

1 TIMOTHY COURCHAINE
United States Attorney
2 District of Arizona

3 KATHERINE R. BRANCH
Assistant United State Attorney
4 Arizona State Bar No. 025128
5 Two Renaissance Square
40 North Central Avenue, Suite 1800
6 Phoenix, Arizona 85004-4449
7 Telephone: (602) 514-7500
8 Facsimile: (602) 514-7760
E-Mail: Katherine.Branch@usdoj.gov
Attorneys for Respondents

9
10 **IN THE UNITED STATES DISTRICT COURT**
FOR THE DISTRICT OF ARIZONA

11 Marco Antonio Solorzano Zepeda,

12
13 Petitioner,

14 v.

15 Kristi Noem, et al.,

16 Respondents.

No. 2:25-cv-04236-KML--ESW

**RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS**

17 Respondents Kristi Noem, Secretary of Homeland Security (“DHS”); Pamela Bondi,
18 Attorney General of the United States; Corina Almeida, Chief Counsel of the Office of the
19 Principal Legal Advisor, U.S. Immigration and Customs Enforcement (“ICE”), John Cantu,
20 Phoenix Field Office Director, ICE Enforcement and Removal Operations (“ERO”); and
21 Luis Rosa, Jr., Warden, Central Arizona Florence Correctional Complex (“Respondents”),
22 by and through undersigned counsel, hereby respond in opposition to the Petition for Writ
23 of Habeas Corpus (Doc. 1).

24 **I. INTRODUCTION.**

25 Before 1996, the federal immigration laws required the detention of aliens who
26 presented at a port of entry but allowed aliens who were already unlawfully present in the
27 United States to obtain release pending removal proceedings. Congress passed the Illegal
28 Immigration Reform and Immigration Responsibility Act (“IIRIRA”) specifically to stop

1 conferring greater privileges and benefits on aliens who enter the United States unlawfully
2 as compared to those who lawfully present themselves for inspection at a port of entry.

3 As relevant here, Congress enacted what is now 8 U.S.C. § 1225, which requires the
4 detention of any alien “who is an applicant for admission” and defines that term to
5 encompass any “alien present in the United States who has not been admitted” following
6 inspection by immigration authorities. 8 U.S.C. § 1225(a), (b)(2)(A). The statute makes no
7 exception for how far into the country the alien traveled or how long the alien managed to
8 evade detection. Unless the Secretary exercises the narrow and discretionary parole
9 authority, mandatory detention is the rule for aliens who have never been lawfully admitted.

10 There is no dispute that Petitioner is an “applicant for admission” under Section
11 1225(a). That provision specifically provides that any “alien present in the United States who
12 has not been admitted ... shall be deemed for purposes of this chapter an applicant for
13 admission.” § 1225(a)(1). Because Petitioner entered the country without inspection,
14 however, he was never “admitted” and thus unambiguously remains an “applicant for
15 admission” who is subject to mandatory detention.

16 **II. STATUTORY FRAMEWORK.**

17 **A. The Pre-IIRIRA Framework Gave Preferential Treatment to Aliens 18 Unlawfully Present in the United States.**

19 The Immigration and Nationality Act (“INA”), as amended, contains a
20 comprehensive framework governing the regulation of aliens, including the creation of
21 proceedings for the removal of aliens unlawfully in the United States and requirements for
22 when the Executive is obligated to detain aliens pending removal.

23 Prior to 1996, the INA treated aliens differently based on whether the alien had
24 physically “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-
25 223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); see *Hing Sum v. Holder*, 602
26 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). “Entry” referred to “any coming of an alien
27 into the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically
28 entered the United States (or not) “dictated what type of [removal] proceeding applied” and

1 whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at
2 1099.

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

13 Thus, the INA’s prior framework distinguishing between aliens based on physical
14 “entry” had

15 the ‘unintended and undesirable consequence’ of having created a statutory
16 scheme where aliens who entered without inspection ‘could take advantage of
17 the greater procedural and substantive rights afforded in deportation
18 proceedings,’ *including the right to request release on bond*, while aliens who
19 had ‘actually presented themselves to authorities for inspection ... were
20 subject to mandatory custody.

21 *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v.*
22 *Att’y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)); see also *Hing Sum*, 602 F.3d at
23 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“House Rep.”) (“illegal aliens
24 who have entered the United States without inspection gain equities and privileges in
25 immigration proceedings that are not available to aliens who present themselves for
26 inspection”).

27 **B. IIRIRA Eliminated the Preferential Treatment of Aliens Unlawfully**
28 **Present in the United States and Mandated Detention of all “Applicants**
for Admission.”

29 Congress discarded that regime through enactment of IIRIRA, Pub. L. 104-208, 110
30 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of “ensur[ing] that

1 all immigrants who have not been lawfully admitted, regardless of their legal presence in
2 the country, are placed on equal footing in removal proceedings under the INA.” *Torres v.*
3 *Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

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

15 IIRIRA effected these changes through several provisions codified in Section 1225
16 of Title 8:

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

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

24 8 U.S.C. § 1225(a)(1) (emphasis added). “All aliens ... who are applicants for admission or
25 otherwise seeking admission or readmission to or transit through the United States” are
26 required to “be inspected by [an] immigration officer[.]” *Id.* § 1225(a)(3). The inspection by
27 the immigration officer is designed to determine whether the alien may be lawfully
28 “admitted” to the country or, instead, must be referred to removal proceedings.

1 **Section 1225(b):** IIRIRA also divided removal proceedings into two tracks—
2 expedited removal and non-expedited “Section 240” proceedings—and mandated that
3 applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-
4 (2).

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

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

23 Subject to subparagraphs (B) and (C), in the case of an alien who is an
24 applicant for admission, if the examining immigration officer determines that
25 an alien seeking admission is not clearly and beyond a doubt entitled to be
26 admitted, the alien *shall be detained* for a proceeding under section 1229a of
27 this title [Section 240].
28

1 8 U.S.C. § 1225(b)(2)(A) (emphasis added).¹ See 8 C.F.R. § 235.3(b)(1)(ii) (mirroring
2 Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section
3 1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable
4 proceedings and not just at the moment those proceedings begin”).

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

14 **Section 1226:** IIRIRA also created a separate authority addressing the arrest,
15 detention, and release of aliens generally (versus applicants for admission specifically). See
16 8 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for
17 example, lawfully enter the country but overstay or otherwise violate the terms of their visas,
18 or are later determined to have been improperly admitted. The statute provides that “[o]n a
19 warrant issued by the Attorney General, an alien may be arrested and detained pending a
20 decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a).
21 Detention under this provision is generally discretionary: The Attorney General “may”
22 either “continue to detain the arrested alien” or release the alien on bond or conditional
23 parole. *Id.* § 1226(a)(1)-(2).²

24
25 ¹ Subsection (b)(2) does not apply to (1) aliens subject to expedited removal, (2) crewmen,
26 (3) stowaways, or (4) aliens who “arriv[e] on land (whether or not at a designated port of
27 arrival) from a foreign territory contiguous to the United States.” 8 U.S.C. § 1225(b)(2)(B)-
(C).

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

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

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

17 **III. FACTUAL BACKGROUND.**

18 Petitioner is a citizen of Mexico. Doc. 1 at ¶ 2. He entered the United States without
19 admission or parole in or about January 2002. Doc. 1 at ¶ 3. On September 29, 2025,
20 Petitioner was arrested by ICE and placed in removal proceedings. Doc. 1 at ¶¶ 4, 8.
21 Petitioner requested a custody review determination with the Immigration Court. Doc. 1 at
22 ¶ 8. The Immigration Judge determined that she did not have jurisdiction to set a bond under
23 *Matter of Yajure Hurtado*, but that if she did, she would set a bond at \$2,500 to ameliorate
24 Petitioner’s flight risk. Doc. 1 at ¶ 8; Doc. 1 at Ex. A.

25 **IV. ARGUMENT**

26 **A. Under the Plain Text of § 1225, Petitioner Must Be Detained Pending the 27 Outcome of his Removal Proceedings.**

28 The Court should reject Petitioner’s argument that § 1226(a) governs his detention
instead of § 1225. When there is “an irreconcilable conflict in two legal provisions,” then

1 “the specific governs over the general.” *Karczewski v. DCH Mission Valley LLC*, 862 F.3d
2 1006, 1015 (9th Cir. 2017). Section 1226(a) applies to aliens “arrested and detained pending
3 a decision” on removal. 8 U.S.C. § 1226(a). In contrast, § 1225 is narrower. *See* 8 U.S.C.
4 § 1225. It applies only to “applicants for admission”; that is, as relevant here, aliens present
5 in the United States who have not be admitted. *Id.*; *see also Fla. v. United States*, 660 F.
6 Supp. 3d 1239, 1275 (N.D. Fla. 2023), *appeal dismissed*, No. 23-11528, 2023 WL 5212561
7 (11th Cir. July 11, 2023). Because Petitioner falls within that category, the specific detention
8 authority under § 1225 governs over the general authority found at § 1226(a).

9 Under 8 U.S.C. § 1225(a), an “applicant for admission” is defined as an “alien present
10 in the United States who has not been admitted or who arrives in the United States.”
11 Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and
12 those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section 1225(b)(2)—the
13 provision relevant here—is the “broader” of the two. *Id.* It “serves as a catchall provision
14 that applies to all applicants for admission not covered by § 1225(b)(1) (with specific
15 exceptions not relevant here).” *Id.* And section 1225(b)(2) mandates detention. *Id.* at 297;
16 *see also* 8 U.S.C. § 1225(b)(2); *Matter of Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) (“[A]n
17 applicant for admission who is arrested and detained without a warrant while arriving in the
18 United States, whether or not at a port of entry, and subsequently placed in removal
19 proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible
20 for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).”).
21 Section 1225(b) therefore applies because Petitioner is present in the United States without
22 being admitted.

23 The BIA has long recognized that “many people who are not *actually* requesting
24 permission to enter the United States in the ordinary sense are nevertheless deemed to be
25 ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*, 25 I. & N. Dec.
26 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.” *Marquez-*
27 *Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*,
28 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) must be read
in the context of the definition of “applicant for admission” in § 1225(a)(1). Applicants for

1 admission are both those individuals present without admission and those who arrive in the
2 United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission”
3 under §1225(a)(1). *See Lemus-Losa*, 25 I. & N. Dec. at 743. Congress made that clear in
4 § 1225(a)(3), which requires all aliens “who are applicants for admission or otherwise
5 seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word
6 “or” here “introduce[s] an appositive—a word or phrase that is synonymous with what
7 precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*,
8 571 U.S. 31, 45 (2013).

9 One of the most basic interpretative canons instructs that a “statute should be
10 construed so that effect is given to all its provisions.” *See Corley v. United States*, 556 U.S.
11 303, 314 (2009) (cleaned up). The court’s decision in *Florida v. United States* is instructive
12 here. The district court held that 8 U.S.C. § 1225(b) mandates detention of applicants for
13 admission throughout removal proceedings, rejecting the assertion that DHS has discretion
14 to choose to detain an applicant for admission under either section 1225(b) or 1226(a). 660
15 F. Supp. 3d at 1275. The court held that such discretion “would render mandatory detention
16 under § 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to include illegal
17 border crossers would make little sense if DHS retained discretion to apply § 1225(a) and
18 release illegal border crossers whenever the agency saw fit.” *Id.* The court pointed to *Demore*
19 *v. Kim*, 538 U.S. 510, 518 (2003), in which the Supreme Court explained that “wholesale
20 failure” by the federal government motivated the 1996 amendments to the INA. *Florida*, 660
21 F. Supp. 3d at 1275. The court also relied on, *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G.
22 2019), in which the Attorney General explained “section [1225] (under which detention is
23 mandatory) and section [1226(a)] (under which detention is permissive) can be reconciled
24 only if they apply to different classes of aliens.” *Florida*, 660 F. Supp. 3d at 1275. Petitioner,
25 present in the United States without being admitted, is an applicant for admission and is
26 therefore subject to mandatory detention without bond under 8 U.S.C. § 1225(b).

26 **B. Congress Did Not Intend to Treat Individuals Who Unlawfully Enter the**
27 **United States Better Than Those Who Appear at a Port of Entry.**

28 When the plain text of a statute is clear, “that meaning is controlling” and courts “need

1 not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848
2 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing “refutes the
3 plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th
4 Cir. 2011). Congress passed IIRIRA to correct “an anomaly whereby immigrants who were
5 attempting to lawfully enter the United States were in a worse position than persons who had
6 crossed the border unlawfully.” *Torres*, 976 F.3d at 928. The Court should reject the
7 Petitioner’s interpretation because it would put aliens who “crossed the border unlawfully”
8 in a better position than those “who present themselves for inspection at a port of entry.” *Id.*
9 Aliens who presented at port of entry would be subject to mandatory detention under § 1225,
10 but those who crossed illegally would be eligible for a bond under § 1226(a).

11 The Board of Immigration Appeals recognized this issue in *Matter of Yajure Hurtado*.
12 In its decision, the BIA affirmed “the Immigration Judge’s determination that he did not have
13 authority over [a] bond request because aliens who are present in the United States without
14 admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8
15 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”
16 29 I. & N. Dec. at 220. The BIA concluded that aliens “who surreptitiously cross into the
17 United States remain applicants for admission until and unless they are lawfully inspected
18 and admitted by an immigration officer. Remaining in the United States for a lengthy period
19 of time following entry without inspection, by itself, does not constitute an ‘admission.’” *Id.*
20 at 228. To hold otherwise would lead to an “incongruous result” that rewards aliens who
21 unlawfully enter the United States without inspection and subsequently evade apprehension
22 for number of years. *Id.*

23 In so concluding, the BIA rejected the alien’s argument that “because he has been
24 residing in the interior of the United States for almost 3 years . . . he cannot be considered as
25 ‘seeking admission.’” *Id.* at 221. The BIA determined that this argument “is not supported
26 by the plain language of the INA” and creates a “legal conundrum.” *Id.* If the alien “is not
27 admitted to the United States (as he admits) but he is not ‘seeking admission’ (as he
28 contends), then what is his legal status?” *Id.* (parentheticals in original). The BIA’s decision
in *Matter of Yajure Hurtado* is consistent not only with the plain language of 8 U.S.C.

1 § 1225(b)(2), but also with the Supreme Court’s 2018 decision in *Jennings* and other caselaw
2 issued subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that
3 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8
4 U.S.C. § 1225(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. 583 U.S. at
5 300, 303 (explaining that “the word ‘shall’ usually connotes a requirement” (quoting
6 *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).

7 Similarly, relying on *Jennings* and the plain language of 8 U.S.C. §§ 1225 and
8 1226(a), the Attorney General, in *Matter of M-S-*, unequivocally recognized that 8 U.S.C.
9 §§ 1225 and 1226(a) do not overlap but describe “different classes of aliens.” 27 I. & N. Dec.
10 at 516. The Attorney General also held—in an analogous context—that aliens present
11 without admission and placed into expedited removal proceedings are detained under 8
12 U.S.C. § 1225 even if later placed in 8 U.S.C. § 1229a removal proceedings. *Id.* at 518-19.
13 In *Matter of Li*, the BIA held that an alien who illegally crossed into the United States and
14 was apprehended without a warrant while arriving is detained under 8 U.S.C. § 1225(b). 29
15 I. & N. Dec. at 71. This ongoing evolution of the law makes clear that all applicants for
16 admission are subject to detention under 8 U.S.C. § 1225(b). *Cf. Niz-Chavez v. Garland*, 593
17 U.S. 155, 171 (2021) (providing that “no amount of policy-talk can overcome a plain
18 statutory command”); *see generally Florida*, 660 F. Supp. 3d at 1275 (explaining that “the
19 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if
20 DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the
21 agency saw fit”). *Florida’s* conclusion “that § 1225(b)’s ‘shall be detained’ means what it
22 says and . . . is a mandatory requirement . . . flows directly from *Jennings*.” *Florida*, 660 F.
23 Supp. 3d at 1273.

23 **C. The Court Should Not Follow the Decision in *Echevarria*.**

24 Respondents are aware of this Court’s prior decision rejecting Respondents’ position,
25 *see Echevarria v. Bondi*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct.
26 3, 2025), but respectfully maintain that Petitioner falls within the definition of an “arriving
27 alien” warranting mandatory detention as the removal process unfolds. Respondents also
28 respectfully maintain that an alien is an “applicant for admission” until an immigration

1 official has inspected that person and determined that he or she is admissible into the United
2 States.

3 In *Echevarria*, this Court determined that the phrase “alien seeking admission” in 8
4 U.S.C. § 1225(b)(2)(A) implies a present-tense nature to the desire for admission, such that
5 an alien who is already present in the United States cannot be “seeking admission”:

6 The word “seeking” is the present participle of the verb “seek.” It thus has a
7 temporal element—Petitioner must have been in the process of seeking
8 admission at the time of the inspection.

9 It is hard to see how Petitioner could be deemed to have been “seeking”
10 admission at the time of the encounter on July 2, 2025. By that point,
11 Petitioner had already been present in the United States for 24 years, having
12 arrived and entered in 2001. Moreover, under Respondents’ interpretation of
13 § 1225(a)(1), Petitioner became an “applicant for admission” in 2001, upon
14 his arrival and entry. Implicit in Respondents’ position, then, is that
15 Petitioner somehow existed in a perpetual state of “seeking” admission
16 during the 24-year period between when he first became an “applicant for
17 admission” in 2001, by virtue of his entry into the country, and when he was
18 encountered and inspected by an immigration officer in 2025.

19 *Echevarria*, 2025 WL 2821282, at *6 (internal citations omitted).

20 However, this analysis fails to consider other pieces of statutory context. Respondents
21 respectfully argue that the phrase “applicants for admission” carves out a subset of those who
22 are “seeking admission.” For example, elsewhere in section 1225, the statute says that “[a]ll
23 aliens who are applicants for admission *or otherwise seeking admission* or readmission to or
24 transit through the United States shall be inspected by immigration officers.” 8 U.S.C.
25 § 1225(a)(3) (emphasis added). In other words, 8 U.S.C. § 1225(a)(3) shows that an alien
26 may be “seeking admission” either by being an “applicant for admission,” or in some
27 different way. As discussed earlier, the phrase “applicant for admission” unambiguously
28 includes aliens who have already entered the United States. “In all but the most unusual
situations, a single use of a statutory phrase must have a fixed meaning.” *See Cochise
Consultancy, Inc. v. United States ex rel. Hunt*, 587 U.S. 262, 268 (2019) (referring to *Ratzlaf
v. United States*, 510 U.S. 135, 143 (1994)). “We therefore avoid interpretations that would
‘attribute different meanings to the same phrase.’” *Id.* (quoting *Reno v. Bossier Par. Sch.*

1 *Bd.*, 528 U. S. 320, 329 (2000)). Thus, the *Echevarria* decision is not supported by the text
2 of the statute, and Respondents respectfully request the Court reach a different result in this
3 case.

4 Furthermore, Respondents direct the Court's attention to a decision issued on
5 September 30, 2025, in the United States District Court for the District of Nebraska: *Vargas*
6 *Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). In that case,
7 the court denied a similar habeas petition brought by an alien who entered the United States
8 in 2013, and held that the petitioner was properly detained under § 1225(b)(2) as an alien
9 within the "catchall" scope of § 1225(b)(2) subject to detention without possibility of release
10 on bond through § 1229a removal proceedings. 2025 WL 2780351, at *6-9. The court noted
11 that illegally remaining in the country for years did not mean the petitioner, who "wish[ed]
12 to stay in this country," was suddenly not an "applicant for admission." *Id.* at *9.
13 Additionally, "even if Vargas Lopez might fall within the scope of § 1226(a), he certainly
14 fits within the language of § 1225(b)(2) as well." *Id.*

15 The *Vargas Lopez* decision also noted the "overlapping relationship between
16 § 1225(b) and § 1226(a) is not only consistent with the plain language of the two provisions
17 but consistent with the interpretation of the two provisions under *Jennings*." *Id.* The court
18 determined that § 1226 does not contain language limiting its application "to aliens already
19 present in the United States." *Id.* (comparing *Jennings*' statements that United States
20 immigration law "authorizes the Government to detain certain aliens already in the country
21 pending the outcome of removal proceedings under §§ 1226(a) and (c)[,]" and that "§ 1226
22 applies to aliens already present in the United States[,]" 583 U.S. at 289 (first quote) and 303
23 (second quote), *with* 8 U.S.C. § 1226(a) (containing no reference to aliens "present" or
24 "already present" in the United States) and 8 U.S.C. § 1226(c) (containing no reference to
25 "criminal aliens" "present" or "already present" in the United States). The court determined
26 that "references to 'aliens' in § 1226 must be read to mean 'alien[s] present in the United
27 States who ha[ve] not been admitted' within the meaning of § 1225(a)(1) and within at least
28 the 'catchall provision that applies to all applicants for admission not covered by
§ 1225(b)(1) in § 1225(b)(2)." 2025 WL2780351, at * 9 (citing *Jennings*, 583 U.S. at 287).

1 The Southern District of California also denied a temporary restraining order sought
2 by an alien who was detained under § 1225(b)(2) despite having been surreptitiously present
3 in the United States for years. *See Chavez v. Noem*, --F. Supp. 3d --, No. 3:25-cv-02325-
4 CAB, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025). The court noted, among other
5 arguments, that “Section 1225(a)(1) expressly defines that ‘[a]n alien present in the United
6 States who has not been admitted . . . shall be deemed for purposes of this Act *an applicant*
7 *for admission.*” *Id.* at *4 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). The court
8 reasoned that, “Petitioners do not contest that they are ‘alien[s] present in the United States
9 who ha[ve]not been admitted.’ By the plain language of § 1225(a)(1), then, Petitioners are
10 ‘applicants for admission’ and thus subject to the mandatory detention provisions of
11 ‘applicants for admission’ under § 1225(b)(2).” *Id.* (cleaned up). *See also Rojas v. Olson*,
12 No. 25-CV-1437-BHL, 2025 WL 3033967, at *1 (E.D. Wis. Oct. 30, 2025); *Sandoval v.*
13 *Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Oliveira v.*
14 *Patterson*, No. 6:25-CV-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde*
15 *v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Garibay-*
16 *Robledo v. Noem*, 1:25-cv-00177 (N.D. Tex. 2025); *Cabanas v. Bondi*, No. 4:25-CV-04830,
17 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-CV-
18 09785-SVW-AJR, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Alonzo v. Noem*, No. 1:25-
19 CV-01519 WBS SCR, 2025 WL 3208284, at *1 (E.D. Cal. Nov. 17, 2025).

20 V. CONCLUSION.

21 In light of the above, Respondents respectfully request the Court deny Petitioner’s
22 Petition for Writ of Habeas Corpus. If the Court grants the Petition, the Court should order
23 that Petitioner be released upon payment to the Immigration Court of a \$2,500 bond, not
24 direct Petitioner’s immediate release from immigration detention.

25 Respectfully submitted this 3rd day of December, 2025.

26 TIMOTHY COURCHAINE
27 United States Attorney
28 District of Arizona

s/ Katherine R. Branch

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

KATHERINE R. BRANCH
Assistant United States Attorney
Attorneys for Respondents