UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-81378-DAMIAN

ANDRES EVANGELISTA ANASTASIO,
on behalf of himself
as an individual and on behalf of others
similarly situated,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary of Department of Homeland Security, Pam BONDI, in her official capacity as U.S. Attorney General; and Todd M. LYONS, in an official capacity as Acting Director of Immigration and Customs Enforcement (ICE),

Respondents.
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RESPONDENTS' RETURN IN OPPOSITION
TO THE PETITION FOR WRIT OF HABEAS CORPUS

Respondents[1], by and through the undersigned Assistant United States Attorney, submit the following return in opposition to the Petition for Writ of Habeas Corpus [DE 1] (Petition). For the reasons set forth below, the Petition should be denied.

[1] A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the Miami Federal Detention Center ("FDC Miami"), an administrative security federal detention center in Miami, FL. His immediate custodian is E.K. Carlton, Warden of FDC Miami. The proper Respondent in the instant case is Mr. Carlton in his official capacity.

INTRODUCTION

By way of the Petition, Petitioner, Andres Evangelista Anastasio, in relevant part, asks this Court to "[d]eclare that Defendants' policy and practice of denying consideration for bond on the basis of §1225(b)(2) to Plaintiff Andres Evangelista Anastasio violates the INA, its implementing regulations, the APA, and the Due Process Clause." Petition at ¶ 80a. Petitioner requests that the Court release him or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a). *Id.* at ¶¶ 80c, d.

Section 1225(b)(2)(A) mandates detention for "an alien who is an applicant for admission." 8 U.S.C. § 1225(b)(2)(A). Pursuant to § 1225(a), "[a]n alien present in the United States who has not been admitted … shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). Accordingly, under a plain language reading of § 1225, Petitioner is an applicant for admission and is subject to mandatory detention pursuant to § 1225(b)(2)(A). For the reasons explained more fully below, the Petition should be dismissed, stayed, or denied.

BACKGROUND

The Petitioner, Andres Evangelista Anastasio (Petitioner), is a native and citizen of Mexico. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213), dated July 9, 2025. Petitioner entered the United States without inspection at an unknown place and unknown date. *See* Exh. A, Form I-213.

On April 21, 1999, Petitioner was convicted of driving under the influence, in violation of Florida Statute § 316.193(1). *See* Exh. B, Judgement and Conviction, Case No. 98-3234MMA, dated April 21, 1999. Petitioner was sentenced to 12 months' probation. *See* Exh. B, Judgement and Conviction, 98-3234MMA, dated April 21, 1999. On June 8, 2003, Petitioner was arrested for Aggravated Battery, in Violation of Florida Statute § 784.045 (1)(a)(1). *See* Exh. C, Aggravated

Battery Information, Case No. 03006634CFA99. The case was nolle prossed. *See* Exh. C, Aggravated Battery Information, Case No. 03006634CFA99.

On July 9, 2025, Petitioner was encountered by U.S. Customs and Border Protection (CBP) following a vehicle stop conducted by the Florida Highway Patrol. *See* Exh. A, I-213. After determining that Petitioner was illegally in the United States, he was detained by U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO). *See* Exh. A, I-213; *see also* Exh. D, Form I-200, Warrant for Arrest of Alien, dated July 10, 2025; *see also* Exh. E, Form I-286, Notice of Custody Determination, dated July 10, 2025.[2]

On August 7, 2025, Petitioner requested a custody redetermination before the Executive Office for Immigration Review ("EOIR"). *See* Exh. G, Declaration. Following a hearing, the Immigration Judge issued an order stating "No action" because the court wanted more guidance on whether Petitioner was an applicant for admission under INA § 235.[3] *See* Exh. H, Immigration Judge Order, dated August 15, 2025.

On August 13, 2025, ICE placed Petitioner in removal proceedings by filing a Notice to Appear (NTA) with the EOIR. *See* Exh. G, Declaration. Petitioner was charged with inadmissibility under INA § 212(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *See* Exh. I, NTA.

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[2] On July 10, 2025, CBP issued Petitioner a Form, I-286, Notice of Custody Determination, along with other documents. *See* Exh. E, Form I-286, Notice of Custody Determination. On November 10, 2025, ICE ERO cancelled the Form I-286 as improvidently issued, as Petitioner is an applicant for admission who is detained pursuant to INA § 235(b)(2)(A). *See* Exh. F, Form I-286 Canceled; *see also* Exh. G, Declaration.

[3] This order was entered before the Board of Immigration Appeals' precedent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), issued on September 5, 2025.

On August 18, 2025, Petitioner requested another custody redetermination before EOIR. *See* Exh. G, Declaration. The Immigration Judge granted Petitioner's motion and ordered him released on a $5,000.00 bond.[4] *See* Exh. J, Immigration Judge Order, dated August 29, 2025; *see also* Exh. G, Declaration. The Department of Homeland Security (DHS) reserved appeal of the Immigration Judge's decision. *See* Exh. G, Declaration. On August 29, 2025, and August 30, 2025, DHS filed a Form EOIR 43, Notice of Intent to Appeal Custody Redetermination, that automatically stayed the Immigration Judge's decision on the custody redetermination, pursuant to 8 C.F.R. § 1003.19(i)(2). *See* Exh. K, Form EOIR -43, Notice of Intent to Appeal Custody Redetermination, dated August 29, 2025[5]; *see also* Exh. L, Form EOIR -43, Notice of Intent to Appeal Custody Redetermination, dated August 30, 2025; *see also* Exh. G, Declaration. On August 29, 2025, Petitioner attempted to post bond, but it was denied due to the automatic stay of the Immigration Judge's order. *See* Exh. G, Declaration.

On September 9, 2025, DHS filed a Motion to Reconsider the Immigration Judge's order. The Immigration Judge granted DHS's motion. *See* Exh. M, Immigration Judge Order, dated September 11, 2025. On September 12, 2025, the Immigration Judge denied the Petitioner's request for custody redetermination, finding he lacked jurisdiction to do so under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Exh. N, Immigration Judge Order, dated September 12, 2025; *see also* Exh. G, Declaration. Because DHS did not file a notice of appeal with the Board of Immigration Appeals, the stay lapsed and is no longer at issue. 8 C.F.R. § 1003.6(c)(1). In any event, while the appeal remains pending, insofar as DHS has not withdrawn it and the Board of

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[4] *See* footnote 2, *supra.*

[5] The Form EOIR-43, Notice of Intent to Appeal Custody Redetermination, dated August 29, 2025, was refiled on August 30, 2025, to include the bond amount of $5,000.

Immigration Appeals has not ruled on it, it has been mooted out by the Immigration Judge's order denying petitioners request for custody redetermination. *See* Exh. N, Immigration Judge Order, dated September 12, 2025; *see also* Exh. G, Declaration.

Petitioner's removal proceedings are ongoing before the immigration court; an individual hearing is presently set for January 12, 2026. See Exh. O, Notice of Hearing, dated November 17, 2025. Petitioner remains detained at the Miami Federal Detention Center pursuant to INA § 235(b)(2). See Exh. P, Detention History; see also Exh. G, Declaration.

ARGUMENT

I. The Petition Should be Dismissed or Stayed due to the Related Class Action.

The Petition should be dismissed or stayed because Petitioner is a member of the nationwide class certified in *Maldonado Bautista et.al v. Santacruz,* No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 20, 2025). The *Maldonado Bautista* court granted class certification under Rule 23(b)(2). *Id.* Prior to class certification, the court entered partial summary judgment for the petitioners but denied the request to enter final judgment because there was a pending motion for class certification. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). Accordingly, the court has not issued final class-wide relief. Rather, the court set a January 9, 2026 joint status report deadline and January 16, 2026 status conference. 2025 WL 3288403, at *10.

The *Maldonado Bautista* court defined the relevant certified class as follows:

> Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Maldonado Bautista et.al v. Santacruz, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, *9. Petitioner herein is a member of the bond eligible class as he entered the United States without inspection; he was not apprehended upon arrival; and he is not subject to detention under § 1226(c)(criminal aliens), § 1225(b)(1)(expedited removal), or § 1231(post final order of removal) at the time the Department of Homeland Security made their initial custody determination.

Because Petitioner is a member of the *Maldonado Bautista* class, the Court should dismiss or, in the alternative, stay this action. Certification of a 23(b)(2) class precludes individual suits for the same injunctive or declaratory relief. *See U.S. v. Sanchez-Gomez*, 584 U.S. 381, 387 (2018)(noting that "[t]he certification of a suit as a class action has important consequences for the unnamed members of the class, including being "bound by the judgment") (cleaned up); *Horns v. Whalen*, 922 F.2d 835 (4th Cir. 1991) (affirming district court's decision to decline jurisdiction in a habeas mandamus action where the issue at bar was pending in a class action); *McNeil v. Guthrie*, 945 F.2d 1163, 1165-66 (10th Cir. 1991) (finding that "[i]ndividual suits for injunctive and declaratory relief from alleged unconstitutional prison conditions cannot be brought where there is an existing class action. To permit them would allow interference with the ongoing class action"); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) ("To allow individual suits would interfere with the orderly administration of the class action and risk inconsistent adjudications"); *Rahman v. Blinken*, 2024 WL 4332603, at *8 (D.D.C. Sept. 27, 2024) (dismissing mandamus and APA claims where the same claims were being litigated in a class action of which the plaintiff was a member).

Should the Court find that Petitioner is a member of the *Maldonado Bautista* class, but that dismissal or a stay is not warranted, the *Maldonado Bautista* court's decision does not have preclusive effect in this matter. As noted above, the *Maldonado Bautista* court did not enter a final

judgment with respect to the class. Although the court stated it was extending "the same declaratory relief" to the class, a court cannot grant declaratory relief prior to the entry of a final judgment, *i.e.*, a declaratory judgment. *See Doran v. Salem Inn, Inc.,* 422 U.S. 922, 931 (1975)("prior to final judgment there is no established declaratory remedy comparable to a preliminary injunction"). A pre-final judgment declaration is, by its nature, not a declaratory judgment "[b]ecause a preliminary declaration—unlike a final declaration—does not specifically bind anyone, it is more akin to an advisory opinion, which the Court is precluded from issuing by history and the implicit policies embodied in Article III." *Vazquez Perez v. Decker*, No. 18-CV-10683 (AJN), 2019 WL 4784950, at *10 (S.D.N.Y. Sept. 30, 2019).

Absent an entry of final judgment with respect to the class, or a certification of partial final judgment under Rule 54(b), there is no declaratory judgment in *Maldonado Bautista*. The partial summary judgment ruling does not operate as a "judgment" because it is not an appealable order and "does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Fed. R. Civ. P. 54(a), (b). Thus, there is no class-wide judgment, let alone any final judgment that could have preclusive effect as to class members.

In summary, the *Maldonado Bautista* court did not enter a class-wide judgment. As such, there is currently no declaratory relief, let alone relief with preclusive effect on *Maldonado Bautista* class members' claims concerning the proper interpretation of 8 U.S.C. § 1225(b)(2)(A)'s mandatory detention provision.

II. Section 1225(b)(2) Mandates Detention of Aliens, Like Petitioner, Who Are Present in the United States Without Having Been Lawfully Admitted. [6]

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[6] Respondents recognize that courts in this District have rejected similar arguments in granting habeas petitions seeking bond hearings. *See, e.g., Perez v. Parra*, Case No. 25-cv-24820 (S.D. Fla.). Nonetheless, Respondents maintain and preserve these arguments for the record in

Should the Court decline to dismiss or stay the Petition due to the related class action, the Court should instead deny habeas relief. Under the plain language of § 1225(b)(2), the Government 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.").

A. The Plain Language of § 1225(b)(2) Mandates Detention of Applicants for Admission.

"As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute. It is well established that, when the statutory language is plain, [courts] must enforce it according to its terms." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). Section 1225(a) deems all aliens who either "arrive[] in the United States" or who are "present in the United States [and] who ha[ve] not been admitted" to be "applicant[s] for admission." 8 U.S.C. § 1225(a)(1). And "admission" under the INA means lawful entry after inspection by immigration authorities, and not mere physical entry. 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, § 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. § 1225(b)(2)(A). The statute's use of the term "shall"

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this case. Notably, other district courts have agreed with Respondents' position. *See, e.g., Mejia Olalde v. Noem*, No. 25-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Vargas Lopez v. Trump,* No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025).

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 based upon the duration of the alien's presence in the country or where in the country the alien is located. Therefore, the statute's plain text mandates that the Government detain all "applicants for admission" who are not clearly and beyond a doubt entitled to be admitted.

Petitioner falls squarely within the statutory definition. He was "present in the United States," and he has "not been admitted." 8 U.S.C. § 1225(a). Therefore, § 1225(b)(2) mandates Petitioner "be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

B. Applicants for Admission under § 1225(b)(2) are seeking to be legally admitted into the United States.

As explained above, Petitioner is an "applicant[] for admission" under § 1225(b)(2) and is, therefore, seeking to be legally admitted into the United States. The statute itself makes clear that an alien who is an "applicant for admission" *is* necessarily "seeking admission." Moreover, an alien like Petitioner, who is identified by immigration authorities as unlawfully present, and who does not choose to depart from the United States voluntarily, is "seeking admission," i.e., seeking legal authority to remain in the United States.

1. The "seeking admission" clause does not negate or otherwise limit the statutorily defined term "applicant for admission".

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

For example, § 1225(a) provides that "[a]ll aliens … who are applicants for admission *or otherwise* seeking admission or readmission … shall be inspected." 8 U.S.C. § 1225(a)(3) (emphasis added). The word "[o]therwise' means 'in a different way or manner[.]'" *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *see also Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) ("or otherwise" means "the first action is a subset of the second action"). Being an "applicant for admission" is thus a particular "way or manner" of seeking admission, such that an alien who is an "applicant for admission" *is* "seeking admission" for purposes of § 1225(b)(2)(A).[7] No separate affirmative act is necessary. *See Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) ("[M]any people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws"). Accordingly, § 1225(b) unambiguously provides that an alien who is an "applicant for admission" is "seeking admission," even if the alien is not engaged in some separate, affirmative act to obtain lawful admission.

2. Any perceived redundancy in the statute cannot serve as a basis to avoid the clear language of the statute.

As explained above, an "applicant for admission" is "seeking admission" under § 1225. To the extent this reading results in some redundancy in § 1225(b)(2)(A), that "is not a license to rewrite" § 1225 "contrary to its text." *Barton v. Barr*, 590 U.S. 222, 239 (2020); *see Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) ("sometimes drafters *do* repeat themselves

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[7] As § 1225 shows, being an "applicant for admission" is only *one* "way or manner" of "seeking admission," not the exclusive way. 8 U.S.C. § 1225(a)(3). For example, lawful permanent residents returning to the United States are not "applicants for admission" because they are already admitted, but they still may be deemed to be "seeking admission" in some circumstances. *See* 8 U.S.C. § 1103(A)(13)(C).

and *do* include words that add nothing of substance" especially when "the arguably redundant words that the drafters employed … are functional synonyms" (alterations accepted and emphasis in original)).

"The canon against surplusage is not an absolute rule." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013). "Redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton*, 590 U.S. at 239. "[R]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.* Thus, as the Supreme Court explained in *Barton*, "[s]ometimes the better overall reading of a statute contains some redundancy." *Id.*

Moreover, "the surplusage canon … must be applied with statutory context in mind" and should not be employed to undermine congressional intent. *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017). As explained in greater detail below, in 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), with the goal of ensuring that aliens who enter the United States unlawfully do not receive greater privileges and benefits than aliens who lawfully present themselves for inspection at a port of entry. The canon against surplusage should not be employed to re-write the statute in contravention of this statutory context.

C. Section 1226 Does Not Support Petitioner's Argument.

Petitioner's reliance upon, and reference to, 8 U.S.C. § 1226 is unavailing. Petitioner's detention is controlled by § 1225(b)(2), not § 1226.

Sections 1225 and 1226 are separate statutory provisions that provide independent bases for detention and, generally, apply to different groups of aliens. While, as explained below, there

is some overlap between the aliens subject to detention under the two detention provisions, that overlap does not create a redundance because the two statutes provide for different bases for release.

Section 1226(a) authorizes the Executive to "arrest[] and detain[]" *any* "alien" pending removal proceedings. Section 1226(a) provides the detention authority for the significant group of aliens who are *not* deemed "applicants for admission" subject to § 1225(b)(2)(A)—specifically, aliens who have been admitted to the United States but are now removable, like those who overstay a visa or lawful permanent residents who engage in conduct that renders them removable.[8] Thus, section 1225(b)(2) is the more specific detention provision. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("the specific governs the general"). Accordingly, § 1226(a) does not control Petitioner's detention.

Section 1226(c) provides for mandatory detention and is an exception to § 1226(a)'s discretionary detention regime. It requires the Executive to detain "any alien" who is deportable or inadmissible for having committed specified offenses or engaged in terrorism-related actions. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Petitioner has not committed one of the specified offenses and has not engaged in terrorism-related actions. Accordingly, he is not detained under § 1226(c).

Earlier this year, Congress passed the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 2 (2025), which amended portions of § 1226(c). While that amendment adds some overlap between aliens subject to detention under § 1225(b)(2) and § 1226(c), that overlap does not apply to Petitioner, and as explained below, it does not create a redundancy as the amendment does independent work.

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[8] The detention of any of the millions of aliens who have overstayed their visas is governed by § 1226(a), because those aliens (unlike Petitioner) *were* lawfully admitted to the United States.

The Laken Riley Act provides for mandatory detention for an alien who is "present … without being admitted or paroled"—i.e., is inadmissible under §1182(a)(6)(A)—and "is charged with, is arrested for, is convicted of, admits having committed, or admits committing" one of the enumerated criminal acts. 8 U.S.C. § 1226(c)(1)(E). Aliens subject to detention under § 1226(c)(1)(E) are effectively applicants for admission that committed one of the enumerated acts and, as applicants for admission, would also be subject to mandatory detention under § 1225(b)(2). There is no redundancy, however, because the two statutes provide for different forms of release.

D. The Government's Reading Comports with Congressional Intent.

Before 1996, 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. In 1996, Congress passed the IIRIRA specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. Accordingly, the Government's reading of the statute is not only supported by the express language of § 1225, but it also comports with congressional intent. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to a result "that Congress designed the Act to avoid"); *New York State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes.").

The 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*, 602 F.3d at 1099. Accordingly, the INA's prior framework, which distinguished 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 'actually presented themselves to authorities for inspection … were subject to mandatory custody.

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (3d 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").

Congress discarded that regime through enactment of IIRIRA. 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 prior focus on physical "entry" and instead made lawful "admission" the governing touchstone. 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).

Petitioner's interpretation would restore the regime Congress sought to discard: It would require detention for those who present themselves for inspection at the border in compliance with law yet grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years, or even decades, until an involuntary encounter with immigration authorities. That is *exactly* the perverse preferential treatment for illegal entrants that IIRIRA sought to eradicate. Accordingly, this Court should reject Petitioner's interpretation. *King*, 576 U.S. at 492 (rejecting "petitioners' interpretation because it would … create the very [thing] that Congress designed the Act to avoid").

The Government's reading, on the other hand, is true to Congress's intent and should be adopted.

E. The Government's Reading Accords with *Jennings*.

The Government's interpretation is consistent with the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *Jennings* reviewed a Ninth Circuit decision that applied constitutional avoidance to "impos[e] an implicit 6-month time limit on an alien's detention" under § 1225(b) and § 1226. *Id.* at 292. The Court held that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of aliens subject to § 1225(b) or § 1226. Nonetheless, consistent with the Government's reading, the Court recognized in its description of § 1225(b) that § "1225(b)(2) …. serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* at 287.

F. Under *Loper Bright*, the Statute Controls, Not Prior Agency Practice

Any argument that prior agency practice applied § 1226(a) is unavailing because under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)), the plain language of the statute and not prior practice controls. *Hurtado*, 29 I. & N. Dec. at 225–26. In overturning *Chevron*, the Supreme Court recognized that courts often change precedents and "correct[] our own mistakes." *Loper Bright*, 603 U.S. at 411. *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years. *Id.* at 380. Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*.

CONCLUSION

For the reasons set forth above, the Petition for Writ of Habeas Corpus should be denied.

Respectfully submitted,

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