UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-25325-BECERRA

LY NGUYEN,

Petitioner,

v.

CHARLES PARRA, Assistant Field Office Director
Immigration and Customs Enforcement, *et. al.*

Respondents.
_____/

RESPONDENTS' RETURN AND RESPONSE TO ORDER TO SHOW CAUSE AND MEMORANDUM OF LAW

Respondents,[1] by and through the undersigned Assistant U.S. Attorney, hereby respond to the Court's Order to Show Cause [ECF No. 6]. For the reasons set forth below, the Petition for Writ of Habeas Corpus [ECF No. 1] ("Petition")[2] should be denied.

Petitioner, Ly Nguyen ("Petitioner"), argues in this Petition that he is unlawfully detained under 8 U.S.C. § 1225(b)(2) of the Immigration and Nationality Act ("INA") and is instead detained pursuant to 8 U.S.C. § 1226(a)(1). [ECF No. ¶ 5]. Therefore, Petitioner maintains that

[1] A writ of habeas corpus must "be directed to the person having custody of the person detained." *See* 28 U.S.C. § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Id.* at 439. As Petitioner is currently detained at Krome Service Processing Center ("Krome"), a detention facility in Miami, Florida, the immediate custodian in charge of Krome is Assistant Field Director ("AFOD") Charles Parra. Accordingly, the only proper Respondent in this case is AFOD Parra, in his official capacity.

[2] Respondents recognize that courts in this District have rejected similar arguments in granting habeas petitions. *See, e.g., Perez v. Parra*, Case No. 25cv24820 (S.D. Fla.). Nonetheless, Respondents maintain and preserve these arguments for the record in this case.

he is entitled to a bond hearing and denying him bond violates the INA and his rights to due process. *Id.* at ¶ 60. To the contrary, under a plain language reading of § 1225, Petitioner is an "applicant for admission," who is lawfully detained under 8 U.S.C. § 1225(a)(1), and therefore, he is subject to mandatory detention under § 1225(b)(2)(A) and ineligible for release under 8 U.S.C. § 1226(a). Pursuant to § 1225(a), "[a]n alien present in the United States who has not been admitted … shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). Petitioner entered the U.S. on or about March 25, 2023, without inspection or admission. Accordingly, under a plain language reading of § 1225, Petitioner is an "applicant for admission" and is subject to mandatory detention pursuant to § 1225(b)(2)(A). And finally, due process does not compel Petitioner's release or a bond hearing.

Therefore, as explained more fully below, the Petition should be denied.

BACKGROUND

Petitioner is a native and citizen of Vietnam. [ECF No. 1, ¶ 14]. On or about March 16, 2023, Petitioner illegally entered the United States without inspection near Rio Grande City, Texas. *See* Exh. A, *Form I-213, Record of Deportable/Inadmissible Alien, dated Sept. 16, 2025.* On March 26, 2023, Petitioner was arrested by U.S. Customs and Border Protection ("CBP") and served with a Notice to Appear ("NTA") charging him with removability pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.*; *see* Exh. C, *NTA, dated March 26, 2023.* On that same day, ICE Enforcement and Removal Operations ("ERO") released Petitioner on his own recognizance. Composite Exh. D, *Order of Release on Recognizance*; Exh. B, ¶ 9.

On or about September 16, 2025, ICE ERO arrested Petitioner at the ICE Miramar office in Miramar, Florida, when he appeared for his ICE check-in appointment. [ECF No. 1, ¶ 43]. Petitioner was arrested and taken into ICE custody where he is presently detained at the Krome Service Processing Center ("Krome") in Miami, Florida. *See* Exh. B, *Declaration of Deportation Officer Jason J. Clarke,* ¶¶ 5, 10; Exh. E, *Form I-200, Warrant for Arrest of Alien*; Exh. F, *Form I-286, Notice of Custody Determination.*[3] Subsequently, on October 23, 2025, Petitioner appeared with counsel before the Executive Office for Immigration Review ("EOIR") for a master calendar hearing in his immigration case. *See* Exh. B, ¶12. At that hearing, Petitioner admitted to the allegations contained in the NTA and conceded to the sole charge of removability. *Id.* The Immigration Judge sustained the charge of removability. *Id.* On November 20, 2025, ICE ERO cancelled the Form I-286 as improvidently issued, as Petitioner is an "applicant for admission" who is detained pursuant to INA § 235(b)(2)(A). *Id.* at ¶15. To date, Petitioner has not requested a custody redetermination hearing ("bond hearing") before EOIR. *See* Exh. B, ¶16.

ARGUMENT

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

Under the plain language of § 1225(b)(2), the Government is required to detain all aliens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the alien has been in the United States or how far from the border they ventured. That unambiguous language resolves this case. *See Little Sisters of the Poor*

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[3] On September 16, 2025, DHS issued Petitioner a Form, I-286, Notice of Custody Determination. *See* Exh. E, *Form I-286, Notice of Custody Determination*; *see also* Exh. B, *Declaration*, ¶ 11. On November 20, 2025, ICE ERO cancelled the Form I-286 as improvidently issued, as Petitioner is an applicant for admission who is detained pursuant to INA § 235(b)(2)(A). *See* Exh. E, *Form I-286*; *see also* Ex. B, *Declaration*, ¶ 12.

Saints Peter & Paul Home v. Pennsylvania, 591 U.S. 657, 676 (2020) ("Our analysis begins and ends with the text.").

A. The Plain Language of § 1225(b)(2) Mandates Detention of Applicants for Admission.

"As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute. It is well established that, when the statutory language is plain, [courts] must enforce it according to its terms." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). Section 1225(a) deems all aliens who either "arrive[] in the United States" or who are "present in the United States [and] who ha[ve] not been admitted" to be "applicant[s] for admission." 8 U.S.C. § 1225(a)(1). And "admission" under the INA means lawful entry after inspection by immigration authorities, and not mere physical entry. 8 U.S.C. § 1101(a)(13)(A). Thus, an alien who enters the country without permission is and remains an applicant for admission, regardless of the duration of the alien's presence in the United States or the alien's distance from the border.

In turn, § 1225(b)(2) provides that "an alien who is an applicant for admission" "shall be detained" pending removal proceedings if the "alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). The statute's use of the term "shall" makes clear that detention is mandatory, *see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998), and the statute makes no exception based upon the duration of the alien's presence in the country or where in the country the alien is located. Therefore, the statute's plain text mandates that the Government detain all "applicants for admission" who are not clearly and beyond a doubt entitled to be admitted.

Petitioner falls squarely within the statutory definition. He is "present in the United States," and there is no dispute that he has "not been admitted." 8 U.S.C. § 1225(a); see [ECF No. 1, ¶ 5. Moreover, Petitioner cannot establish—and has not even alleged that he can establish—

that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Therefore, § 1225(b)(2) mandates Petitioner "be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

B. Applicants for Admission under § 1225(b)(2) are seeking to be legally admitted into the United States.

As explained above, Petitioner is an "applicant for admission" under § 1225(b)(2) and is, therefore, seeking to be legally admitted into the United States. An alien, like Petitioner, who is an "applicant for admission," remains an "applicant for admission" until he withdraws his application for admission or departs on an order of voluntary departure.

1. The "seeking admission" clause does not negate or otherwise limit the statutorily defined term "applicant for admission".

Section 1225(b)(2) requires the detention of an "applicant for admission, if the examining officer determines that [the] alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory text and context show that being an "applicant for admission" is a means of "seeking admission"—no additional affirmative step is necessary. In other words, every "applicant for admission" is inherently and necessarily continually "seeking admission," until he withdraws his application for admission or departs on an order of voluntary departure.

For example, § 1225(a) provides that "[a]ll aliens … who are applicants for admission *or otherwise* seeking admission or readmission … shall be inspected." 8 U.S.C. § 1225(a)(3) (emphasis added). The word "[o]therwise' means 'in a different way or manner[.]'" Texas *Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *see also Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) ("or otherwise" means "the first action is a subset of the second action"). Being an "applicant for admission" is thus a particular

"way or manner" of seeking admission, such that an alien who is an "applicant for admission" *is* "seeking admission" for purposes of § 1225(b)(2)(A).[4] No separate affirmative act is necessary. *See Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("[M]any people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws"). Accordingly, § 1225(b) unambiguously provides that an alien who is an "applicant for admission" is "seeking admission," even if the alien is not engaged in some separate, affirmative act to obtain lawful admission.

2. Any perceived redundancy in the statute cannot serve as a basis to avoid the clear language of the statute.

As explained above, an "applicant for admission" is "seeking admission" under § 1225. To the extent this reading results in some redundancy in § 1225(b)(2)(A), that "is not a license to rewrite" § 1225 "contrary to its text." *Barton v. Barr*, 590 U.S. 222, 239 (2020); *see Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) ("sometimes drafters *do* repeat themselves and *do* include words that add nothing of substance" especially when "the arguably redundant words that the drafters employed … are functional synonyms" (alterations accepted and emphasis in original)).

"The canon against surplusage is not an absolute rule." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013). "Redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication."

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[4] As § 1225 shows, being an "applicant for admission" is only *one* "way or manner" of "seeking admission," not the exclusive way. 8 U.S.C. § 1225(a)(3). For example, lawful permanent residents returning to the United States are not "applicants for admission" because they are already admitted, but they still may be deemed to be "seeking admission" in some circumstances. *See* 8 U.S.C. § 1103(a)(13)(C).

Barton, 590 U.S. at 239. "[R]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.* Thus, as the Supreme Court explained in *Barton*, "[s]ometimes the better overall reading of a statute contains some redundancy." *Id.*

Moreover, "the surplusage cannon … must be applied with statutory context in mind" and should not be employed to undermine congressional intent. *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017). As explained in greater detail below, in 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), with the goal of ensuring that aliens who enter the United States unlawfully do not receive greater privileges and benefits than aliens who lawfully present themselves for inspection at a port of entry. The canon against surplusage should not be employed to re-write the statute in contravention of this statutory context.

C. Section 1226 Does Not Support Petitioner's Argument.

Petitioner's reliance upon, and reference to, 8 U.S.C. § 1226 is unavailing. Petitioner's detention is controlled by § 1225(b)(2), not § 1226. Sections 1225 and 1226 are separate statutory provisions that provide independent bases for detention and, generally, apply to different groups of aliens. While, as explained below, there is some overlap between the aliens subject to detention under the two detention provisions, that overlap is not superfluous because the two statutes provide for different bases for release.

Section 1226(a) authorizes the Executive to "arrest[] and detain[]" *any* "alien" pending removal proceedings. Section 1226(a) provides the detention authority for the significant group of aliens who are *not* deemed "applicants for admission" subject to § 1225(b)(2)(A)—specifically, aliens who have been admitted to the United States but are now removable, like those who overstay

a visa or lawful permanent residents who engage in conduct that renders them removable.[5] Thus, section 1225(b)(2) is the more specific detention provision. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("the specific governs the general"). Accordingly, § 1226(a) does not control Petitioner's detention.

Section 1226(c) provides for mandatory detention and is an exception to § 1226(a)'s discretionary detention regime. It requires the Executive to detain "any alien" who is deportable or inadmissible for having committed specified offenses or engaged in terrorism-related actions. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Petitioner has not committed one of the specified offenses and has not engaged in terrorism-related actions. Accordingly, he is not detained under § 1226(c).

Earlier this year, Congress passed the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 2 (2025), which amended portions of § 1226(c) to mandate detention for an alien who is "present … without being admitted or paroled"—i.e., is inadmissible under §1182(a)(6)(A)—and "is charged with, is arrested for, is convicted of, admits having committed, or admits committing" one of the enumerated criminal acts. 8 U.S.C. § 1226(c)(1)(E). While that amendment adds some overlap between aliens subject to detention under § 1225(b)(2) and § 1226(c), that overlap does not apply to Petitioner, and it does not render § 1226(c) superfluous because the amendment does independent work. Aliens detained under § 1225(b)(2) are eligible for "humanitarian" parole under 8 U.S.C. § 1182(b)(5), while aliens detained under §1226(c) generally are not eligible for release or parole. The Laken Riley Act reflects a "congressional effort to be double sure." *Barton*, 590 U.S. at 239, that unadmitted criminal aliens remain detained; it does not suggest congressional uncertainty about § 1225(b)(2)(A)'s detention mandate.

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[5] The detention of any of the millions of aliens who have overstayed their visas is governed by § 1226(a), because those aliens (unlike Petitioner) *were* lawfully admitted to the United States.

D. The Government's Reading Comports with Congressional Intent.

Before 1996, federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings. In 1996, Congress passed the IIRIRA specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. Accordingly, the Government's reading of the statute is not only supported by the express language of § 1225, but it also comports with congressional intent. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to a result "that Congress designed the Act to avoid"); *New York State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes.").

The INA, as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal.

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

> the 'unintended and undesirable consequence' of having created a statutory scheme where aliens who entered without inspection 'could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' *including*

> *the right to request release on bond*, while aliens who had 'actually presented themselves to authorities for inspection … were subject to mandatory custody.

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

Congress discarded that regime through enactment of IIRIRA. Among other things, that law had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). To that end, IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the governing touchstone. IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep., *supra*, at 226 (emphasis added); *Hing Sum*, 602 F.3d at 1100 (similar).

Petitioner's interpretation would restore the regime Congress sought to discard: It would require detention for those who present themselves for inspection at the border in compliance with law yet grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years, or even decades, until an involuntary encounter with immigration authorities. That is *exactly* the perverse preferential treatment for illegal entrants

that IIRIRA sought to eradicate. Accordingly, this Court should reject Petitioner's interpretation. *King*, 576 U.S. at 492 (rejecting "petitioners' interpretation because it would … create the very [thing] that Congress designed the Act to avoid").

The Government's reading, on the other hand, is true to Congress's intent and should be adopted.

E. The Government's Reading Accords with *Jennings*.

The Government's interpretation is consistent with the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *Jennings* reviewed a Ninth Circuit decision that applied constitutional avoidance to "impos[e] an implicit 6-month time limit on an alien's detention" under § 1225(b) and § 1226. *Id.* at 292. The Court held that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of aliens subject to § 1225(b) or § 1226. Nonetheless, consistent with the Government's reading, the Court recognized in its description of § 1225(b) that § "1225(b)(2) …. serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* at 287.

F. Under *Loper Bright*, the Statute Controls, Not Prior Agency Practice

Furthermore, Petitioner's argument that prior agency practice applying § 1226(a) to individuals like Petitioner is unavailing [ECF No. 1, ¶ 28], because under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)), the plain language of the statute and not prior practice controls. *Yajure Hurtado*, 29 I&N Dec. at 225–26. In overturning *Chevron*, the Supreme Court recognized that courts often change precedents and "correct[] our own mistakes." *Loper Bright*, 603 U.S. at 411. *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens Fishery

Conservation and Management Act that itself predated IIRIRA by twenty years. *Id.* at 380. Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 21, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Chantel Doakes Shelton
Chantel Doakes Shelton
Assistant United States Attorney

EXHIBIT LIST
Case No. 25-cv-25325-BECERRA

Exhibit A:	Form I-213, Record of Deportable/Inadmissible Alien, dated September 16, 2025
Exhibit B:	Declaration of Deportation Officer Jason J. Clarke
Exhibit C:	Form I-862, Notice to Appear, dated March 26, 2023
Exhibit D:	Composite Exhibit, Order of Release on Recognizance
Exhibit E:	Form I-200, Warrant for Arrest of Alien, dated September 16, 2025
Exhibit F:	Form I-286, Notice of Custody Determination, dated September 16, 2025