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9 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

10 EDIN ELEAZAR QUINONEZ OROSCO,  
 11  
 12 Petitioner,  
 v.

Case No. 2:25-cv-02240-RFB-EJY  
**Federal Respondents' Response to  
 Order to Show Cause (ECF No. 12)**

13 TODD M. LYONS, Acting Director  
 Immigration & Customs Enforcement, John  
 14 Doe, Acting Las Vegas/Salt Lake City  
 Field Office Director, Enforcement and  
 15 Removal Operations, United States  
 Immigration and Customs Enforcement  
 16 (Ice); JOHN MATTOS, Warden, Nevada  
 Southern Detention Center; KRISTI  
 17 NOEM, Secretary, United States  
 Department of Homeland Security;  
 18 PAMELA BONDI, Attorney General of the  
 United States; SIRCE OWEN, Executive  
 19 Office for Immigration Review,  
 20  
 21 Respondents.

22 Federal Respondents Todd M. Lyons, Kristi Noem, Pamela Bondi, and Sirce  
 23 Owen, through undersigned counsel, hereby submit their response to the Court's Order to  
 24 Show Cause (ECF No. 12) as to why the Court should not grant Petitioner Edin Eleazar  
 25 Quinonez Orosco's Petition for Writ of Habeas Corpus (ECF No. 1).

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

27 / / /

28 / / /

1 Respectfully submitted this 26th day of November 2025.

2 SIGAL CHATTAH  
3 First Assistant United States Attorney

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

6 **Memorandum of Points and Authorities**

7 **I. INTRODUCTION**

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

17 As relevant here, Congress enacted what is now 8 U.S.C. § 1225, which requires the  
18 detention of any alien "who is an applicant for admission" and defines that term to  
19 encompass any "alien present in the United States who has not been admitted" following  
20 inspection by immigration authorities. 8 U.S.C. § 1225(a), (b)(2)(A). The statute makes no  
21 exception for how far into the country the alien traveled or how long the alien managed to  
22 evade detection. Unless the Secretary exercises the narrow and discretionary parole  
23 authority, detention is the rule for aliens who have never been lawfully admitted. There is  
24 no dispute that Petitioner is an "applicant for admission" under Section 1225(a), because he  
25 entered the country without inspection. ECF No. 1, ¶¶ 4-5; *see also* Notice to Appear,  
26 attached as Exhibit A to Petitioner's Writ for Habeas Corpus. He was neither admitted not  
27 paroled into the United States. Exhibit A. This clear statutory text means that Petitioner is  
28 not entitled to a bond hearing and potential release. Despite the clear statutory text, this

1 Court has held in prior cases before it that Petitioners are entitled to bond hearings, bond,  
2 and release. *Torralba et al v. Wright et al*, 2:25-cv-1366; *Maldonado Vasquez v. Feely*, 2:25-cv-  
3 01542; *Berto Mendez v. Noem et al*, 2:25-cv-02062; *Alvarado Gonzalez v. Mattos et al.*, 2:25-cv-  
4 01599; *Serrano Gonzalez v. Knight et al.*, 2:25-cv-02081; *Sanchez Aparicio v. Noem et al.*, 2:25-cv-  
5 01919; *Cornejo-Meijia v. Bernacke et al.*, 2:25-cv-02139; *E.C. v. Noem et al.*, 2:25-cv-01789. The  
6 Court reasoned that this narrow construction is necessary to avoid surplusage, but  
7 “[r]edundancies are common in statutory drafting,” and are “not a license to rewrite or  
8 eviscerate another portion of the statute contrary to its text.” *Barton v. Barr*, 590 U.S. 222,  
9 223 (2020).

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

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

## 25 **II. STATUTORY FRAMEWORK**

### 26 **a. The Pre-IIRIRA Framework Gave Preferential Treatment to Aliens** 27 **Unlawfully Present in the United States.**

28 The Immigration and Nationality Act (“INA”), as amended, contains a

1 comprehensive framework governing the regulation of aliens, including the creation of  
2 proceedings for the removal of aliens unlawfully in the United States and requirements for  
3 when the Executive is obligated to detain aliens pending removal.

4 Prior to 1996, the INA treated aliens differently based on whether the alien had  
5 physically “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222–  
6 223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); see *Hing Sum v. Holder*, 602 F.3d  
7 1092, 1099–1100 (9th Cir. 2010) (same). “Entry” referred to “any coming of an alien into  
8 the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically  
9 entered the United States (or not) “dictated what type of [removal] proceeding applied” and  
10 whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at  
11 1099.

12 At the time, the INA “provided for two types of removal proceedings: deportation  
13 hearing and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc).  
14 An alien who arrived at a port of entry would be placed in “exclusion proceedings and  
15 subject to mandatory detention, with potential release solely by means of a grant of parole.”  
16 *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223; see 8 U.S.C. § 1225(a)-(b) (1995); *id.*  
17 § 1226(a) (1995). By contrast, an alien who physically entered the United States unlawfully  
18 would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens in  
19 deportation proceedings, unlike those in exclusion proceedings, “were entitled to request  
20 release on bond.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. §  
21 1252(a)(1) (1994)).

22 Thus, the INA’s prior framework distinguishing between aliens based on physical  
23 “entry” had the “‘unintended and undesirable consequence’ of having created a statutory  
24 scheme where aliens who entered without inspection ‘could take advantage of the greater  
25 procedural and substantive rights afforded in deportation proceedings,’ *including the right to*  
26 *request release on bond*, while aliens who had ‘actually presented themselves to authorities for  
27 inspection’ ... were subject to mandatory custody.” *Matter of Yajure Hurtado*, 29 I. & N. Dec.  
28 at 223 (emphasis added) (quoting *Martinez v. Att’y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d

1 Cir. 2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at  
 2 225 (1996) (“House Rep.”) (“illegal aliens who have entered the United States without  
 3 inspection gain equities and privileges in immigration proceedings that are not available to  
 4 aliens who present themselves for inspection”).

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

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

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

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

25 **Section 1225(a):** Section 1225(a) codifies Congress’s decision to make lawful  
 26 “admission,” rather than physical entry, the touchstone. That provision states that an alien  
 27 “present in the United States who has not been admitted or who arrives in the United  
 28 States” “shall be deemed ... an applicant for admission”:

An alien present in the United States who has not been admitted or who arrives in

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

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

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

27 Section 1225(b)(2) is a “catchall provision that applies to all applicants for admission  
28 not covered by [subsection (b)(1)].” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It

1 requires that those aliens be detained pending Section 240 removal proceedings:

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

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

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

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

1 parole. *Id.* § 1226(a)(1)-(2).<sup>2</sup>

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

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

### 18 **III. STANDARD OF REVIEW**

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

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

28 \_\_\_\_\_  
<sup>2</sup> Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

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

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

#### 20 **IV. FACTUAL AND PROCEDURAL BACKGROUND**

21 Petitioner Edin Eleazar Quinonez Orosco, is an illegal alien, from Guatemala who  
22 entered the United States without inspection at an unknown time and location in 2013.  
23 ECF No.1, ¶ 5, Exhibit A. On September 17, 2025, Iron County Sheriff’s Office  
24 apprehended the Petitioner due to allegations of assault and interruption of a  
25 communication device. ECF No. 1, ¶ 58. Subsequently, petitioner was taken into custody  
26 by ICE and is currently in removal proceedings pursuant to 8 U.S.C. § 1229a. Petitioner is  
27 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as a noncitizen who entered the United  
28 States without being admitted or paroled, and under 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an

1 immigrant not in possession of a valid unexpired immigrant visa or other valid entry  
2 document at the time of application for admission. Petitioner had a bond hearing on  
3 October 28, 2025, but his bond was denied because the IJ found that it did not have  
4 jurisdiction to grant bond.

## 5 6 V. ARGUMENT

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

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

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

15 Section 1225(a) defines “applicant for admission” to encompass an alien who either  
16 “arrives in the United States” or who is “present in the United States who has not been  
17 admitted.” 8 U.S.C. § 1225(a)(1). And “admission” under the INA means not physical  
18 entry, but lawful entry after inspection by immigration authorities. 8 U.S.C.  
19 § 1101(a)(13)(A). Thus, an alien who enters the country without permission is and remains  
20 an applicant for admission, regardless of the duration of the alien’s presence in the United  
21 States or the alien’s distance from the border.

22 In turn, Section 1225(b)(2) provides that “an alien who is an applicant for  
23 admission” “shall be detained” pending removal proceedings if the “alien seeking admission  
24 is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1125(b)(2)(A)  
25 (emphasis added). The statute’s use of the term “shall” makes clear that detention is  
26 mandatory, *see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998),  
27 and the statute makes no exception for the duration of the alien’s presence in the country or  
28

1 where in the country he is located. Therefore, the statute’s plain text mandates that DHS  
2 detain all “applicants for admission” who do not fall within one of its exceptions.

3 Petitioner falls squarely within the statute. He was “present in the United States,”  
4 and there is no dispute that he has “not been admitted.” 8 U.S.C. § 1225(a). Petitioner  
5 admitted that he has entered without an inspection the United States. ECF No. 1, ¶ 55.  
6 Moreover, Petitioner cannot — and did not — establish that he is “clearly and beyond a  
7 doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Therefore, Petitioner is  
8 appropriately detained and “shall be detained for a proceeding under [8 U.S.C. § 1229a].”

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

11 There is no denial that Petitioner (and others like him) are “applicants for  
12 admission” under Section 1225(b)(2). Petitioner has neither referenced nor pointed out, that  
13 he is anything else but an applicant for admission under Section 1225(b)(2). Petitioner  
14 claims that he is detained for “the purpose of conducting his deportation proceedings.” ECF  
15 No. 1, ¶ 59. The statute itself makes clear that an alien who is an “applicant for admission”  
16 is necessarily “seeking admission.” Moreover, an alien like Petitioner, who is identified by  
17 immigration authorities as unlawfully present, and who does not choose to depart from the  
18 United States voluntarily, is “seeking admission” under any interpretation of that phrase.  
19 Here, the Petitioner entered the United States without an inspection.

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

27 Section 1225(a) provides that “[a]ll aliens ... who are applicants for admission *or*  
28 *otherwise* seeking admission or readmission ... shall be inspected.” 8 U.S.C. § 1225(a)(3)

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

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

24 None of this is to say, however, that “seeking admission” has no meaning beyond  
25 “applicant for admission.” As Section 1225(a)(3) shows, being an “applicant for admission”  
26 is only *one* “way or manner” of “seeking admission,” not the exclusive way. For example,  
27 lawful permanent residents returning to the United States are not “applicants for admission”  
28 because they are already admitted, but they still may be “seeking admission.” *See* 8 U.S.C.

1 § 1103(A)(13)(C). But for purposes of Section 1225(b)(2) and its regulation of “applicants for  
2 admission,” the statute unambiguously provides that an alien who is an “applicant for  
3 admission” is “seeking admission,” even if the alien is not engaged in some separate,  
4 affirmative act to obtain lawful admission.

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

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

19 Even if “seeking admission” required some separate affirmative conduct by the alien,  
20 an applicant for admission who attempts to avoid removal from the United States, rather  
21 than trying to voluntarily depart, is by any definition “seeking admission.” Section  
22 1225(b)(2)(A) applies to an alien who is present in the United States unlawfully, even for  
23 years. Although the alien may not have been affirmatively seeking admission during those  
24 years of illegal presence, Section 1225(b)(2) is not concerned with the alien’s pre-inspection  
25 conduct. Rather, the statute’s use of present tense language (“seeking” and “determines”)  
26 shows that its focus is a specific point in time — when “the examining immigration officer”  
27 is making a “determin[ation]” regarding the alien’s admissibility. 8 U.S.C. § 1225(b)(2)(A).  
28 At *that* point, the alien is “seeking” — *i.e.*, presently “endeavor[ing] to obtain,” American

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

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

24 To be sure, the Laken Riley Act’s application to aliens who are inadmissible under  
25 §1182(a)(6)(A) — for being “present ... without being admitted or paroled” — overlaps with  
26 Section 1225(b)(2)(A). Both statutes mandate detention of “applicants for admission” who  
27 fall within the specified grounds of inadmissibility. But again, “[r]edundancies are common  
28 in statutory drafting,” and are “not a license to rewrite or eviscerate another portion of the

1 statute contrary to its text.” *Barton*, 590 U.S. at 223. That is particularly true here, where this  
2 portion of the Laken Riley Act overlaps with Section 1225(b)(2)(A) even under *Petitioner’s*  
3 reading, which recognizes that applicants for admission who are “seeking admission” must  
4 be detained under Section 1225(b)(2)(A). See *Microsoft Corp. v. I4I Ltd. P’ship*, 564 U.S. 91,  
5 106 (2011) (“the canon against superfluity assists only where a competing interpretation  
6 gives effect to every clause and word of a statute”).

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

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

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

24 Second, the court concluded that Vargas Lopez was subject to detention without  
25 possibility of bond under § 1225(b)(2). To do so, the court analyzed the Supreme Court’s  
26 decision in *Jennings* to reject the notion that § 1225(b)(2) and § 1226(a) apply to two distinct  
27 groups of aliens; the two sections are not mutually exclusive. *Id.* at \*6–8. The court then  
28 concluded that Vargas Lopez is an alien within the “catchall” scope of § 1225(b)(2), subject

1 to detention without possibility of release on bond through a proceeding on removal under §  
2 1229a. *Id.* at \*9. The court found that Vargas Lopez was an “applicant for admission”  
3 because his counsel admitted that Vargas Lopez “wishe[d] to stay in this country.” *Id.* That  
4 finding, according to the court, was consistent with the conclusions of the BIA  
5 in *Hurtado* and *Jennings*.

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

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

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

23 In denying the TRO, the *Chavez* court went no further than the plain language of §  
24 1225(a)(1). *Id.* at \*4. Beginning and ending with the statutory text, the *Chavez* court correctly  
25 found that because petitioners did not contest that they are “alien[s] present in the United  
26 States who ha[ve] not been admitted,” then the *Chavez* petitioners are “applicants for  
27 admission” and thus subject to the mandatory detention provisions of “applicants for  
28 admission” under § 1225(b)(2). *Id.*; see also *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221–

1 222 (finding that an alien who entered without inspection is an “applicant for admission”  
2 and his argument that he cannot be considered as “seeking admission” is unsupported by  
3 the plain language of the INA, and further stating, “[i]f he is not admitted to the United  
4 States . . . but he is not ‘seeking admission’ . . . then what is his legal status?”).

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

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

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

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

25 Any argument that prior agency practice supports applying § 1226(a) to Petitioner is  
26 unavailing because under *Loper Bright*, the plain language of the statute and not prior  
27 practice controls. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 225–26. In overturning  
28 *Chevron*, the Supreme Court recognized that courts often change precedents and “correct[]

1 our own mistakes” *Loper Bright Enterprises*, 603 U.S. at 411 (overturning *Chevron, U.S.A.,*  
2 *Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). *Loper Bright* overturned a decades  
3 old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management  
4 Act that itself predated IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380.  
5 Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*. The  
6 weight given to agency interpretations “must always ‘depend upon their thoroughness, the  
7 validity of their reasoning, the consistency with earlier and later pronouncements, and all  
8 those factors which give them power to persuade.’” *Loper Bright Enterprises*, 603 U.S. at  
9 432–33 (quoting *Skidmore*, 323 U.S. at 140 (cleaned up)).

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

18 To be sure, “when the best reading of the statute is that it delegates discretionary  
19 authority to an agency,” the Court must “independently interpret the statute and effectuate  
20 the will of Congress.” *Loper Bright Enterprises*, 603 U.S. at 395. But “read most naturally, §§  
21 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain  
22 proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does  
23 not support Petitioner’s position that the plain language mandates detention under  
24 § 1226(a).

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

26 As mentioned above, Congress broadly crafted “applicants for admission” to include  
27 undocumented aliens present within the United States like Petitioner. *See* 8 U.S.C. §  
28 1225(a)(1). And Congress directed aliens like the Petitioner to be detained during their

1 removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 (“Read most  
2 naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until  
3 certain proceedings have concluded.”). In so doing, Congress made a legislative judgment to  
4 detain undocumented aliens during removal proceedings, as they — by definition — have  
5 crossed borders and traveled in violation of United States law. As explained above, that is  
6 the prerogative of the legislative branch serving the interest of the government and the  
7 United States.

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

23 In another immigration context (aliens already ordered removed awaiting their  
24 removal), the Supreme Court has explained that detaining these aliens less than six months  
25 is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this  
26 presumptive constitutional limit has been subsequently distinguished as perhaps  
27 unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court  
28 explained Congress was justified in detaining aliens during the entire course of their removal.

1 proceedings who were convicted of certain crimes. *Demore*, 538 U.S. at 513. In that case,  
2 similar to undocumented aliens like Petitioner, Congress provided for the detention of  
3 certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court  
4 emphasized the constitutionality of the “definite termination point” of the detention, which  
5 was the length of the removal proceedings.<sup>3</sup> *Id.* at 512.<sup>4</sup> In light of Congress’s interest in  
6 dealing with illegal immigration by keeping specified aliens in detention pending the  
7 removal period, the Supreme Court dispensed of any Due Process concerns without  
8 engaging in the “*Mathews v. Eldridge* test” *See id. generally.*

9 Likewise, in the case at bar, Petitioner’s temporary detention pending his removal  
10 proceedings does not violate Due Process. While in detention, Petitioner requested and was  
11 granted a bond hearing. Petitioner has not appealed the IJ’s decision not to grant a bond on  
12 jurisdictional grounds before the BIA. Petitioner’s ample available process in his current  
13 removal proceedings demonstrate no lack of Procedural Due Process — nor any deprivation  
14 of liberty “sufficiently outrageous” required to establish a Substantive Due Process claim.  
15 *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244  
16 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001).  
17 Congress simply made the decision to detain him pending removal which is a  
18 “constitutionally permissible part of that process.” *See Demore*, 538 U.S. at 531.

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

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25 <sup>3</sup> “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*.”

<sup>4</sup> 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 (N.D. Cal. 2004); *El-Dessouki v. Cangemi*, No. CIV 063536 DSD/JSM, 2006 WL 2727191, at  
2 \*3 (D. Minn. Sept. 22, 2006); *Altayar v. Lynch*, No. CV-16-02479-PHX-GMS (JZB), 2016  
3 WL 7383340, at \*10–11 (D. Ariz. Nov. 23, 2016).

4 As explained in *Altayar*, purpose of the automatic stay is to “avoid the necessity of  
5 having to decide whether to order a stay on extremely short notice with only the most  
6 summary presentation of the issues.” Review of Custody Determinations, 71 FR 57873-01,  
7 2006 WL 2811410; *Altayar*, 2016 WL 7383340 at \*12-13. An automatic stay of up to 90  
8 days does not violate due process because it is narrowly tailored to serve a compelling  
9 United States interest. *Id.* In *Altayar*, the Court found there is no procedural due process  
10 violation from § 1003.19(i)(2).

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

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

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

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

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

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

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1 **VI. CONCLUSION**

2 For the foregoing reasons, Federal Respondents respectfully request that the Court  
3 deny the Petition for Writ of Habeas Corpus.

4 Respectfully submitted this 26th day of November 2025.

5 SIGAL CHATTAH  
6 First Assistant United States Attorney

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

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