

1 CRAIG H. MISSAKIAN (CABN 125202)
United States Attorney
2 PAMELA T. JOHANN (CABN 145558)
Chief, Civil Division
3 WILLIAM SKEWES-COX (DCBN 1780431)
Special Assistant United States Attorney

4 450 Golden Gate Avenue, Box 36055
5 San Francisco, California 94102-3495
6 Telephone: (415) 436-7066
Facsimile: (415) 436-6748
7 William.Skewes-Cox@usdoj.gov

8 Attorneys for Respondents

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 JOSEFA HERNANDEZ BERNAL,

13 Plaintiff-Petitioner,

14 v.

15 SERGIO ALBARRAN, et al.,

16 Defendants-Respondents,

Case No. 3:25-cv-09772-RS

**RESPONDENTS' RETURN TO HABEAS
PETITION**

Hon. Richard Seeborg, CJ

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

II. FACTUAL AND PROCEDURAL BACKGROUND..... 2

 A. Factual Background 2

 B. Procedural History 3

III. STATUTORY BACKGROUND 3

 A. The Pre-IIRIRA Framework Gave Preferential Treatment to Noncitizens Who Unlawfully Entered and Were Present in the United States 4

 B. IIRIRA Eliminated the Preferential Treatment of Noncitizens Who Unlawfully Entered the United States and Mandated Detention of “Applicants for Admission” 5

 1. Section 1225(a)..... 5

 2. Section 1225(b) 6

 3. Section 1226 7

 C. DHS Concludes that Section 1225(b)(2)(A) Requires Detention of All Applicants for Admission 8

IV. ARGUMENT 9

 A. Section 1225(b)(2) Mandates Detention of Noncitizens, Like Petitioner, Who Are Present in the United States Without Having Been Admitted 9

 1. The Plain Language of Section 1225(b)(2) Mandates Detention of Applicants for Admission 10

 2. Attempts to Construe Section 1225(b)(2) Narrowly Ignore the Plain Language of the Statute. 11

 a. Section 1225 Is Not Limited to “Arriving Aliens” 11

 b. Section 1225(b)(2)’s Reference to Aliens “Seeking Admission” Does Not Narrow the Statute’s Scope 11

 3. The Overlap Between Section 1226(c) and Section 1225(b)(2) Does Not Support Re-Writing Section 1225(b)(2) to Eliminate Mandatory Detention 15

 4. The Laken Riley Act Does Not Resolve the Statutory Question in Petitioner’s Favor 17

 5. Failing to Uphold Mandatory Detention Would Subvert Congressional Intent..... 18

 6. The Government’s Reading Is Consistent with *Jennings* 19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. The Court May Not Disregard Section 1225(b)(2)'s Mandatory Detention Framework, Which Is Applicable To Petitioner as an Applicant for Admission20

1. The *Mathews* Factors Do Not Apply20

2. Petitioner's Detention Authority Cannot Be Converted To § 1226(a)22

C. Petitioner Is Not Entitled to a Pre-Detention Hearing Under § 1226(a) or a Reversed Burden of Proof.....23

D. Any Ruling On This Habeas Petition Must Allow For Re-Detention Upon a Final Administrative Removal Order.....25

V. CONCLUSION.....25

TABLE OF AUTHORITIES

Cases

Abel v. United States, 362 U.S. 217 (1960) 23

Altamirano Ramos v. Lyons, No. 25-cv-09785,
2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) 2, 10

Alonzo v. Noem, No. 25-cv-01519, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025) 2

Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320 (2015) 13

Att’y Gen. of United States v. Wynn, 104 F.4th 348 (D.C. Cir. 2024) 12

Barton v. Barr, 590 U.S. 222 (2020) 14, 15, 17, 18

Carlson v. Landon, 342 U.S. 524 (1952) 23

Dave v. Ashcroft, 363 F.3d 649 (7th Cir. 2004) 21

Demore v. Kim, 538 U.S. 510 (2003) 20, 23, 24

Dep’t of Homeland Security v. Thuraissigiam, 591 U.S. 103 (2020) *passim*

Drakes Bay Oyster Co. v. Jewell, 747 F.3d 1073 (9th Cir. 2014) 23

Gen. Contractors of Cal., Inc. v. Coal for Econ. Equity, 950 F.2d 1401 (9th Cir. 1991) 23

Henry Schein, Inc. v. Archer & White Sales, Inc., 586 U.S. 63 (2019) 13

Heyman v. Cooper, 31 F.4th 1315 (11th Cir. 2022) 14

Hing Sum v. Holder, 602 F.3d 1092 (9th Cir. 2010) 3, 4, 5

Hose v. I.N.S., 180 F.3d 992 (9th Cir. 1999) 4

In re Guerra, 24 I. & N. Dec. 37 (BIA 2006) 25

Jennings v. Rodriguez, 583 U.S. 281 (2018) *passim*

Johnson v. Arteaga-Martinez, 596 U.S. 573 (2022) 25

Kaplan v. Tod, 267 U.S. 228 (1925) 19

King v. Burwell, 576 U.S. 473 (2015) 18

Kleber v. CareFusion Corp., 914 F.3d 480 (7th Cir. 2019) 12

Landon v. Plasencia, 459 U.S. 21 (1982) 22

Lands Council v. McNair, 537 F.3d 981 (9th Cir. 2008) 24

1 *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657 (2020) 10

2 *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 7474861 (N.D. Cal. Dec. 24, 2018) 23

3 *Marin All. For Med. Marijuana v. Holder*, 866 F. Supp. 2d 1142 (N.D. Cal. 2011) 23

4 *Martinez v. Att’y General of U.S.*, 693 F.3d 408 (2012) 4

5 *Maryland v. King*, 567 U.S. 1301 (2012) 24

6 *Mathews v. Eldridge*, 424 U.S. 319 (1976)..... 20

7 *Matter of Lemus-Losa*, 25 I & N. Dec. 734 (BIA 2012) 12

8 *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) *passim*

9 *Mejia Olalde v. Noem*, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) 10, 12, 13, 17

10 *Meneses v. Jennings*, No. 21-cv-07193-JD, 2021 WL 4804293 (N.D. Cal. Oct. 14, 2021)..... 23

11 *Microsoft Corp. v. I4I Ltd. P’ship*, 564 U.S. 91 (2011) 17

12 *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) 19

13 *New York State Dep’t of Soc. Servs. v. Dublino*, 413 U.S. 405 (1973) 18

14 *Ortega-Cervantes v. Gonzalez*, 501 F.3d 1111 (9th Cir. 2007) 8

15 *Pereira v. Sessions*, 585 U.S. 198 (2018) 13

16 *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639 (2012) 16

17 *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF,
2025 WL 2419263 (N.D. Cal. Aug. 21, 2025) 21

18 *Reno v. Flores*, 507 U.S. 292 (1993) 22, 23

19 *Rimini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334 (2019) 14

20 *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022) 20, 23, 24

21 *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC),
2025 WL 2637503 (N.D. Cal. Sept. 12, 2025) 11, 12, 16

22 *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953) 18

23 *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011) 25

24 *Sixtos Chavez v. Noem*, No. 25-cv-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) 2

25 *Stormans, Inc. v. Selecky*, 586 F.3d 1109 (9th Cir. 2009) 24

26 *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*,
576 U.S. 519 (2015) 12

27 *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020) 5

28

1 *United Gas Improvement v. Callery*, 382 U.S. 223 (1965)..... 22

2 *United States v. Bronstein*, 849 F.3d 1101 (D.C. Cir. 2017) 14

3 *Valencia v. Chestnut*, No. 25-cv-01550, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025) 2

4 *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958 (11th Cir. 2016) 12

5 *Wong Wing v. United States*, 163 U.S. 228 (1896)..... 23

6 *Yamataya v. Fisher*, 189 U.S. 86 (1903) 19

7 *Zadvydas v. Davis*, 533 U.S. 678 (2001) 20, 25

8 **Statutes**

9 8 U.S.C. § 1101(a)(13) (1994) 4

10 8 U.S.C. § 1101(a)(13)(A) 5, 10

11 8 U.S.C. § 1103(A)(13)(C) 13

12 8 U.S.C. § 1127 8, 23

13 8 U.S.C. § 1182 7

14 8 U.S.C. § 1182(a) 1, 8, 13, 17, 24

15 8 U.S.C. § 1182(b)(5) 16

16 8 U.S.C. § 1182(d)(5)(A) 6, 7

17 8 U.S.C. § 1225 (1995) 4

18 8 U.S.C. § 1225 *passim*

19 8 U.S.C. § 1225(a) *passim*

20 8 U.S.C. § 1225(b) *passim*

21 8 U.S.C. § 1226 *passim*

22

23 8 U.S.C. § 1226(a) *passim*

24 8 U.S.C. § 1226(c) *passim*

25 8 U.S.C. § 1229a 6, 11, 15, 21

26 Pub. L. No. 119-1 8

27 **Regulations**

28

1 8 C.F.R. § 236.1(c)(8) 8
2 8 C.F.R. § 236.1(d) 8
3 8 C.F.R. § 1003.19 8
4 8 C.F.R. § 1236.1(d)(1) 8

5 **Other Authorities**

6 Illegal Immigration Reform and Immigration Responsibility Act, Pub.L. 104-208,
7 110 Stat. 3009 (Sept. 30, 1996) *passim*

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 Respondents respectfully request that the Court deny Petitioner’s petition for writ of habeas corpus
3 because under the applicable immigration statutes, Petitioner falls within the category of “applicants for
4 admission” who are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See* 8 U.S.C.
5 § 1225(a)(1); 8 U.S.C. § 1182(a)(6)(A)(i) (categorizing certain classes of noncitizens as inadmissible, and
6 therefore ineligible to be admitted to the United States, including those “present in the United States
7 without being admitted or paroled”). Petitioner remains an “applicant for admission” subject to mandatory
8 detention despite being encountered after unlawfully crossing the border between ports of entry and
9 released into the country. Petitioner’s release was not an “admission” or “parole”; instead, it was
10 expressly conditioned on appearing in removal proceedings based on her *unlawful* entry. *See Dep’t of*
11 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138–40 (2020) (a noncitizen who is neither admitted nor
12 paroled, nor otherwise lawfully present in this country, remains an “applicant for admission” who is “on
13 the threshold” of initial entry, even if released into the country “for years pending removal,” and continues
14 to be “‘treated’ for due process purposes ‘as if stopped at the border’”); *Jennings v. Rodriguez*, 583 U.S.
15 281, 287 (2018) (such individuals are “treated as ‘an applicant for admission’”).

16 “Applicants for admission” like Petitioner are subject to mandatory detention under the Illegal
17 Immigration Reform and Immigration Responsibility Act of 1996 (“IIRIRA”). Before 1996, federal
18 immigration laws required the detention of noncitizens who presented at a port of entry, but allowed those
19 who had entered between ports of entry and were already unlawfully present in the United States when
20 encountered to obtain release pending removal proceedings. Congress overhauled the immigration system
21 by passing IIRIRA, which included the specific objective of ending preferential treatment of noncitizens
22 who attempted to evade inspection by entering the United States unlawfully between ports of entry.

23 Relevant here, Congress enacted what is now codified at 8 U.S.C. § 1225. That provision
24 “deem[s]” any “alien present in the United States who has not been admitted or who arrives in the United
25 States” to be “an applicant for admission.” 8 U.S.C. § 1225(a)(1). And it mandates the detention of any
26 “applicant for admission” who cannot show that they are “clearly and beyond a doubt entitled to be
27 admitted.” *Id.* § 1225(b)(2)(A). The statute makes no exception for how far into the country a noncitizen
28 has traveled or how long he or she manages to avoid detection. Unless the Secretary exercises narrow and

1 discretionary parole authority not applicable here, mandatory detention is the rule for individuals who have
2 never been lawfully admitted.

3 Here, Petitioner entered the country without inspection, was never “admitted,” and unambiguously
4 remains an “applicant for admission” subject to mandatory detention despite her prior conditional release.
5 *Thuraissigiam*, 591 U.S. at 138–40. Further, while courts in this district have concluded that § 1225(b) is
6 not applicable to individuals who were conditionally released under § 1226(a), several courts in other
7 districts in this Circuit have recently denied motions for temporary restraining orders or for preliminary
8 injunctive relief for individuals like Petitioner who are detained under 8 U.S.C. § 1225(b)(2) after prior
9 conditional release. These courts have upheld, at least preliminarily, mandatory detention under
10 § 1225(b)(2). See *Altamirano Ramos v. Lyons*, No. 25-cv-09785, 2025 WL 3199872, at *4 (C.D. Cal.
11 Nov. 12, 2025) (acknowledging that the court had previously rejected the government’s interpretation of
12 § 1225(b)(2), but “after additional research and analysis, the court has concluded that Petitioner is
13 subject to mandatory detention under § 1225(b)(2)(a), and that Petitioner is not eligible for a bond
14 hearing under 8 U.S.C. § 1226(a)”; *Sixtos Chavez v. Noem*, No. 25-cv-02325, 2025 WL 2730228 (S.D.
15 Cal. Sept. 24, 2025), *appeal docketed*, No. 25-7077 (9th Cir. Nov. 7, 2025); *Valencia v. Chestnut*, No.
16 25-cv-01550, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025); *Alonzo v. Noem*, No. 25-cv-01519, 2025
17 WL 3208284 (E.D. Cal. Nov. 17, 2025); see also *In re Matter of Yajure Hurtado*, 29 I & N Dec. 216,
18 225 (B.I.A. 2025) (examining the plain language of § 1225, the INA’s statutory scheme, Supreme Court
19 and BIA precedent, the legislative history of IIRIRA, and DHS’s prior practices before holding that
20 “under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A),
21 Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent,
22 who are present in the United States without admission”).

23 Likewise here, Petitioner is subject to mandatory detention and is not entitled to a custody
24 redetermination hearing prior to re-detention. Despite her conditional release, Petitioner remains an
25 “applicant for admission” “on the threshold” of initial entry for due process purposes, and subject to
26 mandatory detention under § 1225(b)(2).

27 II. FACTUAL AND PROCEDURAL BACKGROUND

28 A. Factual Background

1 Petitioner is a native and citizen of Venezuela. Declaration of Deportation Officer Michael Silva
2 (“Silva Decl.”) ¶ 6. Petitioner unlawfully entered the United States without inspection on or about June
3 2, 2024. *Id.* On that same date she was apprehended by U.S. Border Patrol agents. *Id.* ¶ 7. On or about
4 June 29, 2024, ICE’s Enforcement and Removal Operations (“ERO”) served Petitioner with a Form I-
5 220A, Order of Release on Recognizance, which informed her of the conditions of her release. *Id.* &
6 Exh. 1. Petitioner signed the acknowledgement on the form, confirming that her conditions of release
7 had been explained to her in Spanish. *Id.* Petitioner’s participation and successful completion of an
8 Alternative to Detention (“ATD”) program was a condition of her release. *Id.* On or about July 1, 2024,
9 Petitioner was released from immigration detention. *Id.* ¶ 8. On or about July 22, 2024, Petitioner was
10 placed into removal proceedings via the filing of a Notice to Appear, as an alien present without
11 admission or parole, and charged with inadmissibility under sections 212(a)(6)(A)(i) and
12 212(a)(7)(A)(i)(I) of the INA. *Id.* ¶ 9.

13 On November 19, 2024, Petitioner violated the terms of her release program by failing to
14 complete a self-report check-in with location services enabled. *Id.* ¶ 10. On February 11, 2025,
15 Petitioner violated the terms of her release program for being outside of an approved zone. *Id.* ¶ 11. On
16 July 29, 2025, Petitioner violated the terms of her release program for being outside of an approved
17 zone. *Id.* ¶ 12. On or about November 13, 2025, Petitioner was arrested by ERO officers, on an
18 immigration arrest warrant for violating the conditions of the release program. *Id.* ¶ 13 & Exhs 2, 3.

19 **B. Procedural History**

20 On November 13, 2025, Petitioner filed a petition for writ of habeas corpus and an ex parte
21 motion for a temporary restraining order with this Court. *See* Dkt. No. 1, 3. That same day, the Court
22 granted Petitioner’s motion for a temporary restraining order. Dkt. No. 5. The Court ordered
23 Respondents to release Petitioner from custody and ordered that Respondents are enjoined and restrained
24 from re-detaining her without notice and a pre-deprivation hearing before a neutral decision maker, and
25 from removing her from the United States. *Id.* Petitioner was released from custody on November 13,
26 2025, at approximately 10:20 p.m. pursuant to the District Court’s order in this case. Silva Decl. ¶ 14.
27 On November 25, 2025, this Court issued a Preliminary Injunction. Dkt. No. 14.

28 **III. STATUTORY BACKGROUND**

1 **A. The Pre-IIRIRA Framework Gave Preferential Treatment to Noncitizens Who**
 2 **Unlawfully Entered and Were Present in the United States**

3 The Immigration and Nationality Act (“INA”), as amended, contains a comprehensive framework
 4 governing the regulation of noncitizens, including the creation of proceedings for the removal of
 5 individuals who unlawfully enter the United States or are otherwise removable and requirements for when
 6 the Executive is obligated to detain aliens pending removal.

7 Prior to 1996, the INA treated aliens differently based on whether he or she had presented at a port
 8 of entry or avoided inspection and entered the United States. *Hurtado*, 29 I. & N. Dec. at 222–23 (citing 8
 9 U.S.C. §§ 1225(a), 1251 (1994)); see *Hing Sum v. Holder*, 602 F.3d 1092, 1099–1100 (9th Cir. 2010)
 10 (same). “Entry” referred to “any coming of an alien into the United States,” 8 U.S.C. § 1101(a)(13)
 11 (1994), and whether an individual had physically entered the United States (or not) “dictated what type of
 12 [immigration] proceeding applied” and whether he or she would be detained pending those proceedings.
 13 *Hing Sum*, 602 F.3d at 1099.¹

14 At the time, the INA “provided for two types of removal proceedings: deportation hearings and
 15 exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). A noncitizen who
 16 arrived at a port of entry would be placed in “exclusion proceedings and subject to mandatory detention,
 17 with potential release solely by means of a grant of parole.” *Hurtado*, 29 I. & N. Dec. at 223; see 8 U.S.C.
 18 §§ 1225(a)–(b) (1995), 1226(a) (1995). In contrast, a noncitizen who evaded inspection and physically
 19 entered the United States would be placed in deportation proceedings. *Hurtado*, 29 I. & N. Dec. at 223;
 20 *Hing Sum*, 602 F.3d at 1100. Noncitizens in deportation proceedings, unlike those in exclusion
 21 proceedings, “were entitled to request release on bond.” *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C.
 22 § 1252(a)(1) (1994)).

23 Thus, the INA’s prior framework distinguishing between aliens based on “entry” had the
 24 ‘unintended and undesirable consequence’ of having created a statutory scheme where aliens
 25 who entered without inspection ‘could take advantage of the greater procedural and
 26 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.

27 ¹ Noncitizens who arrive at a port of entry have physically “entered” the United States, but under
 28 the longstanding “entry fiction” doctrine, “aliens who arrive at ports of entry . . . are ‘treated’ for due
 process purposes as if stopped at the border.” *Thuraissigiam*, 591 U.S. at 139.

1 *Hurtado*, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y General of U.S.*, 693 F.3d
2 408, 413 n.5 (2012)); see *Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225
3 (1996) (“House Rep.”) (“illegal aliens who have entered the United States without inspection gain equities
4 and privileges in immigration proceedings that are not available to aliens who present themselves for
5 inspection”).

6 **B. IIRIRA Eliminated the Preferential Treatment of Noncitizens Who Unlawfully**
7 **Entered the United States and Mandated Detention of “Applicants for Admission”**

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

12 To that end, IIRIRA replaced the prior focus on physical “entry” and instead made lawful
13 “admission” the touchstone. IIRIRA defined “admission” to mean “the *lawful* entry of the alien into the
14 United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A)
15 (emphasis added). In other words, the immigration laws no longer distinguish between noncitizens based on
16 whether they manage to avoid detection and enter the country without permission. Instead, the “pivotal
17 factor in determining an alien’s status” is “whether or not the alien has been *lawfully* admitted.” House Rep.
18 225 (emphasis added); *Hing Sum*, 602 F.3d at 1100 (similar). IIRIRA also eliminated the exclusion/
19 deportation dichotomy and consolidated both sets of proceedings into “removal proceedings.” *Hurtado*, 29
20 I. & N. Dec. at 223.

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

22 **1. Section 1225(a)**

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

26 An alien present in the United States who has not been admitted or who arrives in the United
27 States (whether or not at a designated port of arrival and including an alien who is brought to
28 the United States after having been interdicted in international or United States waters) shall
be deemed for purposes of this chapter an applicant for admission.

1
 2 8 U.S.C. § 1225(a)(1). “All aliens (including alien crewmen) who are applicants for admission or otherwise
 3 seeking admission or readmission to or transit through the United States shall be inspected by immigration
 4 officers.” *Id.* § 1225(a)(3). The inspection by the immigration officer is designed to determine whether the
 5 immigrant may be lawfully “admitted” to the country or, instead, must be referred to removal proceedings.

6 **2. Section 1225(b)**

7 IIRIRA also provided for expedited removal and non-expedited “Section 240” proceedings and
 8 mandated that applicants for admission be detained pending either of those proceedings. 8 U.S.C.
 9 § 1225(b)(1)–(2).

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

23 Section 1225(b)(2) is a “catchall provision that applies to all applicants for admission not covered by
 24 [subsection (b)(1)].” *Jennings*, 583 U.S. at 287.² It requires that those individuals be detained pending
 25 Section 240 removal proceedings:

26 Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission,

27 ² Section 1225(b)(2)(A) also does not apply to (1) crewmen or (2) stowaways. 8 U.S.C.
 28 § 1225(b)(2)(B). In addition, the Executive has discretion to return aliens who have arrived on land
 from a contiguous territory to that territory pending removal proceedings. *Id.* § 1225(b)(2)(C).

1 if the examining immigration officer determines that an alien seeking admission is not clearly
2 and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under
3 section 1229a of this title [Section 240].

4 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see* 8 C.F.R. § 235.3(b)(1)(ii) (mirroring Section 1225(b)(2)'s
5 detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention of
6 aliens throughout the completion of applicable proceedings and not just until the moment those proceedings
7 begin”).

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

16 3. Section 1226

17 IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens
18 generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This provision governs the
19 detention of individuals who were admitted to the country but later become removable — for example,
20 admitted noncitizens who overstay or otherwise violate the terms of their visas, engage in conduct that
21 renders them removable despite having permanent resident status, or are later determined to have been
22 improperly admitted. *See* 8 U.S.C. § 1227(a).

23 The statute provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested
24 and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C.
25 § 1226(a). Detention under this provision is generally discretionary. The Attorney General “may” either
26 “continue to detain the arrested alien” or release the individual on bond or conditional parole. *Id.* §
27 1226(a)(1)–(2).³ In practice, DHS makes the initial custody determination. 8 C.F.R. § 236.1(d)(1). The

28 ³ Conditional parole under Section 1226(a) is distinct from parole under Section 1182(d)(5)(A).

1 detainee may seek custody redetermination (a bond hearing) before an immigration judge and can appeal an
2 immigration judge’s custody determination to the Board of Immigration Appeals. 8 C.F.R. §§ 236.1(c)(8),
3 (d), 1236.1(d)(1), 1003.19.

4 This “default rule” does not apply to certain criminal aliens who are being released from the custody
5 of another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c). Section 1226(c)
6 provides that “[t]he Attorney General shall take into custody” certain classes of criminal aliens — those who
7 are inadmissible or deportable because the alien (1) “committed” certain offenses delineated in 8 U.S.C.
8 §§ 1182 and 1227; or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The Executive must
9 detain these criminal aliens after “the alien is released, without regard to whether the alien is released on
10 parole, supervised release, or probation, and without regard to whether the alien may be arrested or
11 imprisoned again for the same offense.” *Id.* Such individuals may be released only if DHS determines “that
12 release of the alien from custody is necessary” to protect a witness to a “major criminal activity” or similar
13 person, and then only if the alien “will not pose a danger” to public safety and is not a flight risk. *Id.* §
14 1226(c)(4).

15 Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2,
16 139 Stat. 3 (2025), which additionally requires detention of (and prohibits parole for) criminal aliens who (1)
17 are inadmissible because they are physically present in the United States without admission or parole (8
18 U.S.C. § 1182(a)(6)(A)), have committed a material misrepresentation or fraud, (*id.* § 1182(a)(6)(C)), or lack
19 required documentation, (*id.* § 1182(a)(7)); and (2) are “charged with, [] arrested for, [] convicted of, admit[]
20 having committed, or admit[] committing acts which constitute the essential elements of” certain listed
21 offenses. 8 U.S.C. § 1226(c)(1)(E).

22 **C. DHS Concludes that Section 1225(b)(2)(A) Requires Detention of All Applicants for**
23 **Admission**

24 For many years after IIRIRA, DHS and most immigration judges treated aliens who entered the
25 United States without admission as being subject to discretionary detention under 8 U.S.C. § 1226(a), rather
26 than mandatory detention under 8 U.S.C. § 1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6. Until this
27

28

See Ortega-Cervantes v. Gonzalez, 501 F.3d 1111, 1116 (9th Cir. 2007).

1 year, however, the Board of Immigration Appeals had not issued any precedential opinion on the appropriate
2 detention authority for such individuals.

3 On July 8, 2025, DHS “revisited its legal position on detention and release authorities” and issued
4 interim guidance that brought the Executive’s practices in line with the statute’s plain text. Memorandum
5 from Commissioner Rodney S. Scott (July 10, 2025), available at [https://www.cbp.gov/sites/default/files/
6 2025-09/intc-46100_-_c1_signed_memo_-_07.10.2025.pdf](https://www.cbp.gov/sites/default/files/2025-09/intc-46100_-_c1_signed_memo_-_07.10.2025.pdf) (last visited Dec. 16, 2025). Specifically, DHS
7 concluded that all noncitizen who enter the country without being admitted are “subject to detention under
8 INA § 235(b) [8 U.S.C. § 1225(b)] and may not be released from ICE custody except by INA § 212(d)(5)
9 parole.” *Id.* As a result, the “only aliens eligible for a custody determination and release on recognizance,
10 bond, or other conditions under the INA § 236(a) [8 U.S.C. § 1226(a)] are aliens admitted to the United
11 States and chargeable with deportability under INA § 237 [8 U.S.C. § 1127].” *Id.*

12 The BIA also adopted this interpretation in *Hurtado*. The Board concluded that Section 1225(b)(2)’s
13 mandatory detention regime applies to *all* noncitizens who entered the United States without inspection and
14 admission:

15 Aliens . . . who surreptitiously cross into the United States remain applicants for admission
16 until and unless they are lawfully inspected and admitted by an immigration officer.
17 Remaining in the United State for a lengthy period of time following entry without inspection,
18 by itself, does not constitute an “admission.”

19 29 I. & N. Dec. at 228. Thus, under Board precedent, “Immigration Judges lack authority to hear bond
20 requests or to grant bond to aliens . . . who are present in the United States without admission.” *Id.* at 225.

21 IV. ARGUMENT

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

23 Under the plain language of Section 1225(b)(2), DHS is required to detain all individuals, like
24 Petitioner, who are present in the United States without admission and are subject to removal proceedings —
25 regardless of how long they have been in the United States or how far from the border they traveled. That
26 unambiguous language resolves this case. *See Little Sisters of the Poor Saints Peter & Paul Home v.*
27 *Pennsylvania*, 591 U.S. 657, 676 (2020) (“Our analysis begins and ends with the text.”). While Respondents
28 recognize that the Court concluded otherwise in granting the motion for preliminary injunction, Respondents

1 provide a more developed analysis for the Court’s consideration, and submit that Petitioner falls squarely
2 within the § 1225(b)(2) framework. *Cf. Altamirano Ramos*, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12,
3 2025) (“after additional research and analysis, the court has concluded that Petitioner is subject to
4 mandatory detention under § 1225(b)(2)(a), and that Petitioner is not eligible for a bond hearing under 8
5 U.S.C. § 1226(a”).

6 **1. The Plain Language of Section 1225(b)(2) Mandates Detention of Applicants**
7 **for Admission**

8 Section 1225(a) deems all individuals who are “present in the United States [and] ha[ve] not been
9 admitted or who arrive[] in the United States” to be “applicant[s] for admission.” 8 U.S.C. § 1225(a)(1).
10 And “admission” under the INA means not mere physical entry, but “lawful entry . . . after inspection” by
11 immigration authorities. 8 U.S.C. § 1101(a)(13)(A). Thus, an alien who enters the country without
12 inspection and admission is and remains an applicant for admission, regardless of the duration of the
13 individual’s presence in the United States or distance traveled from the border. *See Mejia Olalde v. Noem*,
14 2025 WL 3131942, at *2–3 (E.D. Mo. Nov. 10, 2025).

15 In turn, Section 1225(b)(2) provides that “an alien who is an applicant for admission” “shall be
16 detained” pending removal proceedings if the “alien seeking admission is not clearly and beyond a
17 doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). The statute’s use of the term “shall” denotes
18 that detention is mandatory. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26,
19 35 (1998); *see Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention”). And
20 the statute makes no exception for the duration of the alien’s presence in the country or how far the alien
21 traveled into the country. Therefore, except for those aliens expressly exempted, the statute’s plain text
22 mandates that DHS detain all “applicants for admission” who are not “clearly and beyond a doubt
23 entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A).

24 Petitioner falls squarely within the statutory definition. She was “present in the United States,”
25 there is no dispute that she has “not been admitted,” and she does not fall within any of the exceptions to
26 Section 1225(b)(2)(A). 8 U.S.C. § 1225(a), (b)(2)(B). Moreover, she cannot — and did not — establish
27 that she is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Therefore,
28 Petitioner “shall be detained for a proceeding under [8 U.S.C. § 1229a].” 8 U.S.C. § 1225(b)(2)(A).

1 **2. Attempts to Construe Section 1225(b)(2) Narrowly Ignore the Plain**
2 **Language of the Statute.**

3 **a. Section 1225 Is Not Limited to “Arriving Aliens”**

4 At least one court in this district has concluded that § 1225(b)(2) applies narrowly to “arriving aliens.”
5 See *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12,
6 2025) at *10, 11.⁴ Yet Section 1225’s text makes clear that it applies to individuals who are already
7 physically present in the United States, not just to those who are “arriving.” Section 1225(a)(1) deems
8 noncitizens already “present in the United States who ha[ve] not been admitted” to be applicants for
9 admission, and it differentiates those individuals from noncitizens who are “arriv[ing] in the United
10 States.” 8 U.S.C. § 1225(a)(1). And nothing in Section 1225(b)(2)(A) refers to “arriving aliens.” The
11 same goes for the neighboring subsection (b)(1): It extends expedited removal procedures not just to
12 “arriving” aliens but also to aliens who have been “physically present in the United States” for up to two
13 years. 8 U.S.C. § 1225(b)(1)(A)(i), (iii)(II). If Congress had wished for § 1225(b)(2) to apply exclusively
14 to “arriving aliens,” it would have used that term and not “applicants for admission.” Reading § 1225(b)(2) to
15 apply narrowly to “arriving aliens” itself violates the rule against surplusage.

16 **b. Section 1225(b)(2)’s Reference to Aliens “Seeking Admission” Does Not**
17 **Narrow the Statute’s Scope**

18 At least one court in this district has also found that “applicant for admission” is broader than “seeking
19 admission” because it covers “someone who is not ‘admitted’ but is not *necessarily* ‘seeking admission.’” See
20 *Salcedo Aceros*, 2025 WL 2637503 at *11 (emphasis in original). As the argument goes, § 1225(b)(2) covers
21 only a smaller set of aliens “actively seeking admission” — not individuals who are residing unlawfully in the
22 United States *without* making any effort to gain admission. That is wrong. The statute itself makes clear that
23 an alien who is an “applicant for admission” *is* necessarily “seeking admission.”

24 **First**, Section 1225(b)(2) requires the detention of an “applicant for admission, if the examining
25 officer determines that [the] alien *seeking admission* is not clearly and beyond a doubt entitled to be
26

27

28 ⁴ The petitioners’ bar in this district has also referred to § 1225(b)(2) as an “arriving alien statute.” See
Salcedo Aceros, No. 3:25-cv-06924-EMC, ECF No. 24 (Sept. 4, 2025 H’rg Tr.) at 14:10, 23:4–5, 25:1–2.

1 admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory text and context show that being an
2 “applicant for admission” is a means of “seeking admission”; no additional affirmative step is necessary. In
3 other words, every “applicant for admission” is inherently and necessarily “seeking admission,” at least
4 absent a choice, not applicable here, to pursue voluntary withdrawal or voluntary departure.

5 Section 1225(a) provides that “[a]ll aliens . . . who are applicants for admission *or otherwise* seeking
6 admission or readmission . . . shall be inspected.” 8 U.S.C. § 1225(a)(3) (emphasis added). The word
7 “[o]therwise” means “in a different way or manner[.]” *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive*
8 *Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster’s Third New International Dictionary
9 1598 (1971)); *see also Att’y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same);
10 *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) (“or otherwise”
11 means “the first action is a subset of the second action”); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83
12 (7th Cir. 2019). Being an “applicant for admission” is thus a particular “way or manner” of seeking
13 admission, such that any alien who is an “applicant for admission” *is* “seeking admission” for purposes of
14 Section 1252(b)(2)(A).

15 “Seeking admission” is thus “a term of art” that includes not only aliens who “entered the United
16 States with visas or other entry documents before their presence became lawful,” but also aliens who
17 “entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for
18 admission by operation of section 235(a)(1) of the Act.” *Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 n.6
19 (BIA 2012) (emphases omitted). As a result, “many people who are not *actually* requesting permission to
20 enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the
21 immigration laws.” *Id.* at 743 (emphasis in original). For example, an alien who previously unlawfully
22 entered the United States and is never admitted, departs, and subsequently submits a literal application for
23 admission to the United States — e.g., applies for a visa — is deemed to be “*again* seek[ing] admission” to
24 the United States. *Id.* at 743-44 & n.6 (emphasis added) (quoting and discussing 8 U.S.C.
25 § 1182(a)(9)(B)(i)(I)-(II)). Mere presence without admission *is* seeking admission “by operation of law.” *Id.*

26 Neither the duration of an individual’s unlawful presence in the United States nor her distance
27 from the border alters the legal reality that an “applicant for admission” is “seeking admission.”
28 “Congress knows how to limit the scope” of the INA “geographically and temporally when it wants to.”

1 *Mejia Olalde*, 2025 WL 3131942, at *4. For example, Section 1225(b)(1) may apply to aliens “arriving
2 in the United States” or who “ha[ve] been physically present in the United States continuously for [a] 2-
3 year period.” 8 U.S.C. § 1225(b)(1). So, “[i]f Congress meant to say that an alien no longer is ‘seeking
4 admission’ after some amount of time in the United States, Congress knew how to do so.” *Mejia Olalde*,
5 2025 WL 3131942, at *4. It did not. To the contrary, Section 1225(a)(1)’s inclusion of *both* aliens
6 “arriving” and those “present in the United States” confirms that *all* aliens who are not admitted are
7 “applicants for admission,” regardless of the length of their presence in the country. 8 U.S.C. § 1225(a)(1).

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

16 The government previously operated under a narrower application of Section 1225(b)(2)(A), such
17 that aliens present in the United States who had entered without admission were instead detained under
18 Section 1226(a). But past practice does not justify disregard of clear statutory language. *See* 8 C.F.R.
19 § 235.3(b)(1)(ii) (requiring detention of applicants for admission pending removal proceedings “in
20 accordance with section 235(b)(2) of the Act”); *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329
21 (2015). Indeed, the Supreme Court has rejected longstanding government interpretations that it has deemed
22 incompatible with the INA specifically. *See Pereira v. Sessions*, 585 U.S. 198, 204–05, 208–09 (2018).
23 Therefore, a court must always interpret the statute “as written,” *Henry Schein, Inc. v. Archer & White Sales,*
24 *Inc.*, 586 U.S. 63, 68 (2019), and here the statute as written requires detention of *any* applicant for admission,
25 regardless of whether the applicant is taking affirmative steps toward admission. *See Mejia Olalde*, 2025
26 WL 3131942, at *5 (rejecting the prior interpretation of Section 1225(b)(2) as “nontextual” and unsupported
27 by any “thorough, reasoned analysis”).

28 **Second**, the government’s reading does not render the term “seeking admission” redundant of the

1 phrase “applicant for admission” in Section 1252(b)(2)(A); the structure of Section 1252(b)(2)(A) gives each
2 independent meaning. Section 1225(b)(2)(A) is composed of a primary (operative) clause, which is
3 modified by two prefatory clauses offset by commas. The operative clause requires detention of aliens
4 “seeking admission” who cannot show their admissibility (“if the examining immigration officer . . . , [then]
5 the alien shall be detained”). That clause’s mandate is modified by two prefatory clauses. The first excludes
6 aliens covered by subparagraphs (B) and (C). 8 U.S.C. § 1225(b)(2)(A) (“[s]ubject to . . .”). Like the first,
7 the second prefatory clause narrows the operative clause to a subset of “case[s]” — namely, “in the case of
8 an alien who is an applicant for admission . . .” *Id.* (emphasis added). Section 1225(b)(2) thus lays out a
9 general command (the operative clause), and then qualifies that directive: “[I]f an alien seeking admission is
10 not clearly and beyond a doubt entitled to be admitted,” then “the alien shall be detained” — but only if the
11 alien (1) is seeking admission by being “an applicant for admission” under Section 1225(a)(1); and (2) is not
12 covered by subparagraphs (B) or (C). No portion of the statute is redundant.

13 Even if it were otherwise, the canon against surplusage “is not a silver bullet.” *Rimini St., Inc. v.*
14 *Oracle USA, Inc.*, 586 U.S. 334, 346 (2019). “Redundancies are common in statutory drafting — sometimes
15 in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of
16 foresight, or sometimes simply because of the shortcomings of human communication.” *Barton*, 590 U.S. at
17 239. Thus, “[t]he Court has often recognized: Sometimes the better overall reading of a statute contains
18 some redundancy.” *Id.* (quoting *Rimini St., Inc.*, 586 U.S. at 346) (internal quotations omitted). For that
19 reason, “the surplusage canon . . . must be applied with statutory context in mind,” *United States v.*
20 *Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017), and “redundancy in one portion of a statute is not a license
21 to rewrite or eviscerate another portion of the statute contrary to its text,” *Barton*, 590 U.S. at 239.

22 That is the case here. Under a straightforward reading of the statute, being an “applicant for
23 admission” is “seeking admission.” Although that reading may lead to some redundancy in Section
24 1225(b)(2)(A), that is “not a license to rewrite” Section 1225 “contrary to its text.” *Barton*, 590 U.S. at 239;
25 *see Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) (“Th[e] principle [that drafters do repeat
26 themselves] carries extra weight where . . . the arguably redundant words that the drafters employed . . . are
27 functional synonyms.”). And that is especially true where that re-writing would be so clearly contrary to
28 Congress’s objective in passing the law.

1 *Third*, even if “seeking admission” required some separate affirmative conduct by the alien, an
2 applicant for admission who attempts to avoid removal from the United States, rather than trying to
3 voluntarily depart, is by any definition “seeking admission.”

4 Section 1225(b)(2)(A) applies to a noncitizen who is present in the United States without admission,
5 even for years. Although the individual may not have been affirmatively seeking admission during those
6 years of illegal presence, Section 1225(b)(2) is not concerned with the noncitizen’s pre-inspection conduct.
7 Rather, the statute’s use of present tense language (“seeking” and “determines”) shows that its focus is a
8 specific point in time — when “the examining immigration officer” is making a “determin[ation]” regarding
9 the alien’s admissibility. 8 U.S.C. § 1225(b)(2)(A). At *that* point, the alien is “seeking” — i.e., presently
10 “endeavor[ing] to obtain,” American Heritage Dictionary of the English Language 1174 (1980) — admission
11 into the United States; if it were otherwise, the applicant would seek to voluntarily “depart immediately from
12 the United States” in lieu of removal proceedings. *See* 8 U.S.C. § 1225(a)(4). An applicant who, like
13 Petitioner here, forgoes that statutory option and instead endeavors to remain in the United States by
14 participating in Section 240 removal proceedings — proceedings in which the alien has the “burden of
15 establishing that she is clearly and beyond a doubt entitled to be admitted” or satisfies the criteria for “relief
16 from removal,” 8 U.S.C. § 1229a(c)(2)(A), (c)(4) — is plainly “endeavor[ing] to obtain” admission to the
17 United States. American Heritage Dictionary, at 1174.

18 Additionally, Petitioner is *literally* seeking admission because she has applied for asylum. As this
19 Court acknowledged in its Preliminary Injunction, Petitioner “has an open application for asylum. That
20 requires her to fill out forms, attend hearings, and go to ICE check-ins, all in service of securing legal status
21 in the United States. She is unquestionably active when she is doing those things, and it cannot be the case
22 that she oscillates between “seeking admission” and not depending on whether, in that precise moment, she
23 is completing one of the steps required to obtain asylum.” Dkt. No. 14 at 5. So not only is Petitioner seeking
24 admission by way of being physically present in the United States without admission, but also because she is
25 actively seeking admission through a grant of asylum.

26 **3. The Overlap Between Section 1226(c) and Section 1225(b)(2) Does Not Support**
27 **Re-Writing Section 1225(b)(2) to Eliminate Mandatory Detention**

28 At least one court in this district has found that redundancies between the government’s interpretation

1 of § 1225(b)(2) and § 1226(c)'s mandatory detention provisions is problematic given conventional rules of
2 statutory interpretation. *See Salcedo Aceros*, 2025 WL 2637503 at *11. However, although Section 1226(c)
3 and Section 1225(b)(2) do overlap for some noncitizens, each provision has independent effect. Mere
4 overlap is no basis for re-writing unambiguous statutory text.

5 As an initial matter, the government's interpretation of Section 1225(b)(2)(A) does not render
6 Section 1226(a)'s discretionary detention authority superfluous. Section 1226(a) authorizes the Executive to
7 "arrest[] and detain[]" any "alien" pending removal proceedings but provides that the Executive also "may
8 release the alien" on bond or conditional parole. 8 U.S.C. § 1226(a). That provision provides the detention
9 authority for the significant group of aliens who are *not* "applicants for admission" subject to Section
10 1225(b)(2)(A), *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("the
11 specific governs the general") — that is, aliens who have already been admitted to the United States but are
12 now removable. For example, the detention of any of the multitude of noncitizens who overstay their visas
13 or are lawful permanent residents is governed by Section 1226(a), because those aliens (unlike Petitioner)
14 *were* previously admitted to the United States.

15 Likewise, the government's reading of Section 1225(b)(2)(A) does not render Section 1226(c)
16 superfluous. As described above, Section 1226(c) is the exception to Section 1226(a)'s discretionary
17 detention regime, and it requires the Executive to detain "any alien" who is deportable or inadmissible for
18 having committed specified offenses or engaged in terrorism-related actions "when the alien is released"
19 from the custody of another law enforcement entity. *See* 8 U.S.C. § 1226(c)(1)(A)–(E). Like Section
20 1226(a), subsection (c) applies to significant groups of criminal aliens *not* encompassed by Section
21 1225(b)(2). Most obvious, Section 1226(c)(1) requires the Executive to detain aliens who *have been*
22 *admitted* to the United States and are now "deportable." *See* 8 U.S.C. § 1226(c)(1)(B). By contrast, Section
23 1225(b)(2) has no application to admitted noncitizens who, owing to their prior admission, are necessarily
24 not applicants for admission. Next, Section 1226(c)(1) requires detention of aliens who are "inadmissible"
25 on certain grounds. *See* 8 U.S.C. § 1226(c)(1)(A), (D), (E). Here, too, Section 1226(c) sweeps more broadly
26 than Section 1225(b)(2), because the referenced grounds cover aliens who are inadmissible but were
27 erroneously admitted. *See* 8 U.S.C. § 1227(a), (a)(1)(A) (providing for the removal of "[a]ny alien ... in *and*
28 *admitted* to the United States," including "[a]ny alien who at the time of entry or adjustment of status was

1 within one or more of the classes of aliens *inadmissible* by the law existing at the time . . .” (emphasis
2 added)). Finally, as noted above, Section 1225(b)(2)(A) does “not apply to an alien . . . who is a crewman”
3 or “a stowaway.” 8 U.S.C. 1225(b)(2)(B)–(C). Section 1226(c) applies to those aliens who are inadmissible
4 or deportable on one of the specified grounds.

5 Section 1226(c) also differs from Section 1225(b)(2) in another crucial way: Section 1226(c) narrows
6 the circumstances under which aliens may be *released* from mandatory detention. Section 1226(a)(2)(B)
7 permits the release of noncitizens on bond or conditional parole. Section 1226(c)(1) takes that option off the
8 table for admitted noncitizens who have committed the offenses or engaged in the conduct specified in
9 Section 1226(c)(1)(A)–(E). As to those aliens, Section 1226(c) *prohibits* their release except if “necessary to
10 provide protection to” a witness or similar person “and the alien satisfies the Attorney General that the alien
11 will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled
12 proceeding.” 8 U.S.C. § 1226(c)(4).

13 4. The Laken Riley Act Does Not Resolve the Statutory Question in Petitioner’s 14 Favor

15 The Government’s reading does not render superfluous Congress’s recent amendment of Section
16 1226(c) through the Laken Riley Act. That law requires mandatory detention of criminal aliens who are
17 “inadmissible” under 8 U.S.C. § 1182(a)(6)(A), (a)(6)(C), or (a)(7). *See* 8 U.S.C. § 1226(c)(E)(i)–(ii). As
18 with the other grounds of “inadmissibility” listed in Section 1226(c), both (a)(6)(C) and (a)(7) may apply to
19 inadmissible aliens who were admitted in error, as well as those never admitted. *See Mejia Olalde*, 2025 WL
20 3131942, at *4 (noting that “the Laken Riley Act may apply to situations where § 1225 might not” (citing 8
21 U.S.C. § 1182(a)(6)(C)(i))).

22 To be sure, the Laken Riley Act’s application to aliens who are inadmissible under §1182(a)(6)(A)
23 — for being “present . . . without being admitted or paroled” — overlaps with Section 1225(b)(2)(A). But
24 again, “[r]edundancies are common in statutory drafting,” and are “not a license to rewrite or eviscerate
25 another portion of the statute contrary to its text.” *Barton*, 590 U.S. at 239; *see Mejia Olalde*, 2025 WL
26 3131942, at *4 (“even assuming there were surplusage, that cannot trump the plain meaning of [Section]
27 1225(b)(2)”). That is especially true where, as here, there is overlap under *any* possible reading of the
28 statute. *See Microsoft Corp. v. IAI Ltd. P’ship*, 564 U.S. 91, 106 (2011) (“[T]he canon against superfluity

1 assists only where a competing interpretation gives effect to every clause and word of a statute”) (internal
2 quotation omitted).

3 In any event, Section 1226(c) still does independent work, despite the overlap, by preventing the
4 Executive from releasing the specified criminal aliens who were previously admitted. In fact, Congress’s
5 desire to further limit the release power with respect to criminal aliens was one reason it enacted the Laken
6 Riley Act. The Act was adopted in the wake of a murder committed by an inadmissible alien who was
7 “paroled into this country through a shocking abuse of that power,” 171 Cong. Rec. at H278 (daily ed. Jan.
8 22, 2025) (Rep. McClintock). Congress passed it out of concern that the executive branch “ignore[d] its
9 fundamental duty under the Constitution to defend its citizens.” *Id.* at H269 (statement of Rep. Roy). The
10 Act thus reflects a “congressional effort to be double sure,” *Barton*, 590 U.S. at 239, that criminal aliens are
11 not paroled or otherwise released from detention.

12 This Court in the Preliminary Injunction stated that under Respondents’ interpretation, “section 1226
13 will apply only to an extremely small group of noncitizens: those present in the United States who have been
14 admitted but who now lack legal status.” Dkt. No. 14. at 9. However, § 1226 applies to numerous aliens not
15 subject to § 1225(b)(2)(A), including all admitted aliens who are now removable—such as the more than one
16 million aliens in the United States who were lawfully admitted but overstayed their visas. For those aliens,
17 § 1226 alone applies. The mere fact that § 1226(c) may overlap in part with § 1225(b)(2)(A) is insufficient to
18 rewrite clear statutory text. Respondents’ view is not, in fact, “that *virtually every* noncitizen in the interior of
19 the country is both an “applicant for admission” and is “seeking admission,” making all of them subject to
20 mandatory detention under the statute.” Dkt. No. 14. at 9 (emphasis added). Again, there are millions of
21 noncitizens in the interior of the country that have been previously admitted and are accordingly subject to
22 § 1226 and the newly enacted mandatory detention provisions found in the Laken Riley Act.

23 5. Failing to Uphold Mandatory Detention Would Subvert Congressional Intent

24 Failing to uphold mandatory detention here would not only violate the statutes’ plain text, but also
25 subvert IIRIRA’s express goal of eliminating preferential treatment for aliens who enter the country
26 unlawfully. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to result
27 “that Congress designed the Act to avoid”); *New York State Dep’t of Soc. Servs. v. Dublino*, 413 U.S. 405,
28 419–20 (1973) (“We cannot interpret federal statutes to negate their own stated purposes.”).

1 One of IIRIRA’s express objectives was to dispense with the pre-1996 regime under which aliens
2 who entered the United States unlawfully were given “equities and privileges in immigration proceedings
3 that [were] not available to aliens who present[ed] themselves for inspection” at the border, including the
4 right to secure release on bond. House Rep. at 225. Failing to uphold Petitioner’s mandatory detention here
5 would restore the regime Congress sought to discard: It would require detention for those who present
6 themselves for inspection at the border in compliance with law, yet grant bond hearings to aliens who evade
7 immigration authorities, enter the United States unlawfully, and remain here unlawfully for years or even
8 decades. That is exactly the “perverse incentive to enter” unlawfully, *Thuraissigiam*, 591 U.S. at 140, that
9 IIRIRA sought to eradicate. The Court should reject any interpretation that is so subversive of Congress’s
10 stated objective. *King*, 576 U.S. at 492.

11 The government’s reading, by contrast, not only adheres to the statute’s text and congressional intent,
12 but it also brings the statute in line with the longstanding “entry fiction” that courts have employed for well
13 over a century to avoid giving favorable treatment to aliens who have not been lawfully admitted. Under that
14 doctrine, all “aliens who arrive at ports of entry . . . are treated for due process purposes as if stopped at the
15 border,” including aliens “paroled elsewhere in the country for years pending removal” who have developed
16 significant ties to the country. *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy v. United States ex rel.*
17 *Mezei*, 345 U.S. 206, 215 (1953)). For example, *Kaplan v. Tod*, 267 U.S. 228 (1925), held that an alien who
18 was paroled for nine years into the United States was still “regarded as stopped at the boundary line” and
19 “had gained no foothold in the United States.” *Id.* at 230; *see also Mezei*, 345 U.S. at 214–15. The “entry
20 fiction” thus prevents favorable treatment of aliens who have not been admitted — including those who have
21 “entered the country clandestinely.” *Yamataya v. Fisher*, 189 U.S. 86, 100 (1903). IIRIRA sought to
22 implement that same principle with respect to detention. The government’s reading is true to that purpose.

23 **6. The Government’s Reading Is Consistent with *Jennings***

24 The government’s interpretation is also consistent with the Supreme Court’s decision in *Jennings*,
25 583 U.S. 281. *Jennings* reviewed a Ninth Circuit decision that applied constitutional avoidance to “impos[e]
26 an implicit 6-month time limit on an alien’s detention” under Sections 1225(b) and 1226. 583 U.S. at 292.
27 The Court held that neither provision is so limited. *Id.* at 292, 296–306. In reaching that holding, the Court
28 did not — and did not need to — resolve the precise groups of aliens subject to Section 1225(b) or Section

1 1226. Nonetheless, consistent with the government’s reading, the Court recognized in its description of
2 Section 1225(b) that “Section 1225(b)(2) . . . serves as a catchall provision that applies to all applicants for
3 admission not covered by §1225(b)(1).” *Id.* at 287.

4 It is true that in describing the detention authorities in Section 1225(b) and Section 1226, the Court
5 summarized Section 1226 as applying to aliens “already in the country”:

6 In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking
7 admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government
8 to detain certain aliens already in the country pending the outcome of removal proceedings
9 under §§ 1226(a) and (c).

9 583 U.S. at 289; *see also id.* at 288 (characterizing Section 1226 as applying to aliens “once inside the United
10 States”). But “[t]he language of an opinion is not always to be parsed [like the] language of a statute,” and
11 instead “must be read with a careful eye to context.” *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356,
12 373–74 (2023) (quotation omitted). When describing the scope of Section 1226 in particular, *Jennings* refers
13 to aliens “present in the country” who are removable under 8 U.S.C. § 1227(a) — a provision that applies *only*
14 to admitted aliens. *See* 583 U.S. at 288. The government’s interpretation here is consistent with that
15 understanding: it allows that Section 1226 is the exclusive source of detention authority for the substantial
16 category of aliens who were admitted into the United States but are now removable or deportable.

17 Moreover, nothing in the quoted language from *Jennings* suggests that Section 1226 is the *sole*
18 detention authority for *every* “alien[] already in the country,” and the passage’s use of the word “certain”
19 conveys the opposite. At a minimum, the quoted language is ambiguous and such uncertain language is
20 insufficient to displace the statute’s plain text and the manifest congressional purpose; that is especially so, as
21 no part of the holding in *Jennings* required resolution of the precise scope of Sections 1225(b) and 1226.

22 **B. The Court May Not Disregard Section 1225(b)(2)’s Mandatory Detention**
23 **Framework, Which Is Applicable To Petitioner as an Applicant for Admission.**

24 **1. The *Mathews* Factors Do Not Apply**

25 Given her status as an applicant for admission subject to mandatory detention, Petitioner’s reliance
26 on *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) is misplaced. *See* Mot. 10. As an initial matter, the
27 Supreme Court has upheld mandatory civil immigration detention without utilizing the multi-factor
28 “balancing test” of *Mathews*. *See Demore v. Kim*, 538 U.S. 510 (2003) (upholding mandatory detention

1 under 8 U.S.C. § 1226(c)); *cf. Zadvydas v. Davis*, 533 U.S. 678 (2001) (upholding mandatory detention
2 under 8 U.S.C. § 1231(a)(2) for the 90-day removal period); *Khotesouvan v. Morones*, 386 F.3d 1298, 1301
3 (9th Cir. 2004).⁵ Even in the context of discretionary detention under 8 U.S.C. § 1226(a), the detainees are
4 not statutorily entitled to pre-deprivation hearings. Immigration detention without notice and a pre-detention
5 hearing, therefore, is a fundamental component of the statutory framework that Congress created and that the
6 Supreme Court has repeatedly upheld. Due process does not invariably require a bond hearing before a
7 noncitizen can be constitutionally detained. *See Aguilar Garcia v. Kaiser*, No. 25-cv-05070-JSC, 2025 WL
8 2998169, at *5 (N.D. Cal. Oct. 24, 2025) (“Petitioner is within the 90-day mandatory detention window of
9 Section 1231(a)(2) and due process does not require a bond hearing at least until he is in the post-removal
10 period.”).

11 In any event, applicants for admission like Petitioner, who were not admitted or paroled into the
12 country, lack a liberty interest in *additional* procedures including a custody redetermination or pre-detention
13 bond hearing. Their conditional release does not provide them with additional rights above and beyond the
14 process already provided by Congress in § 1225. *See Thuraissigiam*, 591 U.S. at 139 (“aliens who arrive at
15 ports of entry—even those paroled elsewhere in the country for years pending removal—are ‘treated’ for due
16 process purposes ‘as if stopped at the border’”); *Ma v. Barber*, 357 U.S. 185, 190 (1958) (concluding that the
17 parole of an alien released into the country while admissibility decision was pending did not alter her legal
18 status); *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913, *2 (D. Mass. July 28, 2025) (finding that
19 mandatory detention under § 1225(b)(2)(A) of an alien arrested at a traffic stop in the interior of the United
20 States “comports with due process”).

21 Indeed, for “applicants for admission” who are amenable to § 1225(b)(1) — i.e., because they were
22 not physically present for at least two years on the date of inspection, 8 U.S.C. § 1225(b)(1)(A)(iii)(II) —
23 “[w]hatever the procedure authorized by Congress . . . is due process,” whether or not they are apprehended
24 at the border or after entering the country. *Thuraissigiam*, 591 U.S. at 138–139 (“This rule would be

25 _____
26 ⁵ As the Ninth Circuit has recognized, “the Supreme Court when confronted with constitutional
27 challenges to immigration detention has not resolved them through express application of *Mathews*.”
28 *Rodriguez Diaz v. Garland*, 53 F.4th 1206 (9th Cir. 2022) (citations omitted). Whether the *Mathews* test
applies in this context is an open question in the Ninth Circuit. *Id.*, 53 F.4th at 1207 (applying *Mathews*
factors to uphold constitutionality of Section 1226(a) procedures in a prolonged detention context; “we
assume without deciding that *Mathews* applies here”).

1 meaningless if it became inoperative as soon as an arriving alien set foot on U.S. soil.”). These noncitizens
2 have “only those rights regarding admission that Congress has provided by statute.” *Id.* at 140; *see Dave v.*
3 *Ashcroft*, 363 F.3d 649, 653 (7th Cir. 2004). Thus, as regards her detention pending immigration
4 proceedings, Petitioner is entitled only to the protections set forth by statute, and “the Due Process Clause
5 provides nothing more.” *Thuraissigiam*, 591 U.S. at 140.⁶

6 2. **Petitioner’s Detention Authority Cannot Be Converted To § 1226(a)**

7 As an “applicant for admission,” Petitioner’s detention is governed by the § 1225(b) framework.
8 This remains true even where the government previously released an alien under 8 U.S.C. § 1226(a). By
9 citing § 1226(a), DHS does not permanently alter an alien’s status as an “applicant for admission” under
10 § 1225; to the contrary, the alien’s release is expressly subject to an order to appear for removal proceedings
11 based on *unlawful* entry. Nor is DHS prevented from clarifying the detention authority to conform to the
12 requirements of the statutory framework as DHS now interprets it. *See, e.g., United Gas Improvement v.*
13 *Callery*, 382 U.S. 223, 229 (1965) (explaining that an agency can correct its own error). Pursuant to the
14 correct statutory framework, an alien’s conditional release is not the type of “lawful entry into this country”
15 that is necessary to “establish[] connections” that could form a liberty interest requiring additional process,
16 and he or she remains an “applicant for admission” who is “at the threshold of initial entry” and subject to
17 mandatory detention under § 1225. *Thuraissigiam*, 591 U.S. at 106–07 (“While aliens who have established
18 connections in this country have due process rights in deportation proceedings, the Court long ago held that
19 Congress is entitled to set the conditions for an alien’s lawful entry into this country and that, as a result, an
20 alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause.”).

21 This binding Supreme Court authority is in conflict with recent district court decisions finding that
22 the government’s “election to place Petitioner in full removal proceedings under § 1229a and releasing
23 Petitioner under § 1226(a) provided Petitioner a liberty interest that is protected by the Due Process Clause.”

24 ⁶ Courts in this district have cited to *Morrissey v. Brewer*, 408 U.S. 471 (1972), in support of
25 their conclusion that aliens in similar circumstances to Petitioner are entitled to a pre-deprivation
26 hearing. While the Supreme Court did find that post-arrest process should be afforded to the parolee in
27 *Morrissey*, the government respectfully submits that the framework for determining process for parolees
28 differs from that for aliens illegally present in the United States. A fundamental purpose of the parole
system is “to help individuals reintegrate into society” to lessen the chance of committing antisocial acts
in the future. *Id.* at 478–80. That same goal of integration, to support the constructive development of
parolees and to lessen any recidivistic tendencies, is not present with unlawfully present aliens.

1 *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *3 (N.D. Cal. Aug. 21, 2025).

2 The government’s decision to place aliens in full removal proceedings under § 1229a is consistent with
3 § 1225(b)(2), and its decision to cite § 1226(a) in releasing an alien does not render his or her entry lawful; it
4 remains unlawful, as the alien’s release is expressly conditioned on appearing for removal proceedings based
5 on *unlawful* entry. Indeed, as the Supreme Court confirmed in *Thuraissigiam*, the noncitizen who has not
6 been admitted remains “on the threshold of initial entry,” is “treated for due process purposes as if stopped at
7 the border,” and “cannot claim any greater rights under the Due Process Clause” than what Congress
8 provided in § 1225. 591 U.S. at 139–40; *see also Pena*, 2025 WL 2108913 at *2 (“Based upon the inherent
9 authority of the United States to expel aliens, however, applicants for admission are entitled only to those
10 rights and protections Congress set forth by statute.”).

11 The Supreme Court’s holding in *Thuraissigiam* is also consistent with its earlier holding in *Landon*
12 *v. Plasencia*, where the Court observed that only “once an alien gains admission to our country and begins
13 to develop the ties that go with permanent residence [does] his constitutional status change[.]” 459 U.S. 21,
14 32 (1982). In *Thuraissigiam*, the Court reiterated that “established connections” contemplate “an alien’s
15 lawful entry into this country.” 591 U.S. at 106–07. Here, Petitioner was neither admitted nor paroled, nor
16 lawfully present in this country as required by *Landon* and *Thuraissigiam* to claim due process rights beyond
17 what § 1225(b) provides. She instead remains an applicant for admission who — even if released into the
18 country “for years pending removal” — continues to be “‘treated’ for due process purposes ‘as if stopped at
19 the border.’” *Thuraissigiam*, 591 U.S. at 139–140.

20 **C. Petitioner Is Not Entitled to a Pre-Detention Hearing Under § 1226(a) or a Reversed**
21 **Burden of Proof**

22 Finally, even if this Court finds that § 1226(a) applies here, Petitioner would still not be entitled to a
23 pre-detention hearing. ICE properly exercised its authority to redetain Petitioner after she repeatedly
24 violated the terms of her release. DHS previously released Petitioner contingent upon her adherence to
25 certain conditions, specifically her participation in the ATD program. Silva Decl. ¶ 7 & Exh. 1 (“Failure
26 to comply with the requirements of the ATD program will result in a redetermination of your release
27 conditions or your arrest and detention.”). On three separate occasions – on November 19, 2024,
28 February 11, 2025, and July 29, 2025 – Petitioner failed to comply with the requirements of the ATD

1 program in that Petitioner first failed to complete a self-report check-in with location services enabled
2 and then twice was outside of an approved zone. Id. ¶¶ 10-12. Consequently, under 8 U.S.C. § 1226(b),
3 ICE has authority to redetain Petitioner. See 8 U.S.C. § 1226(b) (“The Attorney General at any time may
4 revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant,
5 and detain the alien.”).

6 For aliens detained under § 1226(a), “an ICE officer makes the initial custody determination” *post-*
7 detention, which the alien can later request to have reviewed by an immigration judge. *Rodriguez Diaz*, 53
8 F.4th at 1196. The Supreme Court has long upheld the constitutionality of the basic process of immigration
9 detention. *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that “the INS
10 procedures are faulty because they do not provide for automatic review by an immigration judge of the initial
11 deportability and custody determinations”). Under § 1226(a), aliens are not guaranteed *pre-*detention review
12 and may instead only seek review of their detention by an ICE official once they are in custody — a process
13 the Ninth Circuit has found constitutionally sufficient in the prolonged-detention context. *Rodriguez Diaz*,
14 53 F.4th at 1196–97.⁷

15 Moreover, at any bond hearing, Petitioner should have the burden of demonstrating that she is not a
16 flight risk or danger. That is the ordinary standard applied in bond hearings. *Matter of Guerra*, 24 I&N Dec.
17 37, 40 (B.I.A. 2006) (“The burden is on the alien to show to the satisfaction of the Immigration Judge that he
18 or she merits release on bond.”). It would be improper to reverse the burden of proof and place it on the
19 government in these circumstances. See *Rodriguez Diaz*, 53 F.4th at 1210–12 (“Nothing in this record
20 suggests that placing the burden of proof on the government was constitutionally necessary to minimize the
21 risk of error, much less that such burden-shifting would be constitutionally necessary in all, most, or many
22 cases.”). While the Ninth Circuit previously held that the government bears the burden by clear and
23 convincing evidence that an alien is not a flight risk or danger to the community for bond hearings in certain
24 circumstances, *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011) (bond hearing after allegedly
25 prolonged detention), following intervening Supreme Court decisions, the Ninth Circuit has explained that

26 _____
27 ⁷ Although *Rodriguez Diaz* did not arise in the pre-detention context, the Ninth Circuit noted the
28 petition’s argument that the § 1226(a) framework was unlawful ““for any length of detention”” and
concluded that the claims failed “whether construed as facial or as-applied challenges to § 1226(a).” 53
F.4th at 1203.

1 “Singh’s holding about the appropriate procedures for those bond hearings . . . was expressly premised on the
2 (now incorrect) assumption that these hearings were statutorily authorized.” *Rodriguez Diaz*, 53 F.4th at
3 1196, 1200–01 (citing *Jennings*, 583 U.S. 281, and *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022)).
4 Thus, prior Ninth Circuit decisions imposing such a requirement are “no longer good law” on this issue,
5 *Rodriguez Diaz*, 53 F.4th at 1196, and the Court should follow *Rodriguez Diaz* and the Supreme Court.

6 **D. Any Ruling On This Habeas Petition Must Allow For Re-Detention Upon a Final**
7 **Administrative Removal Order.**

8 Petitioner’s immigration proceedings will continue even after the Court rules on her habeas
9 petition. At some point, Petitioner may be subject to a final order of removal. Assuming Petitioner
10 becomes subject to a final order of removal, her detention is mandatory under the INA. *See* 8 U.S.C.
11 § 1231(a)(2)(A) (“During the removal period, the Attorney General shall detain the alien. Under no
12 circumstance during the removal period shall the Attorney General release an alien who has been found
13 inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section
14 1227(a)(2) or 1227(a)(4)(B) of this title”). The Supreme Court has upheld the constitutionality of both
15 the mandatory 90-day detention during the removal period and the presumptively reasonable six-month
16 discretionary detention period following the removal period, both without the requirements of any bond
17 hearing. *See Zadvydas*, 533 U.S. at 701. Thus, if Petitioner becomes subject to a future final order of
18 removal, her detention will be both constitutionally permissible and statutorily required. Any ruling by
19 this Court, therefore, must allow for the detention of Petitioner to execute a final removal order. *See*
20 *Aguilar Garcia*, 2025 WL 2998169, at *4 (denying motion for preliminary injunction in petition seeking
21 pre-detention hearing after petitioner’s detention authority shifted to § 1231(a)(2)).

22 **V. CONCLUSION**

23 Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Accordingly,
24 Respondents respectfully request that the Court deny Petitioner’s habeas petition. To the extent the Court
25 grants Petitioner relief, it must limit any injunction to permit the execution of a future final order of
26 removal.

27 DATED: January 16, 2026

Respectfully submitted,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CRAIG H. MISSAKIAN
United States Attorney

/s/ William Skewes-Cox
WILLIAM SKEWES-COX
Special Assistant United States
Attorney

Attorneys for Respondents