the United States.

16 A growing number of well-reasoned precedent supports this reading of the law. The
17 following decisions have found that, when the law is properly interpreted and applied, the
18 law supports the Federal Respondents’ positions in the case at bar: *Chavez v. Noem*, No. 25-
19 02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, No. 25-526,
20 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437, 2025 WL
21 3033967, at *1 (E.D. Wis. Oct. 30, 2025); *Barrios Sandoval v. Acuna*, No. 25-01467, 2025
22 WL 3048926 (W.D. La. Oct. 31, 2025); *Silva Oliveira v. Patterson*, No. 25-01463, 2025 WL
23 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 25-00168, 2025 WL 3131942
24 (E.D. Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, 1:25-cv-00177 (N.D. Tex. 2025);
25 *Montoya Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025);
26 *Altamiro Ramos v. Lyons*, 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025);
27 *Cortes Alonzo v. Noem*, No. 1:25-cv-01519, 2025 WL 3208284, at *1 (E.D. Cal. Nov. 17,
28 2025).

BACKGROUND

I. Statutory Framework

A. The Pre-IIRIRA Framework Gave Preferential Treatment to Aliens Unlawfully Present in the United States.

The Immigration and Nationality Act (“INA”), as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether the alien had physically “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); see *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). “Entry” referred to “any coming of an alien into the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) “dictated what type of [removal] proceeding applied” and whether the alien would be detained pending those proceedings, *Hing Sum v. Holder*, 602 F.3d at 1099.

At the time, the INA “provided for two types of removal proceedings: deportation hearing and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). An alien who arrived at a port of entry would be placed in “exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole.” *Hurtado*, 29 I. & N. Dec. at 223; see 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens in deportation proceedings, unlike those in exclusion proceedings, “were entitled to request release on bond.” *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

Thus, the INA’s prior framework distinguishing between aliens based on physical “entry” had

the ‘unintended and undesirable consequence’ of having created a statutory scheme where aliens who entered without inspection ‘could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,’ *including the right to request release on bond*, while aliens who had

1 'actually presented themselves to authorities for inspection ... were subject to
2 mandatory custody.

3 *Hurtado*, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y General of U.S.*
4 693 F.3d 408, 413 n.5 (2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No
5 104-469, pt. 1, at 225 (1996) (“House Rep.”) (“illegal aliens who have entered the United
6 States without inspection gain equities and privileges in immigration proceedings that are not
7 available to aliens who present themselves for inspection”).

8 **B. IIRIRA Eliminated the Preferential Treatment of Aliens Unlawfully
9 Present in the United States and Mandated Detention of all
10 “Applicants for Admission.”**

11 Congress discarded that regime through enactment of IIRIRA, Pub. L. 104-208, 110
12 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of “ensur[ing] that all
13 immigrants who have not been lawfully admitted, regardless of their legal presence in the
14 country, are placed on equal footing in removal proceedings under the INA.” *Torres v. Barr*,
15 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

16 To that end, IIRIRA replaced the prior focus on physical “entry” and instead made
17 lawful “admission” the governing touchstone. IIRIRA defined “admission” to mean “the
18 *lawful* entry of the alien into the United States after inspection and authorization by an
19 immigration officer.” 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the
20 immigration laws would no longer distinguish aliens based on whether they had managed to
21 evade detection and enter the country without permission. Instead, the “pivotal factor in
22 determining an alien’s status” would be “whether or not the alien has been *lawfully* admitted.”
23 House Rep., *supra*, at 226 (emphasis added); *Hing Sum v. Holder*, 602 F.3d at 1100 (similar).
24 IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of
25 proceedings into “removal proceedings.” *Hurtado*, 29 I. & N. Dec. at 223.

26 IIRIRA effected these changes through several provisions codified in Section 1225 of
27 Title 8:

28 **Section 1225(a):** Section 1225(a) codifies Congress’s decision to make lawful
“admission,” rather than physical entry, the touchstone. That provision states that an alien

1 “present in the United States who has not been admitted or who arrives in the United States”
2 “shall be deemed ... an applicant for admission”:

3 An alien present in the United States who has not been admitted or who arrives
4 in the United States (whether or not at a designated port of arrival and including
5 an alien who is brought to the United States after having been interdicted in
international or United States waters) shall be deemed for purposes of this
chapter an applicant for admission.

6 8 U.S.C. § 1225(a)(1) (emphasis added). “All aliens ... who are applicants for admission or
7 otherwise seeking admission or readmission to or transit through the United States” are
8 required to “be inspected by [an] immigration officer[.]” *Id.* § 1225(a)(3). The inspection by
9 the immigration officer is designed to determine whether the alien may be lawfully
10 “admitted” to the country or, instead, must be referred to removal proceedings.

11 **Section 1225(b):** IIRIRA also divided removal proceedings into two tracks—
12 expedited removal and non-expedited “Section 240” proceedings—and mandated that
13 applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

14 Section 1225(b)(1) provides for so-called “expedited removal proceedings,” *DHS v*
15 *Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of
16 aliens—those who (1) are “arriving in the United States,” or who (2) have “not been admitted
17 or paroled into the United States” and have “not affirmatively shown, to the satisfaction of
18 an immigration officer, that the alien has been physically present in the United States
19 continuously for the 2-year period immediately prior to the date of the determination of
20 inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration officer
21 shall “order the alien removed from the United States without further hearing or review unless
22 the alien indicates either an intention to apply for asylum ... or a fear of persecution.” *Id.*
23 § 1225(b)(1)(A)(i). In that event, the alien “shall be detained pending a final determination of
24 credible fear or persecution and, if found not to have such fear, until removed.” *Id.*
25 § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). An alien processed for expedited
26 removal who does not indicate an intent to apply for a form of relief from removal is likewise
27 detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R.
28 § 235.3(b)(2)(iii).

1 Section 1225(b)(2) is a “catchall provision that applies to all applicants for admission
2 not covered by [subsection (b)(1)].” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It requires
3 that those aliens be detained pending Section 240 removal proceedings:

4 Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant
5 for admission, if the examining immigration officer determines that an alien
6 seeking admission is not clearly and beyond a doubt entitled to be admitted,
the alien *shall be detained* for a proceeding under section 1229a of this title
[Section 240].

7 8 U.S.C. § 1225(b)(2)(A) (emphasis added).¹ See 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section
8 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2)
9 “mandate[s] detention of aliens throughout the completion of applicable proceedings and not
10 just at the moment those proceedings begin”).

11 While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA
12 grants DHS discretion to exercise its parole authority to temporarily release an applicant for
13 admission, but “only on a case-by-case basis for urgent humanitarian reasons or significant
14 public benefit.” 8 U.S.C. § 1182(d)(5)(A). Parole, however, “shall not be regarded as
15 admission of the alien.” *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority).
16 Moreover, when the Secretary determines that “the purposes of such parole ... been served,”
17 the “alien shall ... be returned to the custody from which he was paroled” and be “dealt with
18 in the same manner as that of any other applicant for admission to the United States.” 8
19 U.S.C. § 1182(d)(5)(A).

20 **Section 1226:** IIRIRA also created a separate authority addressing the arrest
21 detention, and release of aliens generally (versus applicants for admission specifically). See 8
22 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for
23 example, lawfully enter the country but overstay or otherwise violate the terms of their visas
24 or are later determined to have been improperly admitted. The statute provides that “[o]n a
25 warrant issued by the Attorney General, an alien may be arrested and detained pending a
26

27 ¹ Subsection (b)(2) does not apply to (1) aliens subject to expedited removal, (2) crewman, (3)
28 stowaways, or (4) aliens who “arriv[e] on land (whether or not at a designated port of arrival)
from a foreign territory contiguous to the United States.” 8 U.S.C. § 1225(b)(2)(B)-(C).

1 decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a)
2 Detention under this provision is generally discretionary: The Attorney General “may” either
3 “continue to detain the arrested alien” or release the alien on bond or conditional parole. *Id.*
4 § 1226(a)(1)-(2).²

5 That “default rule,” however, does not apply to certain criminal aliens who are being
6 released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8
7 U.S.C. § 1226(c). Section 1226(c) provides that “[t]he Attorney General shall take into
8 custody” certain classes of criminal aliens—those who are inadmissible or deportable because
9 the alien (1) “committed” certain offenses delineated in 8 U.S.C. §§ 1182 and 1227; or (2)
10 engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The Executive must detain
11 these aliens “when the alien is released, without regard to whether the alien is released on
12 parole, supervised release, or probation, and without regard to whether the alien may be
13 arrested or imprisoned against for the same offense.” *Id.*

14 Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No.
15 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for) aliens
16 who (1) are inadmissible because they are physically present in the United States without
17 admission or parole, have committed a material misrepresentation or fraud, or lack required
18 documentation; and (2) are “charged with, arrested for, [] convicted of, admit[] having
19 committed, or admit[] committing acts which constitute the essential elements of” certain
20 listed offenses. 8 U.S.C. § 1226(c)(1)(E).

21 **C. DHS Concluded That Section 1225(b)(2) Requires Detention of All**
22 **Applicants for Admission.**

23 For many years after IIRIRA, immigration judges treated aliens who entered the
24 United States without admission and were later detained away from the border as being
25 subject to discretionary detention under 8 U.S.C. § 1226(a) rather than mandatory detention
26 under 8 U.S.C. § 1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6.

27 _____
28 ² Conditional parole under Section 1226(a) is broader than parole under Section
1182(d)(5)(A).

1 On July 8, 2025, DHS “revisited its legal position on detention and release
2 authorities”³ and issued interim guidance that brought the Executive’s practices in line with
3 the statute’s plain text. Specifically, DHS concluded that all aliens who enter the country
4 without being admitted or who otherwise arrive in the United States are “subject to detention
5 under INA § 235(b) [8 U.S.C. § 1225(b)] and may not be released from ICE custody except
6 by INA § 212(d)(5) parole.”⁴ As a result, the “only aliens eligible for a custody determination
7 and release on recognizance, bond, or other conditions under the INA § 236(a) are aliens
8 admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C. §
9 1127].”⁵

10 The Board of Immigration Appeals soon adopted this interpretation in *Hurtado*. The
11 Board concluded that Section 1225(b)(2)’s mandatory detention regime applies to *all* aliens
12 who entered the United States without inspection and admission:

13 Aliens ... who surreptitiously cross into the United States remain applicants for
14 admission until and unless they are lawfully inspected and admitted by an
15 immigration officer. Remaining in the United State for a lengthy period of time
following entry without inspection, by itself, does not constitute an
“admission.”

16 29 I. & N. Dec. at 228; *see also id.* at 225 (“Immigration Judges lack authority to hear bond
17 requests or to grant bond to aliens ... who are present in the United States without
18 admission”).

19 **II. Factual Background and Procedural History**

20 The basic facts of this case are not in dispute. Petitioners are aliens that entered the
21 United States without being inspected or admitted. *See* ECF No. 1, ¶¶ 18–19, 46–65; ECF No.
22 15, at 9. DHS initiated removal proceedings charging them with being present in the United
23 States without admission. *Id.*

24
25
26 ³ *See* ICE Memo: Interim Guidance Regarding Detention Authority for Applications for
27 Admission, [https://www.aila.org/ice-memo-interim-guidance-regarding-detention-
authority-for-applications-for-admission](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission) (last visited Dec. 2, 2025).

28 ⁴ *Id.*

⁵ *Id.*

1 DHS detained each alien for removal proceedings under 8 U.S.C. § 1229a and
2 determined they were subject to mandatory detention. ECF No. 1, ¶¶ 52, 55–56, 64–65
3 While Jacobo Ramirez was initially released on bond because of an error from the IJ, the IJ
4 subsequently revoked Jacobo Ramirez’s bond after the BIA issued its precedential decision in
5 *Hurtado*, which provided guidance to the Immigration Courts and allowed the IJ to correct its
6 error. ECF No. 15, at 9. Guevara Alcantar, on the other hand, has not had a custody
7 redetermination hearing because the Immigration Courts do not have jurisdiction to do so.
8 *Id.* at 9–10.

9 Petitioners filed a habeas petition and class action complaint challenging the United
10 States’ interpretation of the detention provisions at § 1225(b)(2). ECF No. 1. Petitioners
11 brought their claim on their behalf and on behalf of a putative class. *See e.g.*, ECF No. 1, ¶ 73–
12 74, 82–85. Petitioners seek a preliminary injunction as to themselves, requesting that Jacobo
13 Ramirez be released unless his previously granted bond is reinstated and Guevara Alcantar
14 be released unless he is provided with a bond hearing. ECF No. 18, at 23. Petitioners also
15 moved for class certification of their putative class. ECF No. 15.

16 STANDARD OF REVIEW

17 In a petition for a writ of habeas corpus, the petitioner is challenging the legality of his
18 restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the
19 confinement is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941). Specifically, here,
20 Petitioners challenge their temporary civil immigration detention pending their removal
21 proceeding.

22 ARGUMENT

23 I. Section 1225(b)(2) Mandates Detention of Aliens, Like Petitioners, Who Are 24 Present in the United States Without Having Been Lawfully Admitted.

25 Under the plain language of Section 1225(b)(2), DHS is required to detain all aliens,
26 like Petitioners, who are present in the United States without admission and are subject to
27 removal proceedings—regardless of how long the alien has been in the United States or how
28 far from the border they ventured. That unambiguous language resolves this case. *See Little*

1 *Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) (“Our
2 analysis begins and ends with the text.”).

3 **A. The Plain Language of Section 1225(b)(2) Mandates Detention of Applicants
4 for Admission.**

5 Section 1225(a) defines “applicant for admission” to encompass an alien who either
6 “arrives in the United States” or who is “present in the United States who has not been
7 admitted.” 8 U.S.C. § 1225(a)(1). And “admission” under the INA means not physical entry,
8 but lawful entry after inspection by immigration authorities. 8 U.S.C. § 1101(a)(13)(A). Thus,
9 an alien who enters the country without permission is and remains an applicant for admission,
10 regardless of the duration of the alien’s presence in the United States or the alien’s distance
11 from the border.

12 In turn, Section 1225(b)(2) provides that “an alien who is an applicant for admission”
13 “shall be detained” pending removal proceedings if the “alien seeking admission is not clearly
14 and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1125(b)(2)(A) (emphasis added).
15 The statute’s use of the term “shall” makes clear that detention is mandatory, *see Lexecon Inc.*
16 *v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998), and the statute makes no
17 exception for the duration of the alien’s presence in the country or where in the country he is
18 located. Therefore, the statute’s plain text mandates that DHS detain all “applicants for
19 admission” who do not fall within one of its exceptions.

20 Petitioners fall squarely within the statutory definition. They are “present in the United
21 States,” and there is no dispute that they have “not been admitted.” 8 U.S.C. § 1225(a)
22 Moreover, Petitioners cannot—and did not—establish that they are “clearly and beyond a
23 doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Therefore, Petitioners “shall be
24 detained for a proceeding under [8 U.S.C. § 1229a].”

25 **B. Section 1225(b)(2)’s Reference to Aliens “Seeking Admission” Does Not
26 Narrow Its Scope.**

27 The statute itself makes clear that an alien who is an “applicant for admission” is
28 necessarily “seeking admission.” Moreover, aliens like Petitioners, who are identified by
immigration authorities as unlawfully present, and who do not choose to depart from the

1 United States voluntarily, are “seeking admission” under any interpretation of that phrase
2 particularly since they could only remain in the United States by gaining admission.

3 **1.** Section 1225(b)(2) requires the detention of an “applicant for admission, if the
4 examining officer determines that [the] alien *seeking admission* is not clearly and beyond a
5 doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory
6 text and context show that being an “applicant for admission” is a means of “seeking
7 admission”—no additional affirmative step is necessary. In other words, every “applicant for
8 admission” is inherently and necessarily “seeking admission,” at least absent a choice to
9 pursue voluntary withdrawal or voluntary departure.

10 Section 1225(a) provides that “[a]ll aliens ... who are applicants for admission *or*
11 *otherwise* seeking admission or readmission ... shall be inspected.” 8 U.S.C. § 1225(a)(3)
12 (emphasis added). The word “[o]therwise’ means ‘in a different way or manner[.]’” *Texas*
13 *Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015)
14 (quoting Webster’s Third New International Dictionary 1598 (1971)); *see also Att’y Gen. of*
15 *United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds*
16 *Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) (“or otherwise” means “the first
17 action is a subset of the second action”); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th
18 Cir. 2019). Being an “applicant for admission” is thus a particular “way or manner” of
19 seeking admission, such that an alien who is an “applicant for admission” is “seeking
20 admission” for purposes of Section 1252(b)(2)(A). No separate affirmative act is necessary.
21 *See Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 (BIA 2012) (“[M]any people who are not
22 *actually* requesting permission to enter the United States in the ordinary sense are nevertheless
23 deemed to be ‘seeking admission’ under the immigration laws”).

24 This reading is consistent with the everyday meaning of the statutory terms. One may
25 “seek” something without “applying” for it—for example, one who is “seeking” happiness is
26 not “applying” for it. But one *applying* for something is necessarily *seeking* it. *Compare*
27 Webster’s New World College Dictionary 69 (4th ed.) (“apply” means “To make a formal
28 request (*to* someone *for* something)”), *with id.* at 1299 (“seek” means “to request, ask for”).

1 For example, a person who is “applying” for admission to a college or club is “seeking”
2 admission to the college or club. *See* The American Heritage Dictionary of the English
3 Language 63 (1980) (“American Heritage Dictionary”) (“apply” means “[t]o request or *seek*
4 employment, acceptance, or *admission*”) (emphasis added). Likewise, an alien who is
5 “applying” for admission to the United States (*i.e.*, an “applicant for admission”) is “seeking
6 admission” to the United States.

7 None of this is to say, however, that “seeking admission” has no meaning beyond
8 “applicant for admission.” As Section 1225(a)(3) shows, being an “applicant for admission”
9 is only *one* “way or manner” of “seeking admission,”—not the exclusive way. For example,
10 lawful permanent residents returning to the United States are not “applicants for admission”
11 because they are already admitted, but they still may be “seeking admission.” *See* 8 U.S.C.
12 § 1103(A)(13)(C). But for purposes of Section 1225(b)(2) and its regulation of “applicants for
13 admission,” the statute unambiguously provides that an alien who is an “applicant for
14 admission” is “seeking admission,” even if the alien is not engaged in some separate
15 affirmative act to obtain lawful admission.

16 To be sure, the Government previously operated under a narrower understanding of
17 Section 1225(b)(2)(A). But past practice does not justify disregard of clear statutory language.
18 A court must always interpret the statute “as written,” *Henry Schein, Inc. v. Archer & White*
19 *Sales, Inc.*, 586 U.S. 63, 68 (2019), and here the statute as written requires detention of *any*
20 applicant for admission, regardless of whether the applicant is taking affirmative steps toward
21 admission.

22 **2.** The district reasoned that “seeking admission” must have independent
23 meaning when used in Section 1225(b)(2)(A), lest it be redundant with the phrase “applicant
24 for admission.” But “[t]he canon against surplusage is not an absolute rule.” *Rimini St., Inc.*
25 *v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019). “Redundancies are common in statutory
26 drafting—sometimes in a congressional effort to be doubly sure, sometimes because of
27 congressional inadvertence or lack of foresight, or sometimes simply because of the
28 shortcomings of human communication.” *Barton v. Barr*, 590 U.S. 222, 223 (2020). Thus

1 “[t]he Court has often recognized that sometimes the better overall reading of a statute
2 contains some redundancy.” *Id.* For that reason, “the surplusage canon ... must be applied
3 with statutory context in mind,” *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir.
4 2017), and “redundancy in one portion of a statute is not a license to rewrite or eviscerate
5 another portion of the statute contrary to its text.” *Barton*, 590 U.S. at 223.

6 That is the case here. Under a straightforward reading of the statute, being an
7 “applicant for admission” is “seeking admission.” Although that reading may lead to some
8 redundancy in Section 1225(b)(2)(A), that is “not a license to rewrite” Section 1225 “contrary
9 to its text.” *Barton*, 590 U.S. at 223; see *Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022)
10 (“The principle [that drafter do repeat themselves carries extra weight where ... the arguably
11 redundant words that the drafters employed ... are functional synonyms”). And that is
12 especially true, where that re-writing would be so clearly contrary to Congress’s objective in
13 passing the law.

14 3. Even if “seeking admission” required some separate affirmative conduct by the
15 alien, an applicant for admission who attempts to avoid removal from the United States,
16 rather than trying to voluntarily depart, is by any definition “seeking admission.”

17 Section 1225(b)(2)(A) applies to an alien who is present in the United States
18 unlawfully, even for years. Although the alien may not have been affirmatively seeking
19 admission during those years of illegal presence, Section 1225(b)(2) is not concerned with the
20 alien’s pre-inspection conduct. Rather, the statute’s use of present tense language (“seeking”
21 and “determines”) shows that its focus is a specific point in time—when “the examining
22 immigration officer” is making a “determin[ation]” regarding the alien’s admissibility. 8
23 U.S.C. § 1225(b)(2)(A). At *that* point, the alien is “seeking”—*i.e.*, presently “endeavor[ing]
24 to obtain,” American Heritage Dictionary, *supra*, at 1174—admission into the United States,
25 if it were otherwise, the applicant would not attempt to show that he is “clearly and beyond
26 a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). That inference is confirmed by
27 Section 1225(a)(4), which authorizes an alien to voluntarily “depart immediately from the
28 United States.” An applicant who forgoes that statutory option and instead endeavors to

1 prove admissibility and opts for Section 240 removal proceedings—proceedings in which the
2 alien has the “burden of establishing that [he] is clearly and beyond a doubt entitled to be
3 admitted,” *id.* § 1229a(c)(2)(A)—is plainly “endeavor[ing] to obtain” admission to the United
4 States. American Heritage Dictionary, *supra*, at 1174.

5 Here, Petitioner Jacobo-Ramirez opted to remain in removal proceedings, rather than
6 depart the country. ECF No. 1, ¶ 52–56. And Petitioner Guevara-Alcantar not only is in
7 removal proceedings but also has a pending U-Visa application. *Id.* ¶ 60–64. These facts bring
8 Petitioners squarely within the scope of § 1225(b)(2)(A) because both Petitioners are “seeking”
9 admission” by virtue of their efforts to obtain admission to the United States.

10 A contrary view would make mandatory detention turn on the fortuity happenstance
11 of when an alien attempts to prove admissibility. *See United States v. Wilson*, 503 U.S. 329,
12 334 (1992) (courts must not “presume lightly” that statute’s application will turn on
13 “arbitrary” issue of timing). Aliens subject to Section 1225(b)(2) must prove admissibility at
14 one of two stages—first, at the time of inspection, 8 U.S.C. § 1225(b)(2)(A); and second,
15 during Section 240 removal proceedings if the alien cannot show admissibility “clearly and
16 beyond a doubt” at the time of inspection, *id.* § 1229a(c)(2)(A) (alien has “burden of
17 establishing that [he] is clearly and beyond a doubt entitled to be admitted”). The required
18 showing is the same—but on the lower court’s reading, detention is required only of aliens
19 who attempt to show admissibility at the time of inspection, but not of those who wait until
20 removal proceedings are commenced. There is “no reason why Congress would desire” the
21 applicability of something so significant as mandatory detention “to depend on the timing”
22 of when an alien attempts to show admissibility, *Wilson*, 503 U.S. at 334—particularly given
23 how susceptible that rule is to manipulation by the alien.

24 **C. Section 1226(c) Does Not Support Petitioners’ Reading.**

25 Although Section 1226(c) and Section 1225(b)(2) overlap for some aliens, Section
26 1226(c) has substantial independent effect beyond aliens that entered without admission, and
27 mere overlap is no basis for re-writing clear statutory text.
28

1 1. To begin, there is no colorable argument that the Government’s interpretation
2 of Section 1225(b)(2)(A) renders Section 1226(a)’s discretionary detention authority
3 superfluous. Section 1226(a) authorizes the Executive to “arrest[] and detain[]” *any* “alien”
4 pending removal proceedings but provides that the Executive also “may release the alien” on
5 bond or conditional parole. 8 U.S.C. § 1226(a). Section 1226(a) provides the detention
6 authority for the significant group of aliens who are *not* “applicants for admission” subject to
7 Section 1225(b)(2)(A)—specifically, aliens who have been admitted to the United States but
8 are now removable. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645
9 (2012) (“the specific governs the general”). For example, the detention of any of the millions
10 of alien who have overstayed their visas will be governed by Section 1226(a), because those
11 aliens (unlike Petitioner) *were* lawfully admitted to the United States.

12 2. Likewise, the Government’s reading of Section 1225(b)(2)(A) does not render
13 Section 1226(c) superfluous. As described above, Section 1226(c) is the exception to Section
14 1226(a)’s discretionary detention regime. It requires the Executive to detain “any alien” who
15 is deportable or inadmissible for having committed specified offenses or engaged in terrorism-
16 related actions. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Like Section 1226(a), subsection (c) applies
17 to significant groups of aliens *not* encompassed by Section 1225(b)(2), such as visa overstayers

18 Most obvious, Section 1226(c)(1) requires the Executive to detain aliens who *have been*
19 *admitted* to the United States and are now “deportable.” *See* 8 U.S.C. § 1226(c)(1)(B)-(C). By
20 contrast, Section 1225(b)(2) has no application to admitted aliens. Next, Section 1226(c)(1)
21 requires detention of aliens who are “inadmissible” on certain grounds, *see* 8 U.S.C.
22 § 1226(c)(1)(A), (D), (E). Those provisions, too, sweep more broadly than Section 1225(b)(2),
23 because they cover aliens who are inadmissible but were erroneously admitted. *See* 8 U.S.C.
24 § 1227(a), (a)(1)(A) (providing for the removal of “[a]ny alien ... *in and admitted to the United*
25 *States,*” including “[a]ny alien who at the time of entry or adjustment of status was within
26 one or more of the classes of aliens *inadmissible* by the law existing at the time....” (emphasis
27 added)). In this respect, Section 1226(c)(1) applies to admitted aliens, who are not covered
28 by Section 1225(b)(2).

1 Finally, as noted above, Section 1225(b)(2)(A) does “not apply to an alien ... who is a
2 crewman,” “a stowaway,” or “is arriving on land ... from a foreign territory contiguous to
3 the United States.” 8 U.S.C. 1225(b)(2)(B)-(C). Section 1226(c) would apply to those aliens
4 too, if they were inadmissible or deportable on one of the specified grounds.

5 Nor does the Government’s reading render superfluous Congress’s recent amendment
6 of Section 1226(c) through the Laken Riley Act. That law requires mandatory detention of
7 criminal aliens who are “inadmissible” under 8 U.S.C. § 1182(a)(6)(A), (a)(6)(C), or (a)(7).
8 See 8 U.S.C. § 1226(c)(E)(i)-(ii). As with the other grounds of “inadmissibility” listed in
9 Section 1226(c), both (a)(6)(C) and (a)(7) apply to inadmissible aliens who were admitted in
10 error, as well as those never admitted. That means there is no surplusage, as Section
11 1225(b)(2) has no application to aliens who were admitted in error.

12 To be sure, the Laken Riley Act’s application to aliens who are inadmissible under
13 §1182(a)(6)(A)—for being “present ... without being admitted or paroled”—overlaps with
14 Section 1225(b)(2)(A). Both statutes mandate detention of “applicants for admission” who
15 fall within the specified grounds of inadmissibility. But again, “[r]edundancies are common
16 in statutory drafting,” and are “not a license to rewrite or eviscerate another portion of the
17 statute contrary to its text.” *Barton*, 590 U.S. at 223.

18 Besides, Section 1226(c) does independent work, despite the overlap, by narrowing the
19 circumstances under which aliens may be *released* from mandatory detention. Recall that, for
20 aliens subject to mandatory detention under Section 1225(b)(2), IIRIRA allows the Executive
21 to “temporarily” parole them “on a case-by-case basis for urgent humanitarian reasons or
22 significant public benefit.” 8 U.S.C. § 1182(b)(5). Section 1226(c)(1) takes that option off the
23 table for aliens who have also committed the offenses or engaged in the conduct specified in
24 Section 1226(c)(1)(A)-(E). As to those aliens, Section 1226(c) *prohibits* their parole and
25 authorizes their release only if “necessary to provide protection to” a witness or similar person
26 “and the alien satisfies the Attorney General that the alien will not pose a danger to the safety
27 of other persons or of property and is likely to appear for any scheduled proceeding.” 8 U.S.C.
28 § 1226(c)(4). So even as to aliens who are already subject to mandatory detention under

1 Section 1225(b)(2), Section 1226(c) is not superfluous: It significantly narrows the Executive's
2 parole power with respect to those aliens.

3 In fact, Congress's desire to further limit the parole power with respect to criminal
4 aliens was one of the principal reasons that it enacted the Laken Riley Act. The Act was
5 adopted in the wake of a heinous murder committed by an inadmissible alien who was
6 "paroled into this country through a shocking abuse of that power," 171 Cong. Rec. at H278
7 (daily ed. Jan. 22, 2025) (Rep. McClintock), and an abdication of the Executive's
8 "fundamental duty under the Constitution to defend its citizens," 171 Cong. Rec. at H269
9 (Rep. Roy). The Act thus reflects a "congressional effort to be double sure," *Barton*, 590 U.S.
10 at 239, that unadmitted criminal aliens are not paroled into the country through an abuse of
11 the Secretary's exceptionally narrow parole authority. It does not suggest congressional
12 uncertainty about Section 1225(b)(2)(A)'s detention mandate, but rather congressional desire
13 to shut down a parole loophole that allowed the Government to circumvent that mandate.

14 **D. Petitioners' Interpretation Subverts Congressional Intent.**

15 Petitioners' reading is not only textually baseless; it also subverts IIRIRA's express
16 goal of eliminating preferential treatment for aliens who enter the country unlawfully. *See*
17 *King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to result
18 "that Congress designed the Act to avoid"); *New York State Dep't of Soc. Servs. v. Dublino*, 413
19 U.S. 405, 419-20 (1973) ("We cannot interpret federal statutes to negate their own stated
20 purposes.").

21 Recall that one of IIRIRA's express objectives was to dispense with the perverse pre-
22 1996 regime under which aliens who entered the United States unlawfully were given
23 "equities and privileges in immigration proceedings that [were] not available to aliens who
24 present[ed] themselves for inspection" at the border, including the right to secure release on
25 bond. House Rep., *supra*, at 225. Petitioners' interpretation would restore the regime
26 Congress sought to discard: It would require detention for those who present themselves for
27 inspection at the border in compliance with law, yet grant bond hearings to aliens who evade
28 immigration authorities, enter the United States unlawfully, and remain here unlawfully for

1 years or even decades until an involuntary encounter with immigration authorities. That is
2 *exactly* the perverse preferential treatment for illegal entrants that IIRIRA sought to eradicate.
3 This Court should reject any interpretation that is so transparently subversive of Congress’s
4 stated objective. *King*, 576 U.S. at 492.

5 The Government’s reading, by contrast, not only adheres to the statute’s text and
6 congressional intent, but it also brings the statute in line with the longstanding “entry fiction”
7 that courts have employed for well over a century to avoid giving favorable treatment to aliens
8 who have not been lawfully admitted. Under that doctrine, all “aliens who arrive at a port of
9 entry ... are treated for due process purposes as if stopped at the border,” and that also
10 includes aliens “paroled elsewhere in the country for years pending removal” who have
11 developed significant ties to the country. *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy*
12 *v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). For example, *Kaplan v. Tod*, 267 U.S.
13 228 (1925), held that an alien who was paroled for nine years into the United States was still
14 “regarded as stopped at the boundary line” and “had gained no foothold in the United States.”
15 *Id.* at 230; *see also Mezei*, 345 U.S. at 214-15. The “entry fiction” thus prevents favorable
16 treatment of aliens who have not been admitted—including those who have “entered the
17 country clandestinely.” *The Yamataya v. Fisher*, 189 U.S. 86, 100 (1903). IIRIRA sought to
18 implement that same principle with respect to detention. The Government’s reading is true
19 to that purpose; the district court’s reading subverts it.

20 **E. The Supreme Court’s Decision in *Jennings* Does Not Undermine the**
21 **Government’s Interpretation.**

22 The Government’s interpretation is consistent with the Supreme Court’s decision in
23 *Jennings*, 583 U.S. 281 (2018). *Jennings* reviewed a Ninth Circuit decision that applied
24 constitutional avoidance to “impos[e] an implicit 6-month time limit on an alien’s detention”
25 under Sections 1225(b) and 1226. 583 U.S. at 292. The Court held that neither provision is
26 so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need
27 to—resolve the precise groups of aliens subject to Section 1225(b) or Section 1226.
28 Nonetheless, consistent with the Government’s reading, the Court recognized in its

1 description of Section 1225(b) that “Section 1225(b)(2) serves as a catchall provision that
2 applies to all applicants for admission not covered by §1225(b)(1).” *Id.* at 287.

3 Some lower courts have rejected the Government’s interpretation based on language
4 in *Jennings* where the Court described the detention authorities in Section 1225(b) and Section
5 1226, and in that context summarized Section 1226 as applying to aliens “already in the
6 country”:

7 In sum, U.S. immigration law authorizes the Government to detain certain
8 aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also
9 authorizes the Government to detain certain aliens already in the country
pending the outcome of removal proceedings under §§ 1226(a) and (c).

10 583 U.S. at 289; *see also id.* at 288 (characterizing Section 1226 as applying to aliens “once
11 inside the United States”). The Government’s interpretation is perfectly consistent with that
12 language: it allows that Section 1226 is the exclusive source of detention authority for the
13 substantial category of aliens who are were admitted into the United States (and so are “in
14 the country”) but are now removable. Nothing in the quoted language from *Jennings* suggests
15 that Section 1226 is the *sole* detention authority that applies to “aliens already in the country.”
16 Indeed, the passage’s use of the word “certain” conveys the opposite. At a minimum, the
17 quoted language is ambiguous and such uncertain language is insufficient to displace the
18 statute’s plain text and the manifest congressional purpose, especially as no part of the holding
19 in *Jennings* required it to decide the precise scope of Sections 1225(b) and 1226.

20 **II. Petitioners’ Temporary Detention Does Not Offend Due Process**

21 The Supreme Court “has long held that an alien seeking initial admission to the
22 United States requests a privilege and has no constitutional rights regarding his application,
23 for the power to admit or exclude aliens is a sovereign prerogative.” *Landon v. Plasencia*, 459
24 U.S. 21, 32 (1982) (citing cases). Because applicants for admission have not been admitted
25 to the United States, their constitutional rights are truncated: “[w]hatever the procedure
26 authorized by Congress is, it is due process as far as an alien denied entry is concerned.”
27 *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *U.S. ex rel. Knauff*
28 *v. Shaughnessy*, 338 U.S. 537, 544 (1950)); *see also Thuraissigiam*, 591 U.S. at 140 (under the

1 Due Process Clause, applicants for admission have “only those rights regarding admission
2 that Congress has provided by statute”). Here, “the procedure authorized by Congress” in §
3 1225(b) and related provisions expressly exclude the possibility of a bond hearing.
4 *Shaughnessy*, 345 U.S. at 212.

5 As mentioned above, Congress broadly crafted “applicants for admission” to include
6 undocumented aliens present within the United States like Petitioners. *See* 8 U.S.C. §
7 1225(a)(1). And Congress directed aliens like the Petitioners to be detained during their
8 removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 (“Read most
9 naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until
10 certain proceedings have concluded.”). In so doing, Congress made a legislative judgment to
11 detain undocumented aliens during removal proceedings, as they—by definition—have
12 crossed borders and traveled in violation of United States law. That is the prerogative of the
13 legislative branch serving the interest of the government and the United States.

14 The Supreme Court has recognized this profound interest. *See Shaughnessy*, 345 U.S.
15 at 210 (“Courts have long recognized the power to expel or exclude aliens as a fundamental
16 sovereign attribute exercised by the Government's political departments largely immune
17 from judicial control.”). And with this power to remove aliens, the Supreme Court has
18 recognized the United States' longtime Constitutional ability to detain those in removal
19 proceedings. *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of
20 this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)
21 (“Proceedings to exclude or expel would be vain if those accused could not be held in
22 custody pending the inquiry into their true character, and while arrangements were being
23 made for their deportation.”); *Demore v. Kim*, 538 U.S. 510, at 531 (2003) (“Detention
24 during removal proceedings is a constitutionally permissible part of that process.”); *Jennings*,
25 583 U.S. at 286 (“Congress has authorized immigration officials to detain some classes of
26 aliens during the course of certain immigration proceedings. Detention during those
27 proceedings gives immigration officials time to determine an alien's status without running
28

1 the risk of the alien's either absconding or engaging in criminal activity before a final
2 decision can be made.”).

3 In another immigration context (aliens already ordered removed awaiting their
4 removal), the Supreme Court has explained that detaining these aliens less than six months
5 is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this
6 presumptive constitutional limit has been subsequently distinguished as perhaps
7 unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court
8 explained Congress was justified in detaining aliens during the entire course of their removal
9 proceedings who were convicted of certain crimes. *Demore*, 538 U.S. at 513. In that case,
10 similar to undocumented aliens like Petitioners, Congress provided for the detention of
11 certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court
12 emphasized the constitutionality of the “definite termination point” of the detention, which
13 was the length of the removal proceedings. *Id.* at 512 (“In contrast, because the statutory
14 provision at issue in this case governs detention of deportable criminal aliens *pending their*
15 *removal proceedings*, the detention necessarily serves the purpose of preventing the aliens from
16 fleeing prior to or during such proceedings. Second, while the period of detention at issue in
17 *Zadvydas* was “indefinite” and “potentially permanent,” *id.*, at 690–691, 121 S.Ct. 2491, the
18 record shows that § 1226(c) detention not only has a definite termination point, but lasts, in
19 the majority of cases, for less than the 90 days the Court considered presumptively valid in
20 *Zadvydas*.”).⁶ In light of Congress’s interest in dealing with illegal immigration by keeping
21 specified aliens in detention pending the removal period, the Supreme Court dispensed of
22 any Due Process concerns without engaging in the “*Mathews v. Eldridge* test” *See id. generally.*

23 Likewise, in the case at bar, Petitioners’ temporary detention pending their removal
24 proceedings does not violate Due Process. Petitioners have been detained for a few months
25 as their *process* unfolds. The procedure Congress has established for applicants for admission
26 like Petitioners does not include the provision of bond hearings or the right to be released

27 _____
28 ⁶ In 2018 the Court again highlighted the significance of a “definite termination point” for
detention of certain aliens pending removal. *See Jennings*, 583 U.S. at 304.

1 during their removal proceedings. Instead, for applicants for admission such as Petitioners,
2 “if the examining immigration officer determines that [he] is not clearly and beyond a doubt
3 entitled to be admitted, the alien *shall* be detained for a proceeding under section 1229a.”
4 U.S.C. § 1225(b)(2)(A). That is, Congress has provided that Petitioners shall be detained for
5 removal proceedings before an immigration judge, which afford the alien a host of
6 procedural protections. *See* 8 U.S.C. § 1229a.

7 More than a century of precedent from the Supreme Court confirms that applicants
8 for admission are treated differently under the law for due process purposes from other
9 categories of detained aliens. *See, e.g., Zadvydas*, 533 U.S. at 693 (“The distinction between
10 an alien who has effected an entry into the United States and one who has never entered
11 runs throughout immigration law.”). In the relevant provisions of the INA, Congress has
12 decided to treat applicants for admission differently, in order to effectuate their exclusion
13 from the United States while considering whether to admit them, by holding them in
14 detention during those ongoing proceedings. Unlike admitted aliens placed in removal
15 proceedings and detained under 8 U.S.C. § 1226, applicants for admission are “request[ing]
16 a privilege,” *Landon*, 459 U.S. at 32, and therefore “stand[] on a different footing,”
17 *Shaughnessy*, 345 U.S. at 212-13.

18 In sum, the constitutional due process rights of applicants for admission are limited
19 to the process that Congress chooses to provide. In § 1225(b) and related provisions,
20 Congress has afforded applicants for admission a variety of protections, but has excluded
21 the possibility of release pursuant to bond hearings. *See Jennings*, 583 U.S. at 297
22 (“[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.”).
23 The United States thus respectfully maintains Petitioners have not been deprived of Due
24 Process in light of the aforementioned precedent.

25 **III. The Court Lacks Jurisdiction to Entertain Petitioners’ Action under 8 U.S.C. §** 26 **1252**

27 As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Petitioners’
28 claims. Accordingly, Petitioners are unable to show a likelihood of success on the merits.

1 First, Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus
2 jurisdiction, to review “any cause or claim by or on behalf of an alien arising from the
3 decision or action by the Attorney General to [1] *commence proceedings*, [2] *adjudicate cases*,
4 or [3] *execute removal orders against any alien under this chapter*.”⁷ 8 U.S.C. § 1252(g)
5 (emphasis added). Section 1252(g) eliminates jurisdiction “[e]xcept as provided in this
6 section and notwithstanding any other provision of law (statutory or nonstatutory),
7 including section 2241 of title 28, United States Code, or any other habeas corpus
8 provision, and sections 1361 and 1651 of such title.”⁸ Except as provided in Section 1252,
9 courts “cannot entertain challenges to the enumerated executive branch decisions or
10 actions.” *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

11 Section 1252(g) also bars district courts from hearing challenges to the method by
12 which the Secretary of Homeland Security chooses to commence removal proceedings,
13 including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d
14 1194, 1203 (11th Cir. 2016) (“By its plain terms, [Section 1252(g)] bars us from questioning
15 ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision to
16 take [plaintiff] into custody and to detain him during removal proceedings”).

17 Petitioners’ claim stems from their detention during removal proceedings. That
18 detention arises from the decision to commence such proceedings against them. *See, e.g.*,
19 *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4
20 (C.D. Cal. Sept. 15, 2008) (“The decision to detain plaintiff until his hearing before the
21 Immigration Judge arose from this decision to commence proceedings[.]”); *Wang v. United*
22 *States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010);
23 *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. §

24 ⁷ Much of the Attorney General’s authority has been transferred to the Secretary of
25 Homeland Security and many references to the Attorney General are understood to refer to
the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005)

26 ⁸ Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat. 3009. In
27 2005, Congress amended § 1252(g) by adding “(statutory or nonstatutory), including section
28 2241 of title 28, United States Code, or any other habeas corpus provision, and sections
1361 and 1651 of such title” after “notwithstanding any other provision of law.” REAL ID
Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

1 1252(g) and (b)(9) deprive district court of jurisdiction to review action to execute removal
2 order).

3 As other courts have held, “[f]or the purposes of § 1252, the Attorney General
4 commences proceedings against an alien when the alien is issued a Notice to Appear before
5 an immigration court.” *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008
6 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). “The Attorney General may arrest the
7 alien against whom proceedings are commenced and detain that individual until the
8 conclusion of those proceedings.” *Id.* at *3. “Thus, an alien’s detention throughout this
9 process arises from the Attorney General’s decision to commence proceedings” and review
10 of claims arising from such detention is barred under Section 1252(g). *Id.* (citing *Sissoko v.*
11 *Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. §
12 1252(g). As such, the Court should dismiss the Petition for lack of jurisdiction.

13 Second, under Section 1252(b)(9), “judicial review of all questions of law . . . including
14 interpretation and application of statutory provisions . . . arising from any action
15 taken . . . to remove an alien from the United States” is only proper before the appropriate
16 federal court of appeals in the form of a petition for review of a final removal order. *See* 8
17 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483
18 (1999). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial
19 review of all [claims arising from deportation proceedings]” to a court of appeals in the first
20 instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D.
21 Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

22 Moreover, Section 1252(a)(5) provides that a petition for review is the exclusive means for
23 judicial review of immigration proceedings:

24 Notwithstanding any other provision of law (statutory or nonstatutory), . . . a
25 petition for review filed with an appropriate court of appeals in accordance with this
26 section shall be the sole and exclusive means for judicial review of an order of removal
27 entered or issued under any provision of this chapter, except as provided in subsection (e)
28 [concerning aliens not admitted to the United States].

1 8 U.S.C. § 1252(a)(5). “Taken together, Sections 1252(a)(5) and 1252(b)(9) mean that *any*
2 issue—whether legal or factual—arising from *any* removal-related activity can be reviewed
3 *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th
4 Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review
5 of all claims, including policies-and-practices challenges . . . whenever they ‘arise from’
6 removal proceedings”); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only
7 when the action is “unrelated to any removal action or proceeding” is it within the district
8 court’s jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 151 n.3 (2d Cir.
9 2006) (a “primary effect” of the REAL ID Act is to “limit all aliens to one bite of the
10 apple” (internal quotation marks omitted)).

11 Critically, Section “1252(b)(9) is a judicial channeling provision, not a claim-barring
12 one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D)
13 provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed as
14 precluding review of constitutional claims or questions of law raised upon a petition for
15 review filed with an appropriate court of appeals in accordance with this section.” *See also*
16 *Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims is
17 vested exclusively in the courts of appeals[.]”). The petition-for-review process before the
18 court of appeals ensures that aliens have a proper forum for claims arising from their
19 immigration proceedings and “receive their day in court.” *J.E.F.M.*, 837 F.3d at 1031–32
20 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The
21 REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns” by
22 permitting judicial review of “nondiscretionary” BIA determinations and “all
23 constitutional claims or questions of law.”).

24 In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained
25 that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d
26 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review
27 challenges regarding decisions to detain aliens for purposes of removal or for proceedings.
28 *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the “decision to

1 detain [an alien] in the first place or to seek removal[.]”). Here, Petitioners challenge the
2 United States’ decision and action to detain them, which arises from DHS’s decision to
3 commence removal proceedings, and is thus an “action taken . . . to remove [them] from
4 the United States.” See 8 U.S.C. § 1252(b)(9); see also, e.g., *Jennings*, 583 U.S. at 294–95;
5 *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did
6 not bar review in that case because the petitioner did not challenge “his initial detention”);
7 *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12,
8 2024) (recognizing that there is no judicial review of the threshold detention decision,
9 which flows from the government’s decision to “commence proceedings”). As such, the
10 Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why Petitioner’s
11 claims are unreviewable here.

12 While holding that it was unnecessary to comprehensively address the scope of
13 Section 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of
14 challenges that may fall within the scope of Section 1252(b)(9). See *Jennings*, 583 U.S. at
15 293–94. The Supreme Court found that “§1252(b)(9) [did] not present a jurisdictional bar”
16 in situations where “respondents . . . [were] not challenging the decision to detain them in
17 the first place.” *Id.* at 294–95. In this case, however, Petitioners *do* challenge the United
18 States’ decision to detain them in the first place. Petitioners ultimately challenge DHS’s
19 decision to detain them in the first instance under Section 1225, and thus the Petition
20 cannot not evade the preclusive effect of Section 1252(b)(9).

21 Indeed, the fact that Petitioners are challenging the basis upon which they are detained
22 is enough to trigger Section 1252(b)(9) because “detention is an ‘action taken . . . to
23 remove’ an alien.” See *Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C.
24 § 1252(b)(9). The Court should deny the Petition for lack of jurisdiction under Section
25 1252(b)(9). If anything, Petitioners must present their claims before the appropriate federal
26 court of appeals because they challenge the United States’ decision or action to detain
27 them, which must be raised before a court of appeals, not this Court. See 8 U.S.C. §
28 1252(b)(9).

1 **IV. Petitioners' APA Claim Fails as a Matter of Law**

2 Petitioners' Count III—styled as a challenge under the Administrative Procedure
3 Act (“APA”), 5 U.S.C. §§ 701–706—fails for multiple independently sufficient reasons: (1)
4 Petitioners' claim is barred by jurisdiction-stripping provisions of the INA; (2) Petitioners'
5 APA claim is an impermissible attempt to repackage a collateral attack on their detention,
6 which cannot avoid the INA's jurisdiction-channeling provisions; (3) DHS's interpretation
7 of 8 U.S.C. § 1225(b)(2) is fully consistent with the unambiguous text of the statute and
8 therefore cannot be arbitrary, capricious, or contrary to law; and (4) the challenged agency
9 action is one “committed to agency discretion by law” and therefore not reviewable.

10 As a threshold matter, the APA does not itself grant jurisdiction. 5 U.S.C. § 702;
11 *Califano v. Sanders*, 430 U.S. 99, 105 (1977) (“[A]n Act of Congress . . . persuades us tha the
12 better view is that the APA is not to be interpreted as an implied grant of subject-matter
13 jurisdiction to review agency actions.”). It applies only where another statute does not
14 preclude judicial review. 5 U.S.C. § 701(a)(1).

15 Here, multiple provisions of the INA expressly foreclose APA review, as outlined
16 above in Section III. Petitioners cannot avoid the INA's jurisdiction-channeling provisions
17 by relabeling a detention challenge as an APA claim. Courts reject such efforts. *See*
18 *Jennings*, 583 U.S. at 294–95 (holding that claims challenging “the decision to detain [an
19 alien] in the first place” fall within § 1252(b)(9) and cannot be reframed as APA actions).
20 Count III is nothing more than a repackaged objection to DHS's determination that
21 Petitioners fall under § 1225(b)(2), designed to circumvent the channeling provisions of §§
22 1252(a)(5) and (b)(9). Congress required such challenges to be made in the administrative
23 removal process and, if appropriate, through a petition for review—not an APA action in
24 district court.

25 Assuming *arguendo* that jurisdiction exists to review DHS's application of 8 U.S.C. §
26 1225, an agency cannot, by definition, act arbitrarily when it aligns its practice with
27 unambiguous statutory text. Where Congress has spoken clearly, the agency must follow
28 the statute and it lacks discretion to adopt a contrary policy. Because here Congress has

1 spoken clearly, DHS may not add extra-statutory limitations; as the Supreme Court has
2 explained, “[o]ur analysis begins and ends with the text.” *Little Sisters*, 591 U.S. at 676.

3 Petitioners take issue with DHS’s alleged change in policy and practice of applying
4 mandatory detention pursuant to § 1225(b)(2) to Petitioners and the putative class
5 members. ECF No. 1, ¶ 83. But even if DHS’s 2025 Interim Guidance constitutes a change
6 in policy, it does not violate the APA because an agency may change course as long as the
7 new policy is permissible under the statute and the agency provides a reasoned explanation.
8 *See FCC v. Fox Television Stations*, 556 U.S. 502, 513–516 (2009). “To be sure, the
9 requirement that an agency provide reasoned explanation for its action would ordinarily
10 demand that it display awareness that it *is* changing position.” *Id.* An agency may not, for
11 example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the
12 books.” *Id.* “[O]f course the agency must show that there are good reasons for the new
13 policy . . . [b]ut it need not demonstrate to a court’s satisfaction that the reasons for the new
14 policy are *better* than the reasons for the old one; it suffices that the new policy is
15 permissible under the statute, that there are good reasons for it, and that the
16 agency *believes* it to be better, which the conscious change of course adequately indicates.”
17 *Id.* at 517.

18 Here, § 1225(a)(1) unambiguously defines an “alien present in the United States
19 who has not been admitted” as an “applicant for admission.” And § 1225(b)(2)(A)
20 mandates that such aliens “shall be detained” pending § 1229a proceedings. DHS’s 2025
21 Interim Guidance merely brought practice into compliance with the plain statutory text.
22 Because DHS’s 2025 Interim Guidance faithfully implements statutory commands, it is by
23 definition, not arbitrary. *See FCC* 556 U.S. at 513-516. Further, DHS’s 2025 Interim
24 Guidance reflects that DHS was conscious that the guidance was a change of course and
25 thus DHS inherently believed it to be better than the prior practice.⁹ Specifically, the 2025

26 _____
27 ⁹ *See* ICE Memo: Interim Guidance Regarding Detention Authority for Applications for
28 Admission, [https://www.aila.org/ice-memo-interim-guidance-regarding-detention-
authority-for-applications-for-admission](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission) (last visited Dec. 2, 2025).

1 Interim Guidance stated that it “serve[d] as notice that DHS, in coordination with the
2 Department of Justice (DOJ), ha[d] *revisited its legal position* on detention and release
3 authorities.”¹⁰

4 In the event the the Court were to find that the foregoing does not sufficiently
5 provide a reasoned explanation for the change of course, which it certainly does, the BIA’s
6 precedential decision in *Hurtado* satisfies this requirement. In *Hurtado*, the BIA applied its
7 specialized expertise in immigration detention law, the very subject Congress charged it
8 with administering. Its decision addressed the interplay between §§ 1225 and 1226 in detail,
9 relying on statutory text, legislative history, and decades of experience resolving custody
10 questions. The BIA’s reasoning is thorough and well supported as it carefully explained
11 why noncitizens who entered without inspection remain “applicants for admission” under
12 § 1225(a)(1), and why reclassifying them under § 1226(a) would create statutory issues and
13 undermine congressional intent. Finally, the BIA’s decision explained how its
14 interpretation is consistent with Supreme Court precedent, including *Jennings*, which
15 recognized that detention under § 1225(b) is mandatory. Thus, the Federal Respondents
16 have provided a well-reasoned explanation regarding why DHS’s 2025 Interim Guidance
17 was necessary, as the correct application and enforcement practice of § 1225.

18 Finally, Petitioners challenge action that has been committed to agency dicrection
19 by law and it therefore is not reviewable. The APA excludes review of matters “committed
20 to agency discretion by law.” 5 U.S.C. § 701(a)(2). “An agency's decision [regarding]
21 enforcement action is presumed immune from judicial review under § 701(a)(2).” *Heckler v.*
22 *Chaney*, 470 U.S. 821, 821 (1985). “Such a decision has traditionally been ‘committed to
23 agency discretion,’ and it does not appear that Congress in enacting the APA intended to
24 alter that tradition.” *Id.* “Accordingly, such a decision is unreviewable unless Congress has
25 indicated an intent to circumscribe agency enforcement discretion, and has provided
26 meaningful standards for defining the limits of that discretion.” *Id.*

27
28 ¹⁰ *Id.*

1 Here, Congress mandated detention of applicants for admission and granted DHS
2 narrow, discretionary parole authority. 8 U.S.C. §§ 1182(d)(5), 1225(b)(2). ICE’s internal
3 instructions implementing the mandatory-detention scheme involve quintessential
4 enforcement discretion—precisely the type of administrative judgment courts cannot
5 review. *See Heckler v. Chaney*, 470 U.S. 821, 831–35 (1985). Petitioners’ APA challenge
6 seeks exactly the type of judicial supervision that *Chaney* forbids: second-guessing how
7 DHS interprets and applies the detention statutes in individual enforcement contexts.

8 **V. Request for EAJA Fees Should be Denied**

9 Petitioners seek attorney’s fees and costs pursuant to § 2412 of the Equal Access for
10 Justice Act (“EAJA”), which allows fee-shifting in civil actions by or against the United
11 States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504,
12 and fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioners cannot obtain
13 fees in this case under 5 U.S.C. § 504 since that provision excludes administrative
14 immigration proceedings. *Ardestani v. Immigration and Naturalization Service*, 502 U.S. 129
15 (1991). Their only recourse for fees is pursuant to § 2412(d)(1)(A), which provides, subject
16 to exceptions not relevant here, that in an action brought by or against the United States, a
17 court must award fees and expenses to a prevailing non-government party “unless the court
18 finds that the position of the United States was substantially justified or that special
19 circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A).

20 Here, Petitioners’ request is premature because they are not a prevailing party.
21 Second, even if Petitioners were to prevail in this case, the Federal Respondents’ position
22 asserted in this Response is substantially justified because other courts have found the
23 arguments presented herein to be persuasive and that DHS can lawfully detain, under the
24 mandatory detention provisions of 8 U.S.C. § 1225, other petitioners who are similarly
25 situated as Perez Sales.

26 A growing number of well-reasoned precedent supports the Federal Respondents’
27 position in this case. The following decisions have found that, when the law is properly
28 interpreted and applied, the law supports the Federal Respondents’ positions: *Chavez v.*

1 *Noem*, No. 25-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*,
2 No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-
3 1437, 2025 WL 3033967, at *1 (E.D. Wis. Oct. 30, 2025); *Barrios Sandoval v. Acuna*, No. 25-
4 01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Silva Oliveira v. Patterson*, No. 25-
5 01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 25-00168,
6 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, 1:25-cv-00177
7 (N.D. Tex. 2025); *Montoya Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex.
8 Nov. 13, 2025); *Altamiro Ramos v. Lyons*, 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov.
9 12, 2025); *Cortes Alonzo v. Noem*, No. 1:25-cv-01519, 2025 WL 3208284, at *1 (E.D. Cal.
10 Nov. 17, 2025).

11 For example, the United States District Court for the District of Nebraska and the
12 United States District Court for the Southern District of California have both issued
13 decisions holding that, under the plain language of § 1225(a)(1), aliens present in the
14 United States who have not been admitted are “applicants for admission” and are thus
15 subject to the mandatory detention provisions of “applicants for admission” under §
16 1225(b)(2). See *Vargas Lopez*, 2025 WL 2780351; *Chavez*, 2025 WL 2730228. Because other
17 federal judges have found persuasive the positions advanced by the Federal Respondents in
18 this case, the Federal Respondents’ position is substantially justified. See *Medina Tovar v.*
19 *Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that the district court did not abuse
20 its discretion, in finding that the United States’ position was substantially justified for
21 purposes of EAJA, where different judges disagreed about the proper reading of the statute
22 and the case involved an issue of first impression).

23 Because the Federal Respondents’ positions in this case are substantially justified,
24 Petitioners’ request for attorney’s fees under EAJA cannot prevail.

25 **VI. Incorporation By Reference of Government’s Prior Response**

26 In the interest of preserving arguments in the record, the Federal Respondents hereby
27 incorporate by reference Federal Respondents’ Response to the Petition for Writ of Habeas
28 Corpus in *Morales Rondo v. Bernacke*, Case No. 2:25-cv-01979-RFB-BNW (D. Nev. Oct. 15,

1 2025 (“*Morales Rondon* Response”) as though fully set forth herein.¹¹ The *Morales Rondon*
2 Response was filed as ECF No. 8 in *Morales Rondon*, and it has been attached as Exhibit A
3 to this pleading. For the reasons set forth in the *Morales Rondon* Response as well as above,
4 the Petitioners fail to demonstrate that they are entitled to the relief they request.

5 **CONCLUSION**

6 For these foregoing, Federal Respondents request that the Petition be denied.

7 Respectfully submitted this 3d day of December 2025.

8 SIGAL CHATTAH
9 Acting United States Attorney

10 /s/ Christian R. Ruiz
11 CHRISTIAN R. RUIZ
12 Assistant United States Attorney
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26 _____
27 ¹¹ The Court has endorsed the incorporation by reference of prior government filings in
28 related or substantively identical immigration habeas petitions, recognizing the efficiency of
unified briefing given the number of overlapping cases presenting identical questions under
8 U.S.C. § 1225(b)(2)(A) and § 1226(a).