IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DAVID LOPEZ-ROMERO, Petitioner, vs. **TODD LYONS,** in his official capacity as Acting Director of United States Immigration and Customs Enforcement; **MARY DE ANDA-YBARRA,** in her official capacity as Director of the El Paso Field Office of United States Immigration and Customs Enforcement; **KRISTI NOEM,** in her official capacity as Secretary of the United States Department of Homeland Security; and **PAMELA JO BONDI,** in her official capacity as Attorney General of the United States, Respondents	**Case 1:25-cv-1113-MIS-JHR**

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

TODD LYONS, MARY DE ANDA-YBARRA, KRISTI NOEM, and PAMELA JO BONDI, in their official capacities and by and through their undersigned attorneys, hereby respond to Petitioner DAVID LOPEZ-ROMERO's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241—Emergency Relief Requested Under 28 U.S.C. § 2243 [Doc. 1] ("Petition").

STATEMENT OF FACTS

1. Petitioner is a citizen of Guatemala.
2. Petitioner covertly entered the United States without being inspected, admitted, or paroled by an immigration officer.
3. Petitioner was found in the United States and apprehended on or about October 13, 2025.

4. After he was apprehended, Petitioner claimed that he had entered the United States in May 2001. Because Petitioner ostensibly has been continuously present in the United States for more than two years, he was not subject to expedited removal but has instead been afforded removal proceedings (including a hearing before an immigration judge) under 8 U.S.C. § 1229a.

5. While the removal proceedings are ongoing, Petitioner has been temporarily detained. Petitioner is presently held at the Otero County Processing Center in Chapparal, New Mexico.

ARGUMENT

I. PETITIONER'S REMOVAL PROCEEDINGS ARE GOVERNED BY 8 U.S.C. § 1225.

A. An alien present in the United States who has not been admitted is deemed an applicant for admission for purposes of the Immigration and Nationality Act.

Over the course of our nation's history Congress has enacted an array of laws to govern immigration and the admission of aliens into the United States. While those laws have continuously evolved to meet ever-changing immigration concerns,[1] the Supreme Court has

[1] [A]fter the adoption of the Constitution there was some doubt about the power of the Federal Government to control immigration, but no doubt about the power of the States to do so. Since the founding era (though not immediately), doubt about the Federal Government's power has disappeared. Indeed, primary responsibility for immigration policy has shifted from the States to the Federal Government. Congress exercised its power "[t]o establish an uniform Rule of Naturalization," Art. I, § 8, cl. 4, very early on, see An Act to establish an uniform Rule of Naturalization, ch. 3, 1 Stat. 103. But with the fleeting exception of the Alien Act, Congress did not enact any legislation regulating *immigration* for the better part of a century. In 1862, Congress passed "An Act to prohibit the 'Coolie Trade' by American Citizens in American Vessels," which prohibited "procuring [Chinese nationals] ... to be disposed of, or sold, or transferred, for any term of years or for any time whatever, as servants or apprentices, or to be held to service or labor." Ch. 27, 12 Stat. 340. Then, in 1875, Congress amended that Act to bar admission to Chinese, Japanese, and other Asian immigrants who had "entered into a contract or agreement for a term of service within the United States, for lewd and immoral purposes." An act supplementary to the acts in relation to immigration, ch. 141, 18 Stat. 477. And in 1882, Congress enacted the first

repeatedly recognized that immigration is a sovereign prerogative.

> In 1892, the Court wrote that as to "foreigners who have never been naturalized, nor acquired any domicil or residence within the United States, nor even been admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Nishimura Ekiu*, 142 U.S. at 660, 12 S.Ct. 336. Since then, the Court has often reiterated this important rule. See, *e.g.*, *Knauff*, 338 U.S. at 544, 70 S.Ct. 309 ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned"); *Mezei*, 345 U.S. at 212, 73 S.Ct. 625 (same); *Landon v. Plasencia*, 459 U.S. 21, 32, 103 S.Ct. 321, 74 L.Ed.2d 21 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative").

Department of Homeland Security v. Thuraissigiam, 591 U.S. 103, 138-139 (2020).

"[I]mmigration is a sovereign prerogative and the judiciary must be wary of imposing procedural requirements that displace legislative and executive policy choices." Michelson v. I.N.S., 897 F.2d 465, 467 (10th Cir. 1990). Succinctly stated, an alien seeking authority to enter and remain in the United States "has only those rights regarding admission that Congress has provided by statute." *Thuraissigiam,* 591 U.S. at 140 (2020).

In 1952, Congress enacted the Immigration and Nationality Act (INA) collecting and reorganizing the immigration laws of the United States. The INA has been amended many times over the years. In 1996, as part of the Omnibus Consolidated Appropriations Act, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 amending the INA. Before 1996, the federal immigration laws drew a distinction between aliens who presented themselves at a port of entry and aliens who successfully evaded inspection

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> general immigration statute. See An act to regulate Immigration, 22 Stat. 214. Of course, it hardly bears mention that federal immigration law is now extensive.

Arizona v. United States, 567 U.S. 387, 421–22 (2012) (J. Scalia, concurring in part and dissenting in part).

and unlawfully entered the United States without inspection. Aliens who presented themselves at a port of entry were subject to summary exclusion proceedings whereas those who unlawfully entered without inspection were afforded full deportation proceedings. This dichotomy created a perverse incentive for aliens to enter the United States unlawfully rather than to present themselves at a port of entry in accordance with the laws of the United States. The 1996 amendments to the INA, *inter alia*, abolished the incongruous distinction drawn in earlier statutes between aliens who presented themselves at the nation's borders and aliens who entered without inspection. In lieu of that distinction, the IIRIRA statutory regime "treating persons present in the United States without authorization as not admitted" and deeming most such aliens "applicants for admission."

> TITLE III—INSPECTION, APPREHENSION, DETENTION, ADJUDICATION, AND REMOVAL OF INADMISSIBLE AND DEPORTABLE ALIENS
>
> Subtitle A—Revision of Procedures for Removal of Aliens
>
> SEC. 301. TREATING PERSONS PRESENT IN THE UNITED STATES WITHOUT AUTHORIZATION AS NOT ADMITTED.
>
> (a) "ADMISSION" DEFINED.—
> Paragraph (13) of section 101(a) (8 U.S.C. 1101(a)) is amended to read as follows:
>
> . . .
>
> "(13)(A) The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.
> . . .
>
> SEC. 302. INSPECTION OF ALIENS; EXPEDITED REMOVAL OF INADMISSIBLE ARRIVING ALIENS; REFERRAL FOR HEARING (REVISED SECTION 235).
>
> (a) IN GENERAL.—
> Section 235 (8 U.S.C. 1225) is amended to read as follows:

> "INSPECTION BY IMMIGRATION OFFICERS; EXPEDITED REMOVAL OF INADMISSIBLE ARRIVING ALIENS; REFERRAL FOR HEARING
>
> "SEC. 235. (a) INSPECTION.—
>
> "(1) ALIENS TREATED AS APPLICANTS FOR ADMISSION.—An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival 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 Act an applicant for admission.

Omnibus Consolidated Appropriations Act, 1997, PL 104–208, September 30, 1996, 110 Stat 3009. *See also* Petition, ¶ 68 ("The legislative history confirms that Congress intended to eliminate the perverse incentive for aliens to enter illegally rather than present themselves at ports of entry. The House Judiciary Committee Report explained that "the pivotal factor in determining an alien's status will be whether or not the alien has been lawfully admitted," and that aliens who enter without inspection "will not be considered to have been admitted." H.R Rep. No. 104-469, pt 1, at 225-26 (1996)"). As amended, 8 U.S.C. § 1225(a)(1) reads.

> ***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). As defined in the 1996 amendment, "[t]he terms 'admission' and 'admitted' mean, with respect to an alien, 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)).[2]

[2] With certain enumerated exceptions, admitted aliens are generally not deemed applicants for admission subject to § 1225. *See* 8 U.S.C. § 1101(a)(13)(C).

B. Petitioner, an alien present in the United States who has not been admitted, is deemed an applicant for admission for purposes of the Immigration and Nationality Act.

It is undisputed that Petitioner is a citizen of Guatemala who unlawfully entered the United States without being inspected, admitted, or paroled by any immigration officer of the United States. *See generally* 8 U.S.C. § 1325(a) (prescribing criminal penalties to be imposed on "[a]ny alien who (enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination on inspection by immigration officers . . ."). Due to the clandestine nature of Petitioner's entry, immigration authorities have no record of the date or place of his entry nor of his presence in the United States. *Cf.* 8 U.S.C. §§ 1302 and 1306 (requiring aliens who remain in the United States for thirty days or longer to apply for registration and prescribing criminal penalties for willful failure to make such an application). By his own account, "Petitioner entered the United States without inspection on or about May 1, 2001." Petition, ¶ 1.

On or about October 13, 2025, Petitioner was discovered and he was apprehended by immigration authorities. Petitioner has not been admitted into the United States, and he has no right to enter or remain in the United States unless or until admitted by immigration authorities. Congress has decreed that an alien present in the United States who has not previously been admitted shall be treated as an applicant for admission for purposes of the INA.

C. The Immigration and Nationality Act mandates that Petitioner and other applicants for admission who are not subject to expedited removal, shall be detained for removal proceedings.

In the IIRIRA, Congress amended 8 U.S.C. § 1225 to revise the procedures applicable to aliens present in the United States who had not been admitted. As amended, § 1225(a) instructs that such aliens are to be treated as applicants for admission under the INA. Subsection (b)—captioned Inspection of applicants for admission—empowers officers to expeditiously remove

many inadmissible aliens but affords additional process to aliens who seek asylum and those who have been in the United States for two years or more.

> **(b) Inspection of applicants for admission**
>
> **(1) Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled**
>
> **(A) Screening**
>
> **(i) In general**
>
> ***If an immigration officer determines that an alien*** (other than an alien described in subparagraph (F)) ***who*** is arriving in the United States or ***is described in clause (iii) is inadmissible*** under section 1182(a)(6)(C) or 1182(a)(7) of this title, ***the 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 under section 1158 of this title or a fear of persecution.
> . . .
>
> **(iii) Application to certain other aliens**
>
> **(I) In general**
>
> ***The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II)*** as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.
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> **(II) Aliens described**
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> An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and ***who has 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 under this subparagraph.

8 U.S.C. § 1225(b)(1)(A).[3]

[3] Subsection (b)(1)(A) repeatedly excludes aliens "described in subparagraph (F)." Subparagraph (F) provides:

> Subparagraph (A) shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.

An applicant for admission who demonstrates that he has continuously been present in the United States for at least two years is excepted under § 1225(b) from expedited removal. Such an alien is to be afforded removal proceedings in accordance with 8 U.S.C. § 1229a.

> **(b) Inspection of applicants for admission**
> . . .
> **(2) Inspection of other aliens**
> **(A) In general**
> Subject to subparagraphs (B) and (C), ***in the case of an alien who is an applicant for admission***, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, ***the alien shall be detained for a proceeding under section 1229a of this title.***

8 U.S.C. § 1225(b)(2)(A) (emphasis added).[4]

Returning to the case at hand, Petitioner, an alien present in the United States who has not been admitted, is deemed an applicant for admission for purposes of the INA. While Congress has excepted applicants for admission who, like Plaintiff, demonstrate that they have been in the United States for two years or more from expedited removal, Congress has mandated that any such "alien shall be detained for proceedings under section 1229a."

D. Petitioner's attempts to circumvent and evade the mandate of 8 U.S.C. § 1225 are untenable.

Petitioner previously circumvented inspection at a port of entry and unlawfully entered the United States. Petitioner now contends that he should be excepted from the procedures and mandate of 8 U.S.C. § 1225 because he succeeded in evading the United States' immigration

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8 U.S.C. § 1325(b)(1)(F). For example, the provisions set forth in § 1325(b)(1)(A) are not applicable to Cuban nationals who arrive at a port of entry.

[4] Subsection 1225(b)(2)(B) instructs: "Subparagraph (A) shall not apply to an alien--(i) who is a crewman, (ii) to whom paragraph (1) applies [i.e., aliens subject to expedited removal], or (iii) who is a stowaway." Subsection 1225(b)(2)(C) pertains to the treatment of aliens arriving from a contiguous nation: "In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 1229a of this title." 8 U.S.C. § 1225.

laws and authorities for more than 24 years.

> The proper interpretation of the INA is that Petitioner, having resided in the United States for 24 years since entry, falls under section 236(a) of the INA, 8 U.S.C. § 1226(a), and is therefore entitled to a bond hearing before an Immigration Judge. Section 235(b)(2)(A) applies only to aliens who are contemporaneously "seeking admission" at the border or immediately upon arrival-not to aliens like Petitioner who entered years ago and have since established their lives here.

Petition, ¶ 6. Petitioner's argument echoes comparable claims that the Supreme Court resoundingly rejected in *Thuraissigiam.*

> Respondent argues that this rule does not apply to him because he was not taken into custody the instant he attempted to enter the country (as would have been the case had he arrived at a lawful port of entry). Because he succeeded in making it 25 yards into U. S. territory before he was caught, he claims the right to be treated more favorably. The Ninth Circuit agreed with this argument.
>
> We reject it. It disregards the reason for our century-old rule regarding the due process rights of an alien seeking initial entry. That rule rests on fundamental propositions: "[T]he power to admit or exclude aliens is a sovereign prerogative," *id.*, at 32, 103 S.Ct. 321; the Constitution gives "the political department of the government" plenary authority to decide which aliens to admit, *Nishimura Ekiu*, 142 U.S. at 659, 12 S.Ct. 336; and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted, see *Knauff*, 338 U.S. at 544, 70 S.Ct. 309.
>
> This rule would be meaningless if it became inoperative as soon as an arriving alien set foot on U. S. soil. When an alien arrives at a port of entry—for example, an international airport—the alien is on U. S. soil, but the alien is not considered to have entered the country for the purposes of this rule. On the contrary, aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are "treated" for due process purposes "as if stopped at the border." *Mezei*, 345 U.S. at 215, 73 S.Ct. 625; see *Leng May Ma v. Barber*, 357 U.S. 185, 188–190, 78 S.Ct. 1072, 2 L.Ed.2d 1246 (1958); *Kaplan v. Tod*, 267 U.S. 228, 230–231, 45 S.Ct. 257, 69 L.Ed. 585 (1925).
>
> The same must be true of an alien like respondent. As previously noted, an alien who tries to enter the country illegally is treated as an "applicant for admission," § 1225(a)(1), and an alien who is

> detained shortly after unlawful entry cannot be said to have "effected an entry," *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). Like an alien detained after arriving at a port of entry, an alien like respondent is "on the threshold." *Mezei*, 345 U.S. at 212, 73 S.Ct. 625. The rule advocated by respondent and adopted by the Ninth Circuit would undermine the "sovereign prerogative" of governing admission to this country and create a perverse incentive to enter at an unlawful rather than a lawful location. *Plasencia*, 459 U.S. at 32, 103 S.Ct. 321.

Thuraissigiam, 591 U.S. at 138–140. The canons and concerns recognized in *Thuraissigiam* are applicable to aliens who navigate past the border and succeed in entering the United States.

Petitioner's interpretation of the INA is refuted by the express terms of § 1225. As amended by the IIRIRA, § 1225 mandates that "in the case of an alien who is an applicant for admission" who is not subject to expedited removal, "the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Petitioner—an alien present in the United States who has not been admitted—is an applicant for admission. 8 U.S.C. § 1225(a)(1). Therefore, Petitioner shall be detained for removal proceeding under § 1229a.

In the face of this statutory syllogism, Petitioner insists that Congress didn't mean what it said; notwithstanding the statute's categorical declaration that "[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," Petitioner contends that he is not an applicant for admission under the INA.

As Petitioner has noted, several courts have ruled that Congress didn't mean what it said; notwithstanding the statute's categorical declaration that "[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," several judges have held that § 1225 is only applicable to aliens detained at the border. United States Magistrate Judge Fashing recently recited several of those decisions:

> Relevant to this case is thus who can be considered an "applicant for admission" or "seeking admission." 8 U.S.C. § 1225(b)(2)(A). The Supreme Court discussed both statutory sections and the classes

of individuals they apply to in *Jennings v. Rodriguez*, 583 U.S. 281 (U.S. 2018). The Court explained that "§ 1225 (b) applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Id.* at 297. The Court then discussed § 1226, explaining that "§ 1226 applies to aliens already present in the United States." *Id.* at 303. The Court further provided that § "1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings," and also "permits the Attorney General to release those aliens on bond." *Id.*

Courts in this district accordingly have granted relief to noncitizens alleging a presence in the United States for years before their arrest, finding that § 1226(a) applied to their detention rather than § 1225(b)(2). *See Salazar*, 2025 WL 2676729, at *4 (finding that a petitioner who has lived in the United States since the 1980s is not "seeking admission" and is subject to § 1226(a)); *Garcia Domingo*, 2025 WL 2941217, at *4 (finding that a petitioner who had been present in the United States for nine years was likely to succeed on the merits of his claim that he had been erroneously classified as an "applicant for admission"); *Pastrana-Saigado*, No. 2:25-cv-00950-MLG-LF, Doc. 17 at 1, Doc. 24 at 1–2 (finding that a petitioner who had been in the United States for over twenty-five years was entitled to a bond hearing pursuant to § 1226); *Cortez-Gonzalez*, No. 2:25-cv-00985-MLG-KK, Doc. 2 at 8, Doc. 16 at 1–2 (ordering a § 1226(a) bond hearing for a petitioner who alleged a presence in the United States since 2005). Federal district courts across the country have also concluded that § 1226 applies in these circumstances. *See, e.g.*, *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346, at *1, *3 (S.D. Tex. Oct. 7, 2025) (concluding "that § 1226, not § 1225, applies to [a petitioner's] detention" after the petitioner had lived in the U.S. unlawfully for over a decade); *Mosqueda v. Noem*, No. 5:25-cv-02304 CAS (BFM), 2025 WL 2591530, at *6 (C.D. Cal. Sept. 8, 2025) (concluding that § 1226(a) rather than § 1225(b)(2) applies "to individuals who, like petitioners, have been residing in the United States and did not apply for admission or a change of status"); *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, — F. Supp. 3d —, 2025 WL 2607924, at *8 (D. Mass. Sept. 9, 2025) (concluding that § 1226 applies to noncitizens who are arrested on a warrant while residing in the United States); *Kostak v. Trump*, No. 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) ("Respondents' position that Section 1225 applies 'because Petitioner is present in the United States without being admitted' is contrary to the Supreme Court's analysis of the application of 1225 to arriving aliens."); *Malets v. Horton*, No. 4:20-cv-01041-MHH-SGC, 2021 WL 4197594, at *4 (N.D. Ala. 2021)

> ("In other words, § 1226 authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings.") (internal quotations omitted)); *Martinez*-Elvir, 2025 WL 3006772, at *8 ("Based on the Supreme Court's reading of [§ 1226 and § 1225], then, § 1226 also appears to apply to Petitioner since he was detained not while arriving to the country, but instead while already in the United States.") (internal quotations omitted)); *Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650, at *7 (D. Colo. Oct. 22, 2025) (concluding that a petitioner present in the United States since 2006 "was not seeking lawful entry into the United States at the time he was detained—he was already here" and "is not subject to § 1225(b)(2)(A)'s mandatory detention provision").

Tomas Alfredo Molina Ochoa v. Kristi Noem, et al., 2025 WL 3125846 (D.N.M. Nov. 7, 2025). However, these rulings cannot be squared with the unambiguous language of § 1225.

At the threshold, the Supreme Court's dicta in *Jennings* that "§ 1225(b) applies primarily to aliens seeking entry into the United States" has been misconstrued. While § 1225 primarily applies to aliens encountered at the United States' borders, it is by its express terms also applicable to any "alien present in the United States who has not been admitted." *Jennings* does not license lower courts to disregard Congress' explicit declaration that such an alien "shall be deemed for purposes of this chapter an applicant for admission." On the contrary, the Supreme Court recognized that § 1225 is applicable to aliens who have not been admitted into the country:

> Under § 302, 110 Stat. 3009–579, 8 U.S.C. § 1225, an alien who "arrives in the United States," or "is present" in this country but "has not been admitted," is treated as "an applicant for admission." § 1225(a)(1). Applicants for admission must "be inspected by immigration officers" to ensure that they may be admitted into the country consistent with U.S. immigration law. § 1225(a)(3).

Jennings v. Rodriguez, 583 U.S. at 287.

In *Jennings v. Rodriguez* the Supreme Court recognized that removal of other aliens who are deportable (i.e., aliens who have been admitted into the United States) is governed by § 1226.

> Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country

> may still be removed if he or she falls "within one or more ... classes of deportable aliens." § 1227(a). That includes aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission. See §§ 1227(a)(1), (2).
>
> Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal. As relevant here, § 1226 distinguishes between two different categories of aliens. Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an alien "pending a decision on whether the alien is to be removed from the United States." § 1226(a). "Except as provided in subsection (c) of this section," the Attorney General "may release" an alien detained under § 1226(a) "on ...bond" or "conditional parole." *Ibid.*

Jennings v. Rodriguez, 583 U.S. at 288. Aliens who have been lawfully admitted into the United States enjoy rights and privileges that are not afforded to aliens who have not been admitted. Although they may still be subject to removal, the procedural rights accorded admitted aliens differ from the process for removal of aliens who have not been admitted. For example, while aliens who have not been admitted may be arrested and removed without a warrant, the arrest and detention of aliens subject to § 1226 is predicated upon a warrant issued by the Attorney General. 8 U.S.C. § 1226(a). Further, while aliens who have been lawfully admitted may be granted bond under § 1226 during removal proceedings under § 1226, § 1225 unequivocally mandates that applicants for admission—i.e., aliens present in the United States who have not been admitted—shall be detained for removal proceedings.

Petitioner urges this Court to disregard BIA's current application of § 1225 in favor of the past leniency that the agency extended to immigrants who were found in the United States. As Petitioner has noted, immigration authorities have not zealously applied § 1225 in the past. Indeed, in recent years immigration authorities often granted aliens parole allowing them to enter and remain in the United States upon the promise that they would appear at future removal proceedings. That practice proved rife with problems (as highlighted by the Laken Riley Act,

discussed below). Immigration authorities discontinued the practice of granting aliens unlawfully in the United States parole or bond and have instead applied § 1225 as written. Past administration's policy decision not to zealously enforce a statute does not alter or annul the law nor confers a right or entitlement to those subject to the law. *See Bokole v. McAleenan*, 2019 WL 2024922 (D.N.M. 2019) ("the Attorney General's discretionary parole authority is permissive and does not create a statutory right to a bond hearing.").

While immigration policies and practices have vacillated over the years, the pertinent provisions of § 1225 have remained unchanged since 1996. It is the province of the judiciary—and not the agency—to interpret that statute.

> Courts . . . understand that such statutes, no matter how impenetrable, do—in fact, must—have a single, best meaning. That is the whole point of having written statutes; "every statute's meaning is fixed at the time of enactment." *Wisconsin Central Ltd. v. United States*, 585 U.S. 274, 284, 138 S.Ct. 2067, 201 L.Ed.2d 490 (2018) (emphasis deleted). So instead of declaring a particular party's reading "permissible" in such a case, courts use every tool at their disposal to determine the best reading of the statute and resolve the ambiguity.
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> In an agency case as in any other, though, even if some judges might (or might not) consider the statute ambiguous, there is a best reading all the same—"the reading the court would have reached" if no agency were involved. [*Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc*., 467 U.S. 837, 843, n. 11 (1984)]. It therefore makes no sense to speak of a "permissible" interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best. In the business of statutory interpretation, if it is not the best, it is not permissible.
>
> Perhaps most fundamentally, *Chevron*'s presumption is misguided because agencies have no special competence in resolving statutory ambiguities. Courts do. The Framers, as noted, anticipated that courts would often confront statutory ambiguities and expected that courts would resolve them by exercising independent legal judgment.

Loper Bright Enters. v. Raimondo, 603 U.S. 369, 400–01 (2024).

As outlined above, § 1225 decrees an alien present in the United States who has not been

admitted shall be deemed an applicant for admission for purposes of the INA. 8 U.S.C. § 1225(b)(2)(A). The statute further mandates that unless the alien is a crewman, a stowaway, or subject to either expedited removal or remand to a contiguous nation, "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(a)(1). Petitioner—an alien present in the United States who has not been admitted—is an applicant for admission who shall be detained under § 1225.

Petitioner nonetheless asserts that "[t]he Laken Riley Act Proves that EWIs are normally under Section 236(a)." Petition, p. 12. At the threshold, "EWI" is an acronym for "Entry Without Inspection," a term that the IIRIRA rendered obsolete. As discussed above and in the Petition, ¶¶ 66-68, the 1996 amendment of the INA ended the distinction historically drawn between aliens at the border and those who succeed in entering the United States without inspection. Under the 1996 amendment "aliens who enter without inspection 'will not be considered to have been admitted.' H.R Rep. No. 104-469, pt 1, at 225-26 (1996)." Petition, ¶ 68. Once again, "[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).

Petitioner has misconstrued the Laken Riley Act. That legislation was precipitated by the brutal murder of Laken Riley, a 22-year-old nursing student. Eventually, Jose Antonio Ibarra was charged with, and convicted of, murdering Ms. Riley. That case drew national attention to immigration policies and practices after it was revealed that Ibarra, a Venezuelan citizen, entered the United States illegally in September 2022. Ibarra was apprehended by immigration authorities near the Mexican border but was granted immigration parole because immigration authorities did not have the capacity to detain him. In September 2023, Ibarra was

arrested in New York on charges of acting in a manner to injure a child and a motor vehicle violation but was soon released. In October 2023, Ibarra was arrested in Georgia on charges of larceny but was again released. Ibarra subsequently murdered Ms. Riley in Georgia in February 2024. Senator Lindsey Graham, the Ranking Member of the Senate Judiciary Committee, declared that Ibarra had been paroled into the country in violation of the law. *See* U.S. Senate Committee on the Judiciary*, DHS Confirms to Graham: Laken Riley Murder Suspect Illegally Paroled Into U.S.* (April 16, 2024). In response to that series of events, Congress passed the Laken Riley Act. Petitioner now twists the Laken Riley Act to argue that it supports his bid for bond. Petitioner writes:

> 50. Specifically, the Laken Riley Act added new subparagraph (E) to section 236(c)(l); which requires mandatory detention for certain criminal aliens who are inadmissible "under section 212(a)(6)(A)"- that is, aliens who are "present in the United States without being admitted or paroled." 8 U.S.C. § 1226(c)(l)(E); INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i).
>
> 51. The fact that Congress found it necessary to *create an exception* in section 236(c) for certain aliens who entered without inspection proves that such aliens are normally subject to section 236(a) and eligible for bond. If all aliens who entered without inspection were already subject to mandatory detention under section 235(b)(2)(A); as the BIA claims, then the Laken Riley Act amendment would have been completely unnecessary and superfluous.

Petition, ¶ 50. Petitioner's argument is wide of the mark.

As amended by the Laken Riley Act, 8 U.S.C. § 1226(c) provides in pertinent part:

> **(c) Detention of criminal aliens**
>
> **(1) Custody**
>
> The Attorney General shall take into custody any alien who—
>
> **(E)(i)** is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and
>
> **(ii)** is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts

> which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person,
>
> when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.
>
> **(2) Definition**
> For purposes of paragraph (1)(E), the terms "burglary", "theft", "larceny", "shoplifting", "assault of a law enforcement officer", and "serious bodily injury" have the meanings given such terms in the jurisdiction in which the acts occurred.
>
> **(3) Detainer**
> The Secretary of Homeland Security shall issue a detainer for an alien described in paragraph (1)(E) and, if the alien is not otherwise detained by Federal, State, or local officials, shall effectively and expeditiously take custody of the alien.

8 U.S.C. § 1226(c)(1)(E), (2) and (3). Subsection (c)(1)(E) incorporates by reference the designation of certain aliens as inadmissible under 8 U.S.C. §§ 1182(a)(6)(A), (6)(C), or (7). Petitioner contends that the cross-reference to § 1182(a)(6)(A)—which declares that "[a]n alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible"—would have been unnecessary if § 1225(b)(2)(A) means what it says. Although § 1225 and § § 1182(a)(6)(A) overlap, they are not identical in scope. Moreover, the Laken Riley Act differs from § 1225 in purpose. The Laken Riley Act amended the INA to compel the Attorney General to "take into custody" criminal aliens described in § 1226(c)(1)(E) and to compel the Secretary of Homeland Security to issue detainers for such aliens. Section § 1225—which governs the processing of applicants for admission—does not contain any comparable provision.

While the Laken Riley Act's cross-reference to § 1182(a)(6) overlaps with § 1225 to the extent that both pertain to aliens who have not been admitted, "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 v. Barr*, 590 U.S. 222, 239 (2020). *See also Connecticut Nat. Bank v. Germain,* 503 U.S. 249, 253 (1992) ("Redundancies across statutes are not unusual events in drafting"); *Skilling v. United States*, 561 U.S. 358, 413 n. 45 (2010) (overlap between statutes does not render them superfluous). Here, while § 1225 and § 1226 overlap, they are aligned and serve a common purpose, The Laken Riley Act did nothing to amend or disturb the mandate that applicants for admission (who are not subject to expedited removal) are to be detained under the INA. Absent any discernible intention by Congress to repeal or annul § 1225, the Laken Riley Act should not be construed to abrogate § 1225.

> In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable. *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 456—457, 65 S.Ct. 716, 725—726, 89 L.Ed. 1051 (1945).
> . . .
> Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment. *See, e.g., Bulova Watch Co. v. United States*, 365 U.S. 753, 758, 81 S.Ct. 864, 6 L.Ed.2d 72 (1961); *Rodgers v. United States*, 185 U.S. 83, 87—89, 22 S.Ct. 582, 583—584, 46 L.Ed. 816 (1902).
>
> The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective. 'When there are two acts upon the same subject, the rule is to give effect to both if possible . . . . The intention of the legislature to repeal 'must be clear and manifest." *United States v. Borden Co.*, 308 U.S. 188, 198, 60 S.Ct. 182, 188, 84 L.Ed. 181 (1939).

Morton v. Mancari, 417 U.S. 535, 550–51 (1974). "[W]hen two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *FCC v. NextWave Personal Communications Inc.*, 537

U.S. 293, 304 (2003) (internal quotation marks omitted)). "A party seeking to suggest that two statutes cannot be harmonized, and that one displaces the other, bears the heavy burden of showing 'a clearly expressed congressional intention' that such a result should follow." *Epic Sys. Corp. v. Lewis,* 584 U.S. 497, 510 (2018) (quoting *Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer,* 515 U.S. 528, 533 (1995)). Overlapping statutes that serve a common purpose should be read in harmony.

> As the Court has said, we "are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Morton v. Mancari,* 417 U.S. 535, 551, 94 S.Ct. 2474, 2483, 41 L.Ed.2d 290 (1974). We should read federal statutes "to give effect to each if we can do so while preserving their sense and purpose." *Watt v. Alaska,* 451 U.S. 259, 267, 101 S.Ct. 1673, 1678, 68 L.Ed.2d 80 (1981); see also *United States v. Fausto,* 484 U.S. 439, 453, 108 S.Ct. 668, 676–677, 98 L.Ed.2d 830 (1988).

Pittsburgh & Lake Erie R. Co. v. Ry. Lab. Executives' Ass'n, 491 U.S. 490, 510 (1989).

Undaunted, Petitioner next attempts to bend the statutes to his will. Disregarding Congress unequivocal decree that an alien present in the United States who has not been admitted is deemed an applicant for admission for purposes of the INA, Petitioner posits that he is not subject mandatory detention for proceedings under § 1129a because he is not seeking admission.

> 55. The plain text of section 235(b)(2)(A) demonstrates that it does not apply to Petitioner. The statute provides that an "applicant for admission" who is "seeking admission" and "not clearly and beyond a doubt entitled to be admitted" "shall be detained for a proceeding under section 240." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).
>
> 56. The phrase "seeking admission" must be given its ordinary meaning in context. An alien who entered the United States years ago without inspection and who has since resided continuously in the interior of the country is not meaningfully "seeking admission" in any ordinary sense of that phrase. Petitioner is not at the border requesting permission to enter. Petitioner is not contemporaneously

> applying for admission. Rather, Petitioner has already entered and has been living in the United States for 24 years.

Petition, ¶¶ 55-56. As discussed above, in the 1996 amendment of the INA Congress deemed an alien present in the United States who had not been admitted an "applicant for admission" for purposes of the INA. While this was primarily intended to end disparate treatment of undocumented aliens, it also recognizes that an alien who unlawfully entered the United States would presumably like to remain. If the statutory presumption is incorrect—if an alien does not want to remain in the United States—he can affirmatively withdraw his presumptive application and return whence he came: "An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States." 8 U.S.C. § 1225(a)(4).

Petitioner asserts that he was in the United States for 24 years before he was discovered, and during those 24 years, he did not apply for admission or do anything else that would reveal his presence to immigration authorities. However, after he was apprehended, his circumstances changed. No longer able to clandestinely remain in the United States, Petitioner is seeking lawful status and contesting removal. *See* Petition, ¶ 1 ("Petitioner has paid for and filed with the Executive Office for Immigration Review a form of relief from deportation, namely an Application for Cancellation of Removal as a non-lawful permanent resident"). If Petitioner does not seek lawful admission, he may withdraw his bid to remain in the United States and depart obviating the need for his detention for removal proceedings.

Petitioner finally asserts that giving effect to § 1225 as written "leads to absurd and unjust results that Congress could not have intended." Petition, ¶ 75. Petitioner elaborates that application of § 1225 as discussed above "means that an alien arrested in the interior of the United States—perhaps at their home or workplace, after years of residence—would be treated

identically to an alien stopped at the border." Petition, ¶ 76. This is precisely what Congress intended when it amended the INA in 1996. Indeed, if Congress had intended that § 1225 was to be applied only to aliens interdicted at this nation's borders, the exemption from expedited removal carved out for an "alien who has been physically present in the United States continuously" to two years would be nonsensical. Congress inclusion of this provision in § 1225 evinces Congress' intent that the procedures prescribed in this statute for processing aliens who have not been admitted into the United States are applicable to unauthorized aliens who are present in the United States, specifically including unauthorized aliens who demonstrate that they have been continuously present in the United States for more than two years. The Supreme Court and our Court of Appeals adhere to "the longstanding canon of statutory construction that terms in a statute should not be construed so as to render any provision of that statute meaningless or superfluous." *Beck v. Prupis*, 529 U.S. 494, 506 (2000). *See, e.g., TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous , void, or insignificant"); *Pennsylvania Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 562 (1990) ("Our cases express a deep reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment"); *Fuller v. Norton*, 86 F.3d 1016, 1024 (10th Cir.1996) ("We avoid interpreting statutes in a manner that makes any part superfluous"); *Bridger Coal Co./Pac. Minerals, Inc., v. Dir., Office of Workers' Comp. Programs,* 927 F.2d 1150, 1153 (10th Cir. 1991) ("We will not construe a statute in a way that renders words or phrases meaningless, redundant, or superfluous"). Construing § 1225 in a manner that would exclude aliens who have been in the United States for two years or more would violate this fundamental tenet of statutory construction.

II. PETITIONER'S DETENTION FOR REMOVAL PROCEEDINGS DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

Petitioner contends that his detention pursuant to 8 U.S.C. § 1225 for removal proceedings violates the Due Process Clause of the Fifth Amendment. Petition, Count Two. Petitioner's argument rests on the dubious premise that an alien may be detained during removal proceedings only if he poses a risk of flight or danger. Petition, ¶¶ 87 and 88.

The Supreme Court has long recognized that detention of aliens during removal proceedings does not violate the Due Process Clause. Indeed, contrary to Petitioner's claim, the Supreme Court expressly observed in *Demore v. Kim* that the "Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process."

> "It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings." *Flores, supra,* at 306, 113 S.Ct. 1439. At the same time, however, this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process. As we said more than a century ago, deportation proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character." *Wong Wing v. United States,* 163 U.S. 228, 235, 16 S.Ct. 977, 41 L.Ed. 140 (1896); see also *Flores, supra,* at 305–306, 113 S.Ct. 1439; *Zadvydas,* 533 U.S., at 697, 121 S.Ct. 2491 (distinguishing constitutionally questioned detention there at issue from "detention pending a determination of removability"); *id.,* at 711, 121 S.Ct. 2491 (KENNEDY, J., dissenting) ("Congress' power to detain aliens in connection with removal or exclusion ... is part of the Legislature's considerable authority over immigration matters").
>
> In *Carlson v. Landon,* 342 U.S. 524, 72 S.Ct. 525, 96 L.Ed. 547 (1952), the Court considered a challenge to the detention of aliens who were deportable because of their participation in Communist activities. The detained aliens did not deny that they were members of the Communist Party or that they were therefore deportable. *Id.,* at 530, 72 S.Ct. 525. Instead, like respondent in the present case, they challenged their detention on the grounds that there had been no finding that they were unlikely to appear for their deportation proceedings when ordered to do so. *Id.,* at 531–532, 72 S.Ct. 525; see also Brief for Petitioner in *Carlson v. Landon,* O.T.1951, No. 35, p. 12 (arguing that legislative determinations could not justify "depriving [an alien] of his liberty without facts personal to the

> individual"). . . .
>
> The Court rejected the aliens' claims that they were entitled to be released from detention if they did not pose a flight risk, explaining "[d]etention is necessarily a part of this deportation procedure." *Id.,* at 538, 72 S.Ct. 525; see also *id.,* at 535, 72 S.Ct. 525.

Demore v. Kim, 538 U.S. 510, 523-524 (2003). The Supreme Court has ruled that the temporary detention of aliens for purposes of removal proceedings does not violate the Fifth Amendment. *See Jennings v. Rodriguez*, 583 U.S. at 299-301 (recognizing that 8 U.S.C. §§ 1225(b)(1) and (b)(2) both "mandate detention until a certain point and authorize release prior to that point only under limited circumstances").

> Detention during removal proceedings is a constitutionally permissible part of that process. See, *e.g., Wong Wing,* 163 U.S., at 235, 16 S.Ct. 977 ("We think it clear that detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid"); *Carlson v. Landon,* 342 U.S. 524, 72 S.Ct. 525, 96 L.Ed. 547 (1952); *Reno v. Flores,* 507 U.S. 292, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993).

Demore v. Kim, 538 U.S. at 531.

Finally, in rejecting a comparable Fourth Amendment challenge to the detention of an alien during removal proceedings, the Supreme Court recognized that deportation proceedings differ from criminal actions.

> A deportation proceeding is a purely civil action to determine eligibility to remain in this country, not to punish an unlawful entry, though entering or remaining unlawfully in this country is itself a crime. 8 U.S.C. §§ 1302, 1306, 1325. The deportation hearing looks prospectively to the respondent's right to remain in this country in the future. Past conduct is relevant only insofar as it may shed light on the respondent's right to remain. . . .
>
> In short, a deportation hearing is intended to provide a streamlined determination of eligibility to remain in this country, nothing more. The purpose of deportation is not to punish past transgressions but rather to put an end to a continuing violation of the immigration laws.

I.N.S. v. Lopez-Mendoza, 468 U.S. 1032, 1038–1039 (1984). The Court held in *Lopez-Mendoza*

that an alleged violation of the Fourth Amendment would not countenance the release of an alien who is unlawfully present in the United States.

> [T]he social costs of applying the exclusionary rule in deportation proceedings are both unusual and significant. The first cost is one that is unique to continuing violations of the law. Applying the exclusionary rule in proceedings that are intended not to punish past transgressions but to prevent their continuance or renewal would require the courts to close their eyes to ongoing violations of the law. This Court has never before accepted costs of this character in applying the exclusionary rule.
>
> Presumably no one would argue that the exclusionary rule should be invoked to prevent an agency from ordering corrective action at a leaking hazardous waste dump if the evidence underlying the order had been improperly obtained, or to compel police to return contraband explosives or drugs to their owner if the contraband had been unlawfully seized. On the rare occasions that it has considered costs of this type the Court has firmly indicated that the exclusionary rule does not extend this far. *See United States v. Jeffers*, 342 U.S. 48, 54, 72 S.Ct. 93, 96, 96 L.Ed. 59 (1951); *Trupiano v. United States*, 334 U.S. 699, 710, 68 S.Ct. 1229, 1234, 92 L.Ed. 1663 (1948). The rationale for these holdings is not difficult to find. "Both *Trupiano* and *Jeffers* concerned objects the possession of which, without more, constitutes a crime. The repossession of such *per se* contraband by *Jeffers* and *Trupiano* would have subjected them to criminal penalties. The return of the contraband would clearly have frustrated the express public policy against the possession of such objects." *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 699, 85 S.Ct. 1246, 1250, 14 L.Ed.2d 170 (1965) (footnote omitted). Precisely the same can be said here. Sandoval–Sanchez is a person whose unregistered presence in this country, without more, constitutes a crime. His release within our borders would immediately subject him to criminal penalties. His release would clearly frustrate the express public policy against an alien's unregistered presence in this country. Even the objective of deterring Fourth Amendment violations should not require such a result. The constable's blunder may allow the criminal to go free, but we have never suggested that it allows the criminal to continue in the commission of an ongoing crime. When the crime in question involves unlawful presence in this country, the criminal may go free, but he should not go free within our borders.

Lopez-Mendoza, 468 U.S. at 1046-1047.

CONCLUSION

Petitioner is a Guatemalan citizen who unlawfully entered the United States without admission. By his own account, Petitioner has surreptitiously remained in the United States for more than 24 years reaping considerable rewards from his crime. After finally being discovered and apprehended, Petitioner contends that he is entitled to bond that would allow him to continue to enjoy the fruits of his unlawful entry during his ongoing removal proceedings.

While many undocumented aliens are subject to expedited removal from the United States following initial screening without further hearing or review, Petitioner has been excepted from expedited removal because he demonstrated that he has been in the United States for more than two years and because he has applied for asylum. *See* 8 U.S.C. § 1225(b)(1)(A). Instead of expedited removal, Petitioner has been accorded extensive process. Petitioner's immigration case has been referred to an immigration judge for a hearing (which is continuing) under 8 U.S.C. § 1229a.

Despite his protests, the INA mandates that Petitioner shall be detained for removal proceedings. More specifically, Petitioner—an alien present in the United States who has not been admitted—is deemed an applicant for admission for purposes of the INA. Applicants for admission (who are not subject to expedited removal, remand to a contiguous nation, or are crewmen or stowaways) shall be detained for proceedings under 8 U.S.C. § 1229a. 8 U.S.C. § 1225(b)(2)(A). Therefore, this statutory syllogism leads to a single conclusion: Petitioner shall be detained for removal proceedings.

Under these circumstances, the Supreme Court's analysis in *Jennings v. Rodriguez* is instructive.

> Read most naturally, §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain proceedings have concluded. Section 1225(b)(1) aliens are detained for "further

> consideration of the application for asylum," and § 1225(b)(2) aliens are in turn detained for "[removal] proceeding[s]." Once those proceedings end, detention under § 1225(b) must end as well. Until that point, however, nothing in the statutory text imposes any limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.
> . . .
> Section 1225(b)(1) mandates detention "for further consideration of the application for asylum," § 1225(b)(1)(B)(ii), and § 1225(b)(2) requires detention "for a [removal] proceeding," § 1225(b)(2)(A). The plain meaning of those phrases is that detention must continue until immigration officers have finished "consider [ing]" the application for asylum, § 1225(b)(1)(B)(ii), or until removal proceedings have concluded, § 1225(b)(2)(A).

Jennings v. Rodriguez, 583 U.S. at 297-299.

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

RESPECTFULLY SUBMITTED this 26th day of November 2025.

Ryan Ellison,
Acting United States Attorney

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 26, 2025, I shall cause the foregoing pleading to be filed electronically through the CM/ECF system, which constitutes service on all parties or counsel by electronic means as reflected on the Notice of Electronic Filing.

/s/ Timothy S. Vasquez 11/26/25
Timothy S. Vasquez
Assistant United States Attorney