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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Juan Alberto GALLEGOS RANGEL,

Petitioner,

v.

Jason KNIGHT, Field Office Director of
Enforcement and Removal Operations, Salt
Lake City Field Office, Immigration and
Customs Enforcement; Michael
BERNACKE, Acting Director of the Las
Vegas U.S. Immigration and Customs
Enforcement Field Sub-Office; Kristi
NOEM, Secretary, U.S. Department of
Homeland Security Pamela BONDI, U.S.
Attorney General; John MATTOS, Warden,
Nevada Southern Detention Center,

Respondents.

Case No. 2:25-cv-02161-RFB-BNW

**Federal Respondents' Response to
Order to Show Cause (ECF No. 4)**

Federal Respondents Jason Knight, Michael Bernacke, Kristi Noem, and Pamela Bondi, through undersigned counsel, hereby submit their response to the Court's Order to Show Cause (ECF No. 4) as to why the Court should not grant Petitioner Juan Alberto Gallegos Rangel's Petition for Writ of Habeas Corpus (ECF No. 1).

This response is supported by the following memorandum of points and authorities.

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Respectfully submitted this 25th day of November 2025.

SIGAL CHATTAH
First Assistant United States Attorney

/s/ Virginia T. Tomova
VIRGINIA T. TOMOVA
Assistant United States Attorney

Memorandum of Points and Authorities

I. INTRODUCTION

Based on the language in the petition, Federal Respondents' interpretation of the basis for the Petitioner's writ is rooted into the distinctions between 8 USC § 1225(b)(2) and § 1226(a) framework, post *Hurtado*. Before 1996, the federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings. Congress passed the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA") specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who present themselves for inspection at a port of entry.

As relevant here, Congress enacted what is now 8 U.S.C. § 1225, which requires the detention of any alien "who is an applicant for admission" and defines that term to encompass any "alien present in the United States who has not been admitted" following inspection by immigration authorities. 8 U.S.C. § 1225(a), (b)(2)(A). The statute makes no exception for how far into the country the alien traveled or how long the alien managed to evade detection. Unless the Secretary exercises the narrow and discretionary parole authority, detention is the rule for aliens who have never been lawfully admitted. There is no dispute that Petitioner is an "applicant for admission" under Section 1225(a), because he entered the country without inspection. ECF No. 1, ¶ 42; *see also* Notice to Appear, attached as Exhibit A. He was neither admitted nor paroled into the United States. Exhibit A. This clear statutory text means that Petitioner is not entitled to a bond hearing and potential release. Despite the clear statutory text, this Court has held in prior cases before it that

Petitioners are entitled to bond hearings, bond, and release. *Torralba et al v. Wright et al*, 2:25-cv-1366; *Maldonado Vasquez v. Feely*, 2:25-cv-01542; *Berto Mendez v. Noem et al*, 2:25-cv-02062; *Alvarado Gonzalez v. Mattos et al.*, 2:25-cv-01599; *Serrano Gonzalez v. Knight et al.*, 2:25-cv-02081; *Sanchez Aparicio v. Noem et al.*, 2:25-cv-01919; *Cornejo-Meijia v. Bernacke et al.*, 2:25-cv-02139; *E.C. v. Noem et al.*, 2:25-cv-01789. The Court reasoned that this narrow construction is necessary to avoid surplusage, but “[r]edundancies are common in statutory drafting,” and are “not a license to rewrite or eviscerate another portion of the statute contrary to its text.” *Barton v. Barr*, 590 U.S. 222, 223 (2020).

Besides, that canon has no relevance where, as here, portions of a statute are superfluous under any interpretation. Nor is the district court’s atextual reading necessary to give meaning to the separate detention authority in Section 1226. On its face, that provision applies to numerous aliens *not* subject to Section 1225(b)(2)(A), including all *admitted* aliens who are now removable, and the mere fact of partial overlap is not a reason to rewrite clear statutory text. Although the Government has previously operated under a different understanding of the law, this Court must apply the language of Section 1225(b)(2)(A) as written. The Court’s interpretation in the above referenced cases and most likely in this case is not only contrary to text, but it would reimpose the same perverse regime that IIRIRA was meant to eliminate — requiring the detention of aliens who present at a port of entry as the law requires, but authorizing the release of those aliens who enter the United States in violation of law. The Court should not endorse such a backwards outcome — particularly one that is so plainly subversive of congressional intent.

For the same reasons, Petitioner’s due process arguments fail, because they are based on entirely derivative of his mistaken interpretation of Section 1225.

II. 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

1 proceedings for the removal of aliens unlawfully in the United States and requirements for
2 when the Executive is obligated to detain aliens pending removal.

3 Prior to 1996, the INA treated aliens differently based on whether the alien had
4 physically “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222–
5 223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); see *Hing Sum v. Holder*, 602 F.3d
6 1092, 1099–1100 (9th Cir. 2010) (same). “Entry” referred to “any coming of an alien into
7 the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically
8 entered the United States (or not) “dictated what type of [removal] proceeding applied” and
9 whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at
10 1099.

11 At the time, the INA “provided for two types of removal proceedings: deportation
12 hearing and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc).
13 An alien who arrived at a port of entry would be placed in “exclusion proceedings and
14 subject to mandatory detention, with potential release solely by means of a grant of parole.”
15 *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223; see 8 U.S.C. § 1225(a)-(b) (1995); *id.*
16 § 1226(a) (1995). By contrast, an alien who physically entered the United States unlawfully
17 would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens in
18 deportation proceedings, unlike those in exclusion proceedings, “were entitled to request
19 release on bond.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. §
20 1252(a)(1) (1994)).

21 Thus, the INA’s prior framework distinguishing between aliens based on physical
22 “entry” had the “‘unintended and undesirable consequence’ of having created a statutory
23 scheme where aliens who entered without inspection ‘could take advantage of the greater
24 procedural and substantive rights afforded in deportation proceedings,’ *including the right to*
25 *request release on bond*, while aliens who had ‘actually presented themselves to authorities for
26 inspection’ ... were subject to mandatory custody.” *Matter of Yajure Hurtado*, 29 I. & N. Dec.
27 at 223 (emphasis added) (quoting *Martinez v. Att’y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d
28 Cir. 2012)); see also *Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at

225 (1996) (“House Rep.”) (“illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection”).

b. IIRIRA Eliminated the Preferential Treatment of Aliens Unlawfully Present in the United States and Mandated Detention of all “Applicants for Admission.”

Congress discarded that regime through enactment of IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of “ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal 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).

To that end, IIRIRA replaced the focus on physical “entry” with a focus on lawful “admission.” IIRIRA defined “admission” to mean “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)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the “pivotal factor in determining an alien’s status” would be “whether or not the alien has been *lawfully* admitted.” House Rep., *supra*, at 226 (emphasis added); *Hing Sum*, 602 F.3d at 1100 (similar). IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into “removal proceedings.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223.

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

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 “present in the United States who has not been admitted or who arrives in the United States” “shall be deemed ... an applicant 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 and including 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. 8 U.S.C. § 1225(a)(1) (emphasis added). “All aliens ... who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States” are required to “be inspected by [an] immigration officer[.]” *Id.* § 1225(a)(3). The inspection by the immigration officer is designed to determine whether the alien may be lawfully “admitted” to the country or, instead, must be referred to removal proceedings.

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

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

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

1 Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for
 2 admission, if the examining immigration officer determines that an alien seeking admission
 3 is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a
 4 proceeding under section 1229a of this title [Section 240]. 8 U.S.C. § 1225(b)(2)(A)
 5 (emphasis added).¹ See 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention
 6 mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention
 7 of aliens throughout the completion of applicable proceedings and not just at the moment
 8 those proceedings begin”).

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

17 **Section 1226:** IIRIRA also created a separate authority addressing the arrest,
 18 detention, and release of aliens generally (versus applicants for admission specifically). See 8
 19 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for
 20 example, lawfully enter the country but overstay, otherwise violate the terms of their visas,
 21 or later determined to have been improperly admitted. The statute provides that “[o]n a
 22 warrant issued by the Attorney General, an alien may be arrested and detained pending a
 23 decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a).
 24 Detention under this provision is generally discretionary: The Attorney General “may”
 25 either “continue to detain the arrested alien” or release the alien on bond or conditional
 26

27
 28 ¹ Subsection (b)(2) does not apply to (1) aliens subject to expedited removal, (2) crewman, (3) 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 parole. *Id.* § 1226(a)(1)-(2).²

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

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

18 **III. STANDARD OF REVIEW**

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

24 Judicial review of immigration matters, including of detention issues, is limited.
25 *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. Am.-Arab Anti-Discrimination*
26 *Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo*
27 *v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow*

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

1 *Sun Wong*, 426 U.S. 88, 101 n.21 (1976) (“the power over aliens is of a political character
 2 and therefore subject only to narrow judicial review”). The Supreme Court has thus
 3 “underscore[d] the limited scope of inquiry into immigration legislation,” and “has
 4 repeatedly emphasized that over no conceivable subject is the legislative power of Congress
 5 more complete than it is over the admission of aliens.” *Fiallo*, 430 U.S. at 792 (internal
 6 quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S.
 7 522, 531 (1954).

8 The plenary power of Congress and the Executive Branch over immigration
 9 necessarily encompasses immigration detention, because the authority to detain is elemental
 10 to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United*
 11 *States ex rel. Mezei*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to
 12 expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's
 13 political departments largely immune from judicial control.”); *Carlson v. Landon*, 342 U.S.
 14 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong*
 15 *Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be
 16 vain if those accused could not be held in custody pending the inquiry into their true
 17 character, and while arrangements were being made for their deportation.”); *Demore v. Kim*,
 18 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally
 19 permissible part of that process.”).

20 **IV. FACTUAL AND PROCEDURAL BACKGROUND**

21 Petitioner admits that he is a national and citizen of Mexico (ECF No. 1, ¶ 16), who
 22 entered without inspection the United States at an unknown time and unknown location
 23 (*Id.*, ¶ 46). Petitioner was taken into custody in Boise, Idaho, when he was found on the
 24 premises of an illegal gambling and criminal operation that was raided by the FBI as part of
 25 an investigation. Petitioner is detained at Washoe County Jail in Reno, Nevada after being
 26 transferred from Idaho. Since his detention, Petitioner has appeared in two hearings on
 27 November 4, 2025, and November 13, 2025, regarding his removal. To date, Petitioner has
 28 not filed any applications for relief from removal or lawful status with USCIS or DHS.

V. ARGUMENT

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

Under the plain language of Section 1225(b)(2), DHS is required to detain all aliens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings — regardless of how long the alien has been in the United States or how far from the border they ventured. That unambiguous language resolves this case. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) (“Our analysis begins and ends with the text.”).

1. *The Plain Language of Section 1225(b)(2) Mandates the Detention of the Petitioner Who is an Applicant for Admission.*

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

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

Petitioner falls squarely within the statute. He was “present in the United States,” and there is no dispute that he has “not been admitted.” 8 U.S.C. § 1225(a). Petitioner

1 admitted that he has entered without an inspection the United States. ECF No. 1, ¶ 5.
 2 Moreover, Petitioner cannot — and did not — establish that he is “clearly and beyond a
 3 doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Therefore, Petitioner is
 4 appropriately detained and “shall be detained for a proceeding under [8 U.S.C. § 1229a].”

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

7 There is no denial that Petitioner (and others like him) are “applicants for
 8 admission” under Section 1225(b)(2). Petitioner has neither referenced nor pointed out, that
 9 he is anything else but an applicant for admission under Section 1225(b)(2). Petitioner
 10 claims that he is detained for “the purpose of conducting his deportation proceedings.” ECF
 11 No. 1, ¶ 5. The statute itself makes clear that an alien who is an “applicant for admission” is
 12 necessarily “seeking admission.” Moreover, an alien like Petitioner, who is identified by
 13 immigration authorities as unlawfully present, and who does not choose to depart from the
 14 United States voluntarily, is “seeking admission” under any interpretation of that phrase.
 15 Here, the Petitioner entered the United States without an inspection.

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

23 Section 1225(a) provides that “[a]ll aliens ... who are applicants for admission or
 24 otherwise seeking admission or readmission ... shall be inspected.” 8 U.S.C. § 1225(a)(3)
 25 (emphasis added). The word “[o]therwise” means “in a different way or manner[.]” *Texas*
 26 *Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015)
 27 (quoting Webster’s Third New International Dictionary 1598 (1971)); see also *Att’y Gen. of*
 28 *United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds*

1 *Tobacco Co.*, 839 F.3d 958, 963–64 (11th Cir. 2016) (en banc) (“or otherwise” means “the
2 first action is a subset of the second action”); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482–
3 83 (7th Cir. 2019). Being an “applicant for admission” is thus a particular “way or manner”
4 of seeking admission, such that an alien who is an “applicant for admission” *is* “seeking
5 admission” for purposes of Section 1252(b)(2)(A). No separate affirmative act is necessary.
6 *See Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) (“[M]any people who are not
7 *actually* requesting permission to enter the United States in the ordinary sense are
8 nevertheless deemed to be ‘seeking admission’ under the immigration laws”).

9 This reading is consistent with the everyday meaning of the statutory terms. One
10 may “seek” something without “applying” for it — for example, one who is “seeking”
11 happiness is not “applying” for it. But one *applying* for something is necessarily *seeking* it.
12 *Compare* Webster’s New World College Dictionary 69 (4th ed.) (“apply” means “To make a
13 formal request (*to someone for something*)”), *with id.* at 1299 (“seek” means “to request, ask
14 for”). For example, a person who is “applying” for admission to a college or club is
15 “seeking” admission to the college or club. *See* The American Heritage Dictionary of the
16 English Language 63 (1980) (“American Heritage Dictionary”) (“apply” means “[t]o
17 request or *seek* employment, acceptance, or *admission*”) (emphasis added). Likewise, an alien
18 who is “applying” for admission to the United States (*i.e.*, an “applicant for admission”) is
19 “seeking admission” to the United States.

20 None of this is to say, however, that “seeking admission” has no meaning beyond
21 “applicant for admission.” As Section 1225(a)(3) shows, being an “applicant for admission”
22 is only *one* “way or manner” of “seeking admission,” not the exclusive way. For example,
23 lawful permanent residents returning to the United States are not “applicants for admission”
24 because they are already admitted, but they still may be “seeking admission.” *See* 8 U.S.C.
25 § 1103(A)(13)(C). But for purposes of Section 1225(b)(2) and its regulation of “applicants for
26 admission,” the statute unambiguously provides that an alien who is an “applicant for
27 admission” is “seeking admission,” even if the alien is not engaged in some separate,
28 affirmative act to obtain lawful admission.

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

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

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

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

6 Here, Petitioner entered the United States without inspection and is in removal
7 proceedings, subject to mandatory detention. A contrary view would make mandatory
8 detention turn on the fortuity happenstance of when an alien attempts to prove
9 admissibility. *See United States v. Wilson*, 503 U.S. 329, 334 (1992) (courts must not “presume
10 lightly” that statute’s application will turn on “arbitrary” issue of timing). Aliens subject to
11 Section 1225(b)(2) must prove admissibility at two stages — first, at the time of inspection, 8
12 U.S.C. § 1225(b)(2)(A); and second, during Section 240 removal proceedings if the alien
13 cannot show admissibility “clearly and beyond a doubt” at the time of inspection, *id.*
14 § 1229a(c)(2)(A) (alien has “burden of establishing that [he] is clearly and beyond a doubt
15 entitled to be admitted”). Petitioner has failed to meet these two stages. There is “no reason
16 why Congress would desire” the applicability of something so significant as mandatory
17 detention “to depend on the timing” of when an alien attempts to show admissibility,
18 *Wilson*, 503 U.S. at 334 — particularly given how susceptible that rule is to manipulation by
19 the alien.

20 To be sure, the Laken Riley Act’s application to aliens who are inadmissible under
21 §1182(a)(6)(A) — for being “present ... without being admitted or paroled” — overlaps with
22 Section 1225(b)(2)(A). Both statutes mandate detention of “applicants for admission” who
23 fall within the specified grounds of inadmissibility. But again, “[r]edundancies are common
24 in statutory drafting,” and are “not a license to rewrite or eviscerate another portion of the
25 statute contrary to its text.” *Barton*, 590 U.S. at 223. That is particularly true here, where this
26 portion of the Laken Riley Act overlaps with Section 1225(b)(2)(A) even under *Petitioner’s*
27 reading, which recognizes that applicants for admission who are “seeking admission” must
28 be detained under Section 1225(b)(2)(A). *See Microsoft Corp. v. I4I Ltd. P’ship*, 564 U.S. 91,

106 (2011) (“the canon against superfluity assists only where a competing interpretation gives effect to every clause and word of a statute”).

b. The Recent *Vargas Lopez v. Trump* Decision Is Highly Instructive and Supports Petitioner’s Detention Under 8 U.S.C. § 1225.

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

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

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

1 finding, according to the court, was consistent with the conclusions of the BIA
2 in *Hurtado* and *Jennings*.

3 Pursuant to the language of the statute and the holding of *Jennings*, the court said that
4 “just because Vargas Lopez illegally remained in this country *for years* does not mean that he
5 is suddenly not an ‘applicant for admission’ under § 1225(b)(2).” *Id.* “Even if Vargas Lopez
6 might have fallen within the scope of § 1226(a),” the court found “he also certainly fit
7 within the language of § 1225(b)(2) as well.” *Id.* “The Court thus conclude[d] that the *plain*
8 *language* of § 1225(b)(2) and the “all applicants for admission” language
9 of *Jennings* permitted the DHS to detain Vargas Lopez under § 1225(b)(2).” *Id.*

10 **c. The Recent *Chavez v. Noem* Decision Is Also Instructive.**

11 The United States District Court for the Southern District of California’s decision in
12 *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228, at *1 (S.D. Cal. Sept. 24,
13 2025), is also instructive. In *Chavez*, the court denied a motion for a temporary restraining
14 order (“TRO”) filed by the petitioners who were detained under 8 U.S.C. § 1225(b)(2).
15 *Chavez*, 2025 WL 2730228, at *1. The *Chavez* petitioners argued they should not have been
16 mandatorily detained and instead they should have received bond redetermination hearings
17 under § 1226(a). *Id.* The *Chavez* petitioners filed a motion for TRO, seeking to “enjoin[]
18 Respondents from continuing to detain them unless [they received] an individualized bond
19 hearing . . . pursuant to 8 U.S.C. § 1226(a) within fourteen days of the TRO.” *Id.*

20 In denying the TRO, the *Chavez* court went no further than the plain language of §
21 1225(a)(1). *Id.* at *4. Beginning and ending with the statutory text, the *Chavez* court correctly
22 found that because petitioners did not contest that they are “alien[s] present in the United
23 States who ha[ve] not been admitted,” then the *Chavez* petitioners are “applicants for
24 admission” and thus subject to the mandatory detention provisions of “applicants for
25 admission” under § 1225(b)(2). *Id.*; see also *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221–
26 222 (finding that an alien who entered without inspection is an “applicant for admission”
27 and his argument that he cannot be considered as “seeking admission” is unsupported by
28

1 the plain language of the INA, and further stating, “[i]f he is not admitted to the United
2 States . . . but he is not ‘seeking admission’ . . . then what is his legal status?”).

3 **d. The BIA’s Decision in *Hurtado* Is Entitled to Significant Weight in Construing**
4 **the Scope of 8 U.S.C. § 1225(b)(2).**

5 While *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), eliminated Chevron
6 deference, *Hurtado* nonetheless should be afforded substantial weight under *Skidmore v. Swift*
7 & *Co.*, 323 U.S. 134 (1944). Under *Skidmore*, the weight owed to an agency interpretation
8 depends on “the thoroughness evident in its consideration, the validity of its reasoning, its
9 consistency with earlier and later pronouncements, and all those factors which give it power
10 to persuade, if lacking power to control.” *Id.* at 140. *Hurtado* scores highly on these factors.

11 First, the BIA applied its specialized expertise in immigration detention law, the very
12 subject Congress charged it with administering. Its decision addressed the interplay between
13 §§ 1225 and 1226 in detail, relying on statutory text, legislative history, and decades of
14 experience resolving custody questions. Second, the BIA’s reasoning is thorough and well
15 supported. It carefully explained why noncitizens who entered without inspection remain
16 “applicants for admission” under § 1225(a)(1) and why reclassifying them under § 1226(a)
17 would create statutory issues and undermine congressional intent. Third, the BIA’s
18 interpretation is consistent with Supreme Court precedent, including *Jennings*, which
19 recognized that detention under § 1225(b) is mandatory. Finally, adopting *Hurtado* promotes
20 uniformity and coherence in federal immigration law by preventing detention outcomes
21 from turning on the happenstance of when and where a noncitizen is apprehended.

22 **e. Under *Loper Bright*, the Statute Controls, Not Prior Agency Practices.**

23 Any argument that prior agency practice supports applying § 1226(a) to Petitioner is
24 unavailing because under *Loper Bright*, the plain language of the statute and not prior
25 practice controls. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 225–26. In overturning
26 *Chevron*, the Supreme Court recognized that courts often change precedents and “correct[]
27 our own mistakes” *Loper Bright Enterprises*, 603 U.S. at 411 (overturning *Chevron, U.S.A.,*
28 *Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). *Loper Bright* overturned a decades

old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380. Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*. The weight given to agency interpretations “must always ‘depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.’” *Loper Bright Enterprises*, 603 U.S. at 432–33 (quoting *Skidmore*, 323 U.S. at 140 (cleaned up)).

The BIA’s recent precedent decision in *Hurtado* includes thorough reasoning. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221–22. In *Hurtado*, the BIA analyzed the statutory text and legislative history. *Id.* at 223–225. It highlighted congressional intent that aliens present without inspection be considered “seeking admission.” *Id.* at 224. The BIA concluded that rewarding aliens who entered unlawfully with bond hearings while subjecting those presenting themselves at the border to mandatory detention would be an “incongruous result” unsupported by the plain language “or any reasonable interpretation of the INA.” *Id.* at 228.

To be sure, “when the best reading of the statute is that it delegates discretionary authority to an agency,” the Court must “independently interpret the statute and effectuate the will of Congress.” *Loper Bright Enterprises*, 603 U.S. at 395. But “read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does not support Petitioner’s position that the plain language mandates detention under § 1226(a).

f. Petitioner’s Temporary Detention Does Not Offend Due Process.

As mentioned above, Congress broadly crafted “applicants for admission” to include undocumented aliens present within the United States like Petitioner. *See* 8 U.S.C. § 1225(a)(1). And Congress directed aliens like the Petitioner to be detained during their removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until

1 certain proceedings have concluded.”). In so doing, Congress made a legislative judgment to
2 detain undocumented aliens during removal proceedings, as they — by definition — have
3 crossed borders and traveled in violation of United States law. As explained above, that is
4 the prerogative of the legislative branch serving the interest of the government and the
5 United States.

6 The Supreme Court has recognized this profound interest. *See Shaughnessy*, 345 U.S.
7 at 210 (“Courts have long recognized the power to expel or exclude aliens as a fundamental
8 sovereign attribute exercised by the Government's political departments largely immune
9 from judicial control.”). And with this power to remove aliens, the Supreme Court has
10 recognized the United States’ longtime Constitutional ability to detain those in removal
11 proceedings. *Carlson*, 342 U.S. at 538 (“Detention is necessarily a part of this deportation
12 procedure.”); *Wong Wing*, 163 U.S. at 235 (“Proceedings to exclude or expel would be vain
13 if those accused could not be held in custody pending the inquiry into their true character,
14 and while arrangements were being made for their deportation.”); *Demore*, 538 U.S. at 531
15 (“Detention during removal proceedings is a constitutionally permissible part of that
16 process.”); *Jennings*, 583 U.S. at 286 (“Congress has authorized immigration officials to
17 detain some classes of aliens during the course of certain immigration proceedings.
18 Detention during those proceedings gives immigration officials time to determine an alien's
19 status without running the risk of the alien's either absconding or engaging in criminal
20 activity before a final decision can be made.”).

21 In another immigration context (aliens already ordered removed awaiting their
22 removal), the Supreme Court has explained that detaining these aliens less than six months
23 is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this
24 presumptive constitutional limit has been subsequently distinguished as perhaps
25 unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court
26 explained Congress was justified in detaining aliens during the entire course of their removal
27 proceedings who were convicted of certain crimes. *Demore*, 538 U.S. at 513. In that case,
28 similar to undocumented aliens like Petitioner, Congress provided for the detention of

1 certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court
 2 emphasized the constitutionality of the “definite termination point” of the detention, which
 3 was the length of the removal proceedings.³ *Id.* at 512.⁴ In light of Congress’s interest in
 4 dealing with illegal immigration by keeping specified aliens in detention pending the
 5 removal period, the Supreme Court dispensed of any Due Process concerns without
 6 engaging in the “*Mathews v. Eldridge* test” *See id. generally.*

7 Likewise, in the case at bar, Petitioner’s temporary detention pending his removal
 8 proceedings does not violate Due Process. Petitioner has been detained for a little over a
 9 month during which he was given two hearings regarding his removal proceedings and his
 10 process continues to unfold. Specifically, DHS’s narrow appeal on the issue of release on
 11 bond is before the BIA, and resolution one way or another is undoubtedly forthcoming.
 12 Petitioner’s ample available process in his current removal proceedings demonstrate no lack
 13 of Procedural Due Process — nor any deprivation of liberty “sufficiently outrageous”
 14 required to establish a Substantive Due Process claim. *See generally Reed v. Goertz*, 598 U.S.
 15 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244 F.3d 623, 628 (8th Cir. 2001), *as*
 16 *corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001). Congress simply made the decision to
 17 detain him pending removal which is a “constitutionally permissible part of that process.”
 18 *See Demore*, 538 U.S. at 531.

19 The temporary, automatic, and discretionary stays permit the United States an
 20 opportunity to appeal an IJ bond decision to correct any errors by the Immigration Judge
 21 while providing “an appropriate and less restrictive means whereby the government’s
 22 interest in seeking a stay of the custody redetermination may be protected without unduly
 23 infringing upon Petitioner’s liberty interest.” *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1077
 24

25 ³ “In contrast, because the statutory provision at issue in this case governs detention of deportable criminal
 26 aliens *pending their removal proceedings*, the detention necessarily serves the purpose of preventing the aliens
 27 from fleeing prior to or during such proceedings. Second, while the period of detention at issue in *Zadvydas*
 28 was ‘indefinite’ and ‘potentially permanent,’ *id.*, at 690–691, 121 S.Ct. 2491, the record shows that § 1226(c)
 detention not only has a definite termination point, but lasts, in the majority of cases, for less than the 90 days
 the Court considered presumptively valid in *Zadvydas*.”

⁴ 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.

(N.D. Cal. 2004); *El-Dessouki v. Cangemi*, No. CIV 063536 DSD/JSM, 2006 WL 2727191, at *3 (D. Minn. Sept. 22, 2006); *Altayar v. Lynch*, No. CV-16-02479-PHX-GMS (JZB), 2016 WL 7383340, at *10–11 (D. Ariz. Nov. 23, 2016).

As explained in *Altayar*, purpose of the automatic stay is to “avoid the necessity of having to decide whether to order a stay on extremely short notice with only the most summary presentation of the issues.” Review of Custody Determinations, 71 FR 57873-01, 2006 WL 2811410; *Altayar*, 2016 WL 7383340 at *12-13. An automatic stay of up to 90 days does not violate due process because it is narrowly tailored to serve a compelling United States interest. *Id.* In *Altayar*, the Court found there is no procedural due process violation from § 1003.19(i)(2).

In this case, Petitioner, who is present in the United States without admission or parole, is an applicant for admission in INA § 240 removal proceedings and is therefore detained pursuant to 8 U.S.C. § 1225. As discussed above, his detention is mandatory and the IJ does not have jurisdiction to issue a bond. As history has revealed, the BIA issued its precedential decision in *Hurtado*, in which it ruled that Immigration Judges lacked jurisdiction to grant bonds to illegal aliens like the Petitioner. The United States is aware of prior rulings in this District and others rejecting these arguments, but the United States respectfully maintains Petitioner has not been deprived of Due Process in light of the aforementioned precedent.

g. Request for EAJA Fees Should be Denied.

Petitioner seeks attorney’s fees and costs pursuant to § 2412 of the Equal Access for Justice Act (“EAJA”), which allows fee-shifting in civil actions by or against the United States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504, and fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioner cannot obtain fees in this case under 5 U.S.C. § 504 since that provision excludes administrative immigration proceedings. *Ardestani v. I.N.S.*, 502 U.S. 129 (1991). His only recourse for fees is pursuant to § 2412(d)(1)(A), which provides, subject to exceptions not relevant here, that in an action brought by or against the United States, a court must award fees and expenses

1 to a prevailing non-government party “unless the court finds that the position of the United
2 States was substantially justified or that special circumstances make an award unjust.” 28
3 U.S.C. § 2412(d)(1)(A).

4 Here, Petitioner’s request is premature because he is not a prevailing party. Second,
5 even if Petitioner were to prevail in this case, the Federal Respondents’ position asserted in
6 this Response is substantially justified because other courts have found the arguments
7 presented herein to be persuasive and that DHS can lawfully detain, under the mandatory
8 detention provisions of 8 U.S.C. § 1225, other petitioners who are similarly situated to this
9 Petitioner.

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

24 VI. CONCLUSION

25 For the foregoing reasons, Federal Respondents respectfully request that the Court
26 deny the Amended Petition for Writ of Habeas Corpus.

27 / / /

28 / / /

1 Respectfully submitted this 25th day of November 2025.

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