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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FILOGONIO RAMIREZ-CONTRERAS,

Petitioner,

v.

KRISTI NOEM, Secretary of the United States Department of Homeland Security; PAM BONDI, United States Attorney General; TODD LYONS, Director of United States Immigration and Customs Enforcement; BRYAN WILCOX, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security; JOHN MATTOS Warden, Nevada Southern Detention Center; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents.

Case No. 2:25-cv-02218-RFB-EJY

Federal Respondents' Response to Order to Show Cause (ECF No. 7) Re Unsigned Petitioner's Amended Writ of Habeas Corpus (ECF No. 5)

Federal Respondents through undersigned counsel, hereby submit their response to the Court's Order to Show Cause (ECF No. 7) as to why the Court should not grant Petitioner Filogonio Ramirez-Contreras' Amended Petition for Writ of Habeas Corpus (ECF No. 5).

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

2 Respectfully submitted this 26th day of November 2025.

3 SIGAL CHATTAH
4 First Assistant United States Attorney

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

8 **Memorandum of Points and Authorities**

9 **I. INTRODUCTION**

10 Based on the language in the petition, Federal Respondents' interpretation of the
11 basis for the Petitioner's writ is rooted into the distinctions between 8 USC § 1225(b)(2) and
12 § 1226(a) framework, post *Hurtado*. Before 1996, the federal immigration laws required the
13 detention of aliens who presented at a port of entry but allowed aliens who were already
14 unlawfully present in the United States to obtain release pending removal proceedings.
15 Congress passed the Illegal Immigration Reform and Immigration Responsibility Act
16 ("IIRIRA") specifically to stop conferring greater privileges and benefits on aliens who enter
17 the United States unlawfully as compared to those who present themselves for inspection at
18 a port of entry.

19 As relevant here, Congress enacted what is now 8 U.S.C. § 1225, which requires the
20 detention of any alien "who is an applicant for admission" and defines that term to
21 encompass any "alien present in the United States who has not been admitted" following
22 inspection by immigration authorities. 8 U.S.C. § 1225(a), (b)(2)(A). The statute makes no
23 exception for how far into the country the alien traveled or how long the alien managed to
24 evade detection. Unless the Secretary exercises the narrow and discretionary parole
25 authority, detention is the rule for aliens who have never been lawfully admitted. There is
26 no dispute that Petitioner is an "applicant for admission" under Section 1225(a), because he
27 entered the country without inspection. ECF No. 5, p. 5; *See* Records of
28 Deportable/Inadmissible Alien, attached as Exhibit A, pp. 1-8, 10. He was neither admitted
not paroled into the United States. Exhibit A. As a matter of fact, Petitioner entered and re-

1 entered the United States illegally on three separate occasions, and he was deported three
2 separate times. Exhibit A. This clear statutory text of § 1225(b)(2) means that Petitioner is
3 not entitled to a bond hearing and potential release. Despite the clear statutory text, this
4 Court has held in prior cases before it that Petitioners are entitled to bond hearings, bond,
5 and release. *Torralba et al v. Wright et al*, 2:25-cv-1366; *Maldonado Vasquez v. Feely*, 2:25-cv-
6 01542; *Berto Mendez v. Noem et al*, 2:25-cv-02062; *Alvarado Gonzalez v. Mattos et al.*, 2:25-cv-
7 01599; *Serrano Gonzalez v. Knight et al.*, 2:25-cv-02081; *Sanchez Aparicio v. Noem et al.*, 2:25-cv-
8 01919; *Cornejo-Mejia v. Bernacke et al.*, 2:25-cv-02139; *E.C. v. Noem et al.*, 2:25-cv-01789. The
9 Court reasoned that this narrow construction is necessary to avoid surplusage, but
10 “[r]edundancies are common in statutory drafting,” and are “not a license to rewrite or
11 eviscerate another portion of the statute contrary to its text.” *Barton v. Barr*, 590 U.S. 222,
12 223 (2020).

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

26 For the same reasons, Petitioner’s due process arguments fail, because they are based
27 on entirely derivative of his mistaken interpretation of Section 1225.
28

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 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.

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

Thus, the INA’s prior framework distinguishing between aliens based on physical “entry” had the “‘unintended and undesirable consequence’ of having created a statutory scheme where aliens who entered without inspection ‘could take advantage of the greater

procedural and substantive rights afforded in deportation proceedings,’ *including the right to request release on bond*, while aliens who had ‘actually presented themselves to authorities for inspection’ ... were subject to mandatory custody.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y Gen. 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”).

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

1 “admission,” rather than physical entry, the touchstone. That provision states that an alien
 2 “present in the United States who has not been admitted or who arrives in the United
 3 States” “shall be deemed ... an applicant for admission”:

4 An alien present in the United States who has not been admitted or who arrives in
 5 the United States (whether or not at a designated port of arrival and including an alien who
 6 is brought to the United States after having been interdicted in international or United States
 7 waters) shall be deemed for purposes of this chapter an applicant for admission. 8 U.S.C.
 8 § 1225(a)(1) (emphasis added). “All aliens ... who are applicants for admission or otherwise
 9 seeking admission or readmission to or transit through the United States” are required to
 10 “be inspected by [an] immigration officer[.]” *Id.* § 1225(a)(3). The inspection by the
 11 immigration officer is designed to determine whether the alien may be lawfully “admitted”
 12 to the country or, instead, must be referred to removal proceedings.

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

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

1 from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see*
 2 8 C.F.R. § 235.3(b)(2)(iii).

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

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

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

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

27 ¹ Subsection (b)(2) does not apply to (1) aliens subject to expedited removal, (2) crewman, (3) stowaways, or (4)
 28 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).

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

That “default rule,” however, does not apply to certain criminal aliens who are being released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c). Section 1226(c) provides that “[t]he Attorney General shall take into custody” certain classes of criminal aliens — those who are inadmissible or deportable because the alien (1) “committed” certain offenses delineated in 8 U.S.C. §§ 1182 and 1227; or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The Executive must detain these aliens “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 against for the same offense.” *Id.*

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

III. STANDARD OF REVIEW

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

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

Judicial review of immigration matters, including of detention issues, is limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) (“the power over aliens is of a political character and therefore subject only to narrow judicial review”). The Supreme Court has thus “underscore[d] the limited scope of inquiry into immigration legislation,” and “has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.” *Fiallo*, 430 U.S. at 792 (internal quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

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

IV. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner, an illegal alien, is a citizen of Mexico, who has a long-standing history of violating the immigration laws of the United States. Petitioner was voluntarily returned to Mexico by the United States Border Patrol on September 27, 2002, and September 29, 2002, respectively, until he was re-arrested again for a third time by ICE based on an

administrative warrant. *See* Records of Deportable/Inadmissible Alien, attached as Exhibit A, pp. 1-8, 10. Petitioner falls within the definition of an applicant for admission subject to mandatory detention under 8 U.S.C. 1225(b)(2). He also has violated three times 8 U.S.C. § 1325, by illegally entering the United States three times. Exhibit A. Petitioner had a bond hearing in front of an IJ, on October 28, 2025. Exhibit A, p. 9. The IJ denied bond. *Id.* Petitioner filed an appeal before the BIA, which is currently pending. Exhibit A, pp. 12-14.

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

1 mandatory, *see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998),
 2 and the statute makes no exception for the duration of the alien's presence in the country or
 3 where in the country he is located. Therefore, the statute's plain text mandates that DHS
 4 detain all "applicants for admission" who do not fall within one of its exceptions.

5 Petitioner falls squarely within the statute. He was "present in the United States,"
 6 and there is no dispute that he has "not been admitted." 8 U.S.C. § 1225(a). Petitioner
 7 admitted that he has entered without an inspection the United States. ECF No. 1, ¶ 5.
 8 Moreover, Petitioner cannot — and did not — establish that he is "clearly and beyond a
 9 doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Therefore, Petitioner is
 10 appropriately detained and "shall be detained for a proceeding under [8 U.S.C. § 1229a]."

11 ***2. Section 1225(b)(2)'s Reference to Aliens "Seeking Admission" Does Not Narrow Its***
 12 ***Scope.***

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

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

Section 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 Att’y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *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”); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482–83 (7th Cir. 2019). 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 Section 1252(b)(2)(A). 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”).

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

None of this is to say, however, that “seeking admission” has no meaning beyond “applicant for admission.” As Section 1225(a)(3) shows, being an “applicant for admission” is only *one* “way or manner” of “seeking admission,” not the exclusive way. For example,

1 lawful permanent residents returning to the United States are not “applicants for admission”
2 because they are already admitted, but they still may be “seeking admission.” *See* 8 U.S.C.
3 § 1103(A)(13)(C). But for purposes of Section 1225(b)(2) and its regulation of “applicants for
4 admission,” the statute unambiguously provides that an alien who is an “applicant for
5 admission” is “seeking admission,” even if the alien is not engaged in some separate,
6 affirmative act to obtain lawful admission.

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

13 That is the case here with this Petitioner. Under a straightforward reading of the
14 statute, being an “applicant for admission” is “seeking admission.” Although that reading
15 may lead to some redundancy in Section 1225(b)(2)(A), that is “not a license to rewrite”
16 Section 1225 “contrary to its text.” *Barton*, 590 U.S. at 223; *see Heyman v. Cooper*, 31 F.4th
17 1315, 1322 (11th Cir. 2022) (“The principle [that drafter do repeat themselves carries extra
18 weight where ... the arguably redundant words that the drafters employed ... are functional
19 synonyms”). And that is especially true, where that re-writing would be so clearly contrary
20 to Congress’s objective in passing the law.

21 Even if “seeking admission” required some separate affirmative conduct by the alien,
22 an applicant for admission who attempts to avoid removal from the United States, rather
23 than trying to voluntarily depart, is by any definition “seeking admission.” Section
24 1225(b)(2)(A) applies to an alien who is present in the United States unlawfully, even for
25 years. Although the alien may not have been affirmatively seeking admission during those
26 years of illegal presence, Section 1225(b)(2) is not concerned with the alien’s pre-inspection
27 conduct. Rather, the statute’s use of present tense language (“seeking” and “determines”)
28 shows that its focus is a specific point in time — when “the examining immigration officer”

1 is making a “determin[ation]” regarding the alien’s admissibility. 8 U.S.C. § 1225(b)(2)(A).
2 At *that* point, the alien is “seeking” — *i.e.*, presently “endeavor[ing] to obtain,” American
3 Heritage Dictionary, *supra*, at 1174 — admission into the United States; if it were otherwise,
4 the applicant would not attempt to show that he is “clearly and beyond a doubt entitled to
5 be admitted.” 8 U.S.C. § 1225(b)(2)(A). That inference is confirmed by Section 1225(a)(4),
6 which authorizes an alien to voluntarily “depart immediately from the United States.” An
7 applicant who forgoes that statutory option and instead endeavors to prove admissibility
8 and opts for Section 240 removal proceedings — proceedings in which the alien has the
9 “burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted,” *id.* §
10 1229a(c)(2)(A) — is plainly “endeavor[ing] to obtain” admission to the United States.
11 American Heritage Dictionary, *supra*, at 1174.

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

27 To be sure, the Laken Riley Act’s application to aliens who are inadmissible under
28 §1182(a)(6)(A) — for being “present ... without being admitted or paroled” — overlaps with

1 Section 1225(b)(2)(A). Both statutes mandate detention of “applicants for admission” who
 2 fall within the specified grounds of inadmissibility. But again, “[r]edundancies are common
 3 in statutory drafting,” and are “not a license to rewrite or eviscerate another portion of the
 4 statute contrary to its text.” *Barton*, 590 U.S. at 223. That is particularly true here, where this
 5 portion of the Laken Riley Act overlaps with Section 1225(b)(2)(A) even under *Petitioner’s*
 6 reading, which recognizes that applicants for admission who are “seeking admission” must
 7 be detained under Section 1225(b)(2)(A). See *Microsoft Corp. v. I4I Ltd. P’ship*, 564 U.S. 91,
 8 106 (2011) (“the canon against superfluity assists only where a competing interpretation
 9 gives effect to every clause and word of a statute”).

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

12 The United States District Court for the District of Nebraska’s decision denying the
 13 habeas corpus petition in *Vargas Lopez v. Trump* is particularly relevant here. In *Vargas Lopez*,
 14 the petitioner, an undocumented alien who had been residing in the United States since
 15 2013, sought immediate release from detention. *Vargas Lopez v. Trump*, No. 8:25CV526,
 16 2025 WL 2780351, at *1 (D. Neb. Sept. 30, 2025). Prior to filing his petition, Vargas Lopez
 17 had received a bond hearing, and the immigration judge ordered that he be released from
 18 custody under bond of \$10,000. *Id.* at *3. DHS however appealed the bond determination,
 19 which automatically stayed Vargas Lopez’s release on bond. *Id.* Vargas Lopez then filed a
 20 petition for habeas corpus alleging that the automatic stay was *ultra vires* and violated his
 21 due process rights. *Id.* He also alleged that application of 8 U.S.C. § 1225 in his case was
 22 unlawful because 8 U.S.C. § 1226 should control his detention. *Id.*

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

27 Second, the court concluded that Vargas Lopez was subject to detention without
 28 possibility of bond under § 1225(b)(2). To do so, the court analyzed the Supreme Court’s

1 decision in *Jennings* to reject the notion that § 1225(b)(2) and § 1226(a) apply to two distinct
 2 groups of aliens; the two sections are not mutually exclusive. *Id.* at *6–8. The court then
 3 concluded that Vargas Lopez is an alien within the “catchall” scope of § 1225(b)(2), subject
 4 to detention without possibility of release on bond through a proceeding on removal under §
 5 1229a. *Id.* at *9. The court found that Vargas Lopez was an “applicant for admission”
 6 because his counsel admitted that Vargas Lopez “wishe[d] to stay in this country.” *Id.* That
 7 finding, according to the court, was consistent with the conclusions of the BIA
 8 in *Hurtado* and *Jennings*.

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

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

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

26 In denying the TRO, the *Chavez* court went no further than the plain language of §
 27 1225(a)(1). *Id.* at *4. Beginning and ending with the statutory text, the *Chavez* court correctly
 28 found that because petitioners did not contest that they are “alien[s] present in the United

1 States who ha[ve] not been admitted,” then the *Chavez* petitioners are “applicants for
 2 admission” and thus subject to the mandatory detention provisions of “applicants for
 3 admission” under § 1225(b)(2). *Id.*; see also *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221–
 4 222 (finding that an alien who entered without inspection is an “applicant for admission”
 5 and his argument that he cannot be considered as “seeking admission” is unsupported by
 6 the plain language of the INA, and further stating, “[i]f he is not admitted to the United
 7 States . . . but he is not ‘seeking admission’ . . . then what is his legal status?”).

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

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

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

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

2 Any argument that prior agency practice supports applying § 1226(a) to Petitioner is
 3 unavailing because under *Loper Bright*, the plain language of the statute and not prior
 4 practice controls. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 225–26. In overturning
 5 *Chevron*, the Supreme Court recognized that courts often change precedents and “correct[]
 6 our own mistakes” *Loper Bright Enterprises*, 603 U.S. at 411 (overturning *Chevron, U.S.A.,*
 7 *Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). *Loper Bright* overturned a decades
 8 old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management
 9 Act that itself predated IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380.
 10 Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*. The
 11 weight given to agency interpretations “must always ‘depend upon their thoroughness, the
 12 validity of their reasoning, the consistency with earlier and later pronouncements, and all
 13 those factors which give them power to persuade.’” *Loper Bright Enterprises*, 603 U.S. at
 14 432–33 (quoting *Skidmore*, 323 U.S. at 140 (cleaned up)).

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

23 To be sure, “when the best reading of the statute is that it delegates discretionary
 24 authority to an agency,” the Court must “independently interpret the statute and effectuate
 25 the will of Congress.” *Loper Bright Enterprises*, 603 U.S. at 395. But “read most naturally, §§
 26 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain
 27 proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does
 28

1 not support Petitioner's position that the plain language mandates detention under
2 § 1226(a).

3 **f. Petitioner's Temporary Detention Does Not Offend Due Process.**

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

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

1 In another immigration context (aliens already ordered removed awaiting their
 2 removal), the Supreme Court has explained that detaining these aliens less than six months
 3 is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this
 4 presumptive constitutional limit has been subsequently distinguished as perhaps
 5 unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court
 6 explained Congress was justified in detaining aliens during the entire course of their removal
 7 proceedings who were convicted of certain crimes. *Demore*, 538 U.S. at 513. In that case,
 8 similar to undocumented aliens like Petitioner, Congress provided for the detention of
 9 certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court
 10 emphasized the constitutionality of the “definite termination point” of the detention, which
 11 was the length of the removal proceedings.³ *Id.* at 512.⁴ In light of Congress’s interest in
 12 dealing with illegal immigration by keeping specified aliens in detention pending the
 13 removal period, the Supreme Court dispensed of any Due Process concerns without
 14 engaging in the “*Mathews v. Eldridge* test” *See id. generally.*

15 Likewise, in the case at bar, Petitioner’s temporary detention pending his removal
 16 proceedings does not violate Due Process. Petitioner has been detained for a little over a
 17 month during which he was given s bond hearing, has filed an appeal before the BIA
 18 regarding the IJ’s decision denying him a bond, and his *process* continues to unfold.
 19 Specifically, DHS’s narrow appeal on the issue of release on bond is before the BIA, and
 20 resolution one way or another is undoubtedly forthcoming. Petitioner’s ample available
 21 process in his current removal proceedings demonstrate no lack of Procedural Due Process
 22 — nor any deprivation of liberty “sufficiently outrageous” required to establish a
 23 Substantive Due Process claim. *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young*

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.

1 *v. City of St. Charles, Mo.*, 244 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as*
2 *corrected* (May 1, 2001). Congress simply made the decision to detain him pending removal
3 which is a “constitutionally permissible part of that process.” *See Demore*, 538 U.S. at 531.

4 The temporary, automatic, and discretionary stays permit the United States an
5 opportunity to appeal an IJ bond decision to correct any errors by the Immigration Judge
6 while providing “an appropriate and less restrictive means whereby the government’s
7 interest in seeking a stay of the custody redetermination may be protected without unduly
8 infringing upon Petitioner’s liberty interest.” *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1077
9 (N.D. Cal. 2004); *El-Dessouki v. Cangemi*, No. CIV 063536 DSD/JSM, 2006 WL 2727191, at
10 *3 (D. Minn. Sept. 22, 2006); *Altayar v. Lynch*, No. CV-16-02479-PHX-GMS (JZB), 2016
11 WL 7383340, at *10–11 (D. Ariz. Nov. 23, 2016).

12 As explained in *Altayar*, purpose of the automatic stay is to “avoid the necessity of
13 having to decide whether to order a stay on extremely short notice with only the most
14 summary presentation of the issues.” Review of Custody Determinations, 71 FR 57873-01,
15 2006 WL 2811410; *Altayar*, 2016 WL 7383340 at *12-13. An automatic stay of up to 90
16 days does not violate due process because it is narrowly tailored to serve a compelling
17 United States interest. *Id.* In *Altayar*, the Court found there is no procedural due process
18 violation from § 1003.19(i)(2).

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

28 ///

1 **g. Request for EAJA Fees Should be Denied.**

2 Petitioner seeks attorney's fees and costs pursuant to § 2412 of the Equal Access for
 3 Justice Act ("EAJA"), which allows fee-shifting in civil actions by or against the United
 4 States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504,
 5 and fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioner cannot obtain
 6 fees in this case under 5 U.S.C. § 504 since that provision excludes administrative
 7 immigration proceedings. *Ardestani v. I.N.S.*, 502 U.S. 129 (1991). His only recourse for fees
 8 is pursuant to § 2412(d)(1)(A), which provides, subject to exceptions not relevant here, that
 9 in an action brought by or against the United States, a court must award fees and expenses
 10 to a prevailing non-government party "unless the court finds that the position of the United
 11 States was substantially justified or that special circumstances make an award unjust." 28
 12 U.S.C. § 2412(d)(1)(A).

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

19 As described above, the United States District Court for the District of Nebraska
 20 and the United States District Court for the Southern District of California have both
 21 issued decisions holding that, under the plain language of § 1225(a)(1), aliens present in the
 22 United States who have not been admitted are "applicants for admission" and are thus
 23 subject to the mandatory detention provisions of "applicants for admission" under §
 24 1225(b)(2). *See Vargas Lopez*, 2025 WL 2780351; *Chavez*, 2025 WL 2730228. Because other
 25 federal judges have found persuasive the positions advanced by the Federal Respondents in
 26 this case, the Federal Respondents' position is substantially justified. *See Medina Tovar v.*
 27 *Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that the district court did not abuse
 28 its discretion, in finding that the United States' position was substantially justified for

1 purposes of EAJA, where different judges disagreed about the proper reading of the statute
2 and the case involved an issue of first impression). Because the United States' position in
3 this case is substantially justified, Petitioner's request for attorney's fees under EAJA
4 cannot prevail.

5 **VI. CONCLUSION**

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

8 Respectfully submitted this 26th day of November 2025.

9
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