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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Kevin Ariel SALGUERO Y SALGUERO, and Juan Manuel GARCIA-HERNANDEZ

Petitioners,
v.

Kristi NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela J. BONDI, U.S. Attorney General, in her official capacity; Todd LYONS, Acting Director for U.S. Immigration and Customs Enforcement, in his official capacity; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; Jason KNIGHT, Acting Field Office Director, Salt Lake City Field Office; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Sirce OWEN,
Acting Director for Executive Office of Immigration Review, in her official capacity; LAS VEGAS IMMIGRATION COURT; John MATTOS, Warden of Nevada Southern Detention Center, in his official capacity; Reggie RADER, Police Chief, Henderson Detention Center, in his official capacity,

Respondents.

Case No. 2:25-cv-02328-RFB-NJK

Federal Respondents' Response to Petitioners' Petition for Writ of Habeas Corpus (ECF No. 1)

Federal Respondents hereby file their response to Petitioners Kevin Ariel Salguero Y Salguero and Juan Manuel Garcia-Hernandez' Petition for Writ of Habeas Corpus (ECF

No. 1). Petitioners are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). This response is supported by the following memorandum of points and authorities. In their Petition, the Petitioners, who do not have legal status in the United States, are asking the Court to grant them release from Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) or order Respondents to conduct a bond hearing under § 1226(a). ECF No. 1, ¶¶ 8, 9. Petitioners are charged with having entered the United States without admission or inspection. ECF No. 1, ¶¶ 17, 18. Petitioners are claiming that they are unlawfully detained by DHS because the mandatory detention § 1225(b)(2)(A) does not apply to them since they previously entered and are now residing in the United States and such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. ECF No. 1, ¶¶ 45, 46, 59, 61. The Petition should be denied because Petitioners are lawfully detained in mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Federal Respondents' position is supported by the I-213 Record of Deportable/Inadmissible Alien and DHS Form I-862 Notice to Appear for the Petitioners attached hereto as Exhibit A.

FACTUAL BACKGROUND

Petitioner, Mr. Salguero is detained at the Henderson Detention Center. ECF No. 6, Page 4, line 5. On or about September 28, 2025, Mr. Salguero was arrested in Las Vegas for the offense of possession of a controlled substance, which is a Felony. See the I-213 for Mr. Salguero attached hereto as Exhibit A. On or about October 16, 2025, Mr. Salguero was arrested for the offense of driving under the influence. See Exhibit A. Petitioner, Mr. Garcia-Hernandez is detained at the Nevada Southern Detention Center. ECF No. 6, Page 4, line 15. On October 18, 2025, Mr. Salguero was issued a Notice to Appear. See Mr. Salguero Notice to Appear attached as Exhibit A. On October 10, 2025, Mr. Garcia-Hernandez was arrested for

the offense of driving under the influence. See the I-213 for Mr. Garcia-Hernandez attached hereto as Exhibit A. On October 14, 2025, Mr. Garcia-Hernandez was issued a Notice to Appear. See Mr. Garcia-Hernandez Notice to Appear attached as Exhibit A. Petitioners were placed into 1229a removal proceedings for entering the United States without inspection. ECF No. 6, Page 3, lines 3, 5. Petitioners sought bond and were denied by the Immigration Judges due to the decision in the *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). ECF No. 6, Page 4, lines 20-21. Petitioners are seeking to challenge the policy adopted by the Board of Immigration Appeals ("BIA") in the *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). ECF No. 6, Page 4, lines 20-22. Petitioners are claiming that they are unlawfully detained by DHS because the mandatory detention § 1225(b)(2)(A) does not apply to them since they previously entered and are now residing in the United States and such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. ECF No. 1, ¶¶ 8, 9. Petitioners' Petition requests that this Court order that Petitioners be either released or provided an individualized custody redetermination hearing under § 1226(a) before an Immigration Judge. ECF No. 1, Page 21, lines 18-24. Petitioners seek to circumvent the detention statute under which they are rightfully detained to secure bond hearings to which they are not entitled. The Court should deny Petitioners' Petition for Writ of Habeas Corpus.

I. INTRODUCTION

The plain language of the Immigration and Nationality Act ("INA") mandates that the Petitioner—who is present in the United States without being admitted—is correctly considered "applicant for admission" and therefore subject to detention under 8 U.S.C. § 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants of admission until certain

proceedings have concluded.") The best reading of the statutes is that Congress insured that all aliens would be inspected by immigration authorities, by treating aliens, who are present in the United States without having been inspected and admitted, as applicants for admission. Aliens who are present without having been inspected and admitted have the benefit of full removal proceedings and are not subject to expedited removal. But they are subject to detention during their removal proceedings. The Court should deny Petitioners' Petition for Writ of Habeas Corpus.

II. BACKGROUND

I. Legal Background

A. Applicants for Admission

"The phrase 'applicant for admission' is a term of art denoting a particular legal status." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Section 1225(a)(1) states:

> (1) Aliens treated as applicants for admission.— An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival …) shall be deemed for the purposes of this Act an applicant for admission.

8 U.S.C. § 1225(a)(1).[1] Section 1225(a)(1) was added to the INA as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). Pub. L. No. 104-208, § 302, 110 Stat. 3009-546. "The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Before IIRIRA, "immigration law provided for two types of removal proceedings: deportation hearings and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir.

[1] Admission is the "lawful entry of an alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13).

1999) (en banc). A deportation hearing was a proceeding against an alien already physically present in the United States, whereas an exclusion hearing was against an alien outside of the United States seeking admission *Id.* (quoting *Landon v. Plasencia*, 459 U.S. 21, 25 (1982)). Whether an applicant was eligible for "admission" was determined only in exclusion proceedings, and exclusion proceedings were limited to "entering" aliens—those aliens "coming ... into the United States, from a foreign port or place or from an outlying possession." *Plasencia*, 459 U.S. at 24 n.3 (quoting 8 U.S.C. § 1101(a)(13) (1982)). "[N]on-citizens who had entered without inspection could take advantage of greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings." *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010); *see also Plasencia*, 459 U.S. at 25-26. Prior to IIRIRA, aliens who attempted to lawfully enter the United States were in a worse position than aliens who crossed the border unlawfully. *See Hing Sum*, 602 F.3d at 1100; *see also* H.R. Rep. No. 104-469, pt. 1, at 225-229 (1996). IIRIRA "replaced deportation and exclusion proceedings with a general removal proceeding." *Hing Sum*, 602 F.3d at 1100.

IIRIRA added Section 1225(a)(1) to "ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres*, 976 F.3d at 928; *see also* H.R. Rep. 104-469, pt. 1, at 225 (explaining that § 1225(a)(1) replaced "certain aspects of the current 'entry doctrine,'" under which illegal aliens who entered the United States without inspection gained equities and privileges in immigration proceedings unavailable to aliens who presented themselves for inspection at a port of entry). The provision "places some

physically-but not-lawfully present noncitizens into a fictive legal status for purposes of removal proceedings." *Torres*, 976 F.3d at 928.

B. Expedited Removal Under 8 U.S.C. § 1225

IIRIRA established distinct types of removal proceedings. Pub. L. 104-208, 110 Stat. 3009, 3009-546 (1996). Removal proceedings under § 1225 are known as "expedited removal proceedings." *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109–113 (2020) (citing provisions). Only two categories of aliens are eligible for expedited removal, rather than full removal proceedings, (1) "arriving aliens" and (2) aliens who "ha[ve] not been admitted or paroled into the United States" and have not been "physically present in the United States" for two years. 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). "Arriving aliens" are defined by regulation as "an applicant for admission coming or attempting to come into the United States at a port-of-entry …" 8 C.F.R. § 1.2.

Expedited removal proceedings are conducted by an immigration officer, not an Immigration Judge ("IJ"). The immigration officer asks the applicant for admission questions to determine (a) "identity, alienage, and inadmissibility," and (b) whether the alien intends to apply for asylum. 8 C.F.R. § 235.3(b)(2)(i), (b)(4). Aliens are not entitled to counsel, and no recording or transcript is made. *Id.* § 235.3(b)(2)(i). If the alien is inadmissible and does not intend to apply for asylum, the immigration officer, after supervisory review, issues a Notice and Order of Expedited Removal. *Id.* § 235.3(b)(2)(i). The alien has no right to appeal to an IJ, the Board of Immigration Appeals ("BIA") or any other court. *Id.* § 235.3(b)(2)(ii); 8 U.S.C. § 1252(a)(2)(A)(i). Unlike section 240 proceedings, which often take place over the course of several months, the expedited removal process is "conducted on a very compressed schedule and can result in deportation in hours or days." *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-CV-872 (JMC), 2025 WL 2192986, at *4

(D.D.C. Aug. 1, 2025).

C. Removal Proceedings under 8 U.S.C. § 1229(a)

Removal proceedings under § 1229a are commonly referred to as "full removal proceedings" or "240 removal proceedings" due to the statutory section of the INA in which they appear. 8 U.S.C. § 1229a; INA § 240. The proceedings take place before an IJ, an employee of the Department of Justice. 8 U.S.C. § 1229a(a)(1), (b)(1). Aliens in 1229a proceedings have an opportunity to apply for relief from removal. *See, e.g.*, 8 U.S.C. § 1158 (asylum); 8 U.S.C. § 1229b(b) (cancellation of removal for nonpermanent residents); 8 U.S.C. § 1255 (adjustment of status). These are adversarial proceedings in which the alien has the right to hire counsel, examine and present evidence, and cross-examine witnesses. 8 U.S.C. § 1229a(b)(4). Either party may appeal the IJ decision to the BIA. 8 U.S.C. § 1229a(b)(4)(C); *see also* 8 C.F.R. § 1240.15. If the BIA issues a final order of removal, the alien may also seek judicial review at a U.S. court of appeals through a petition for review. 8 U.S.C. § 1252.

D. Detention under the INA

The INA authorizes civil detention of aliens during removal proceedings and "[d]etention is necessarily part of this deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see also* 8 U.S.C. § 1225(b), 1226(a), and 1231(a). "Where an alien falls within this statutory scheme can affect whether his detention is mandatory or discretionary, as well as the kind of review process available to him if he wishes to contest the necessity of his detention." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).

i. Detention under Section 1225

The INA mandates the detention of applicants for admission. 8 U.S.C. § 1225(b)(1) and (2); *see also Jennings*, 583 U.S. at 287 (Applicants for admission "fall into one of two

categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).").[2]

As explained above, arriving aliens and aliens present less than two years are subject to expedited removal. 8 U.S.C. § 1225(b)(1). If an alien "indicates an intention to apply for asylum," the alien proceeds through the credible fear process and is subject to mandatory detention. 8 U.S.C. § 1225(b)(1)(B)(ii); *see also* 8 U.S.C. § 1225(B)(1)(B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. The Supreme Court recognized that 1225(b)(2) "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration 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). While section 1225 does not provide for aliens to be released on bond, DHS has the sole discretionary to release any applicant for admission on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

ii. Detention under Section 1226

Section 1226 provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed. 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or

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[2] Petitioners argue the proposition that "8 U.S.C. § 1225(b)(2), applies only to detention incident to border inspection. ECF No. 1, Page 10, lines 21-21. This is a misreading of *Jennings*. The full text is:
To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering. That process of decision generally begins at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible. Under § 302, 110 Stat. 3009-579, 8 U.S.C. § 1225, an alien who "arrives in the United States," or "is present" in this country but "has not been admitted," is treated as "an applicant for admission." § 1225(a)(1). *Jennings*, 583 U.S. at 286–87.

release him on conditional parole.[3] By regulation, immigration officers can release an alien if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request custody redetermination (i.e., a bond hearing) by an IJ at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

III. ARGUMENT

The INA, 8 U.S.C. § 1101 *et seq.*, entrusts the Executive branch to remove inadmissible and deportable aliens and to ensure that aliens who are removable are in fact removed from the United States. "[D]etention necessarily serves the purpose of preventing deportable [] aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that if ordered removed, the aliens will be successfully removed." *Demore v. Kim*, 538 U.S. 510, 528 (2003). The Supreme Court has long held that deportation proceedings "would be in vain if those accused could not be held in custody pending the inquiry" of their immigration status. *Wong Wing v. United States*, 163 U.S. 228, 235 (1896). Congress intended for all applicants for admission to be detained during the course of their removal proceedings. *See Jennings*, 583 U.S. at 299 (interpreting the "plain meaning" of sections 1225(b)(1) and (2) to mean that applicants for admission be mandatorily detained for the duration of their immigration proceedings).

I. The Bond Denial Claims Should Be Dismissed for Lack of Jurisdiction

"Federal courts are courts of limited jurisdiction, possessing only that power authorized by Constitution and statute." *Gunn v. Minton*, 568 U.S. 251, 256 (2013); *see also Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "Subject matter

[3] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007).

jurisdiction is fundamental; [t]he defense of lack of subject matter jurisdiction cannot be waived, and the court is under a continuing duty to dismiss an action whenever it appears that the court lacks jurisdiction." *Billingsley v. Comm'r*, 868 F.2d 1081, 1085 (9th Cir. 1989) (alteration in original) (quotations omitted); *see also* Fed. R. Civ. P. 12(h)(3).

In this case, the Court lacks subject matter jurisdiction over the Petition for Writ of Habeas Corpus because federal law limits—and in this case, forecloses—district court review of the Executive Branch's decisions and actions taken regarding the removal of aliens. *See, e.g.*, 8 U.S.C. § 1252(b)(9), (f)(1).

A. 8 U.S.C. § 1252(b)(9) bars review of the denial of bond.

Under § 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings. 8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices

challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction).

Critically, "[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008). The petition-for-review process before the courts of appeals ensures that aliens have a forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

Sections (a)(5) and (b)(9) divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]").

Here, the Petition challenges the decision and action to detain Petitioners, which arises from DHS's decision to commence removal proceedings, and is thus an "action . . . to remove [them] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention

decision). As such, the Court lacks jurisdiction over this action. Petitioners must present their claims before the appropriate court of appeals because they challenge the government's decision or action to detain them, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

B. 8 U.S.C. § 1252(e)(3)(A) bars review in this Court.

Challenges to 8 U.S.C. § 1225(b) are limited to the United States District Court for the District of Columbia ("D.D.C."). 8 U.S.C. § 1252(e)(3)(A). Petitioners' Petition is clearly challenging § 1225(b). The DC Circuit has held that challenges to implementation and policies related to § 1225(b) must be brought in the D.D.C. *See Make The Rd. New York v. Wolf*, 962 F.3d 612, 625 (D.C. Cir. 2020). The Ninth Circuit recognized that the limitation of challenges to policies under 1225(b) must be filed in the D.D.C. *See Singh v. Barr*, 982 F.3d 778, 783 (9th Cir. 2020).

The statute indicates that only the D.D.C. can hear challenges to "a regulation, or written policy directive, written policy guideline, or written procedure" to § 1225(b). 8 U.S.C. § 1252(e)(3).

Any argument that § 1252(e)(3)'s restriction on review is limited to policies relating to expedited removal orders under 1225(b)(1) and not to policies relating to detention under 1225(b)(2) is meritless. Section 1252(e) has five paragraphs numbered 1 through 5. 8 U.S.C. § 1252(e). Paragraphs (1), (2), (4), and (5) specifically reference § 1225(b)(1), while paragraph (3) references all of § 1225(b). *Id.* The inclusion of "(b)(1)" in some paragraphs, but using just "(b)" in paragraph (3) shows that Congress wanted review of the three subsections of § 1225(b) to be limited to the D.D.C.

Thus, Petitioners' Petition fails at the outset; the Court lacks subject matter jurisdiction. *See Billingsley*, 868 F.2d at 1085.

II. Under the Statutory Text, Applicants for Admission Must Be Detained Pending the Outcome of Removal Proceedings

A. The plain text of the Statute means that aliens present in the country without having been admitted are applicants for admission.

The plain language of the statute is clear: Petitioners are subject to detention under § 1225(b)(2) because they are applicants for admission. *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025). The INA specifies that "an alien present in the United States who has not been admitted" "shall be deemed . . . an applicant for admission." 8 U.S.C. § 1225(a). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. As the Supreme Court indicated in *Jennings*, "[r]ead most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants of admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297. Despite the clear direction from the Supreme Court, Petitioners argue that there is some third category of applicants for admission that are not subject to mandatory detention. *Jennings*, 583 U.S. at 287. Section 1225(b)(1) covers which applicants for admission, including arriving aliens *or* aliens who have not been admitted and have been present for less than two years, and directs that both of those classes of applicants for admission are subject to expedited removal. 8 U.S.C. § 1225(b)(1). Section 1225(b)(2) "serves as a catchall provision that applies to all applicants not covered by 1225(b)(1) (with specific exceptions not relevant here)."[4] *Jennings*, 583 U.S. at 287. *Jennings* recognized that 1225(b)(2) mandates detention. *Id.* at 297; *see also Matter of Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) ("[A]n applicant for admission . . . whether or not at a port of entry, and subsequently placed in removal proceedings is detained under . . . 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond."). The IJs in these cases were correct in holding that §

[4] The two exceptions are crewmen and stowaways. *See* 8 U.S.C. §§ 1225(a)(2), 1281, and 1282(b).

1225(b) applied because Petitioners, present in the United States without being admitted, are applicants for admission. *See Yajure*, 29 I. & N. Dec. at 221.

Petitioners' argument that § 1225(b)(2) governs detention of certain "applicants for admission" during inspection at or near the border and does not authorize the government to treat long-settled residents, arrested years after entry in Nevada, as if they were still at the threshold seeking admission is unpersuasive. ECF No. 1, ¶ 69. Courts "interpret the relevant words not in a vacuum, but with reference to the statutory context, 'structure, history and purpose'." *Abramski v. United States*, 573 U.S. 169, 179 (2014) (quoting *Maracich v. Spears*, 570 U.S. 48, 76 (2013)). The BIA has long recognized that "many people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012). Statutory language "is known by the company it keeps." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of "applicant for admission" in § 1225(a)(1). Applicants for admission includes arriving aliens and aliens present without admission. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under §1225(a)(1). *See Lemus*, 25 I. & N. at 743. Congress made clear that all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive–a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *See United States v. Woods*, 571 U.S. 31, 45 (2013).

Petitioners' interpretation reads "applicant for admission" out of 1225(b)(2)(A). "[O]ne of the most basic interpretive canons" instructs that a "statute should be construed

so that effect is given to all its provisions." *Corley v. United States*, 556 U.S. 303, 314 (2009). "Applicant" is defined as "[s]omeone who requests something; a petitioner, such as a person who applies for letters of administration." Black's Law Dictionary (12th ed. 2024). Applying the definition of "applicant" to "applicant for admission," an applicant for admission is an alien "requesting" admission, defined by statute as "the lawful entry of the alien into the United States after inspection." 8 U.S.C. § 1101(a)(13)(A). "Seeking admission" does not have a different meaning from applicant for admission ("requesting admission"); the terms are synonymous.

"The canon against surplusage is not an absolute rule." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013); *see also Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 299 n.1 (2006) ("While it is generally presumed that statutes do not contain surplusage, instances of surplusage are not unknown"). "Sometimes drafters *do* repeat themselves and *do* include words that add nothing of substance, either out of a flawed sense of style or to engage in the ill-conceived but lamentably common belt-and-suspenders approach." *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017) (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation Of Legal Texts 176–77 (2012) (emphasis in original)). "This is why the surplusage canon of statutory interpretation must be applied with statutory context in mind." *Id.* (citing Scalia & Garner, Reading Law 179); *see also Doe v. Boland*, 698 F.3d 877, 881 (6th Cir. 2012) (recognizing that the U.S. Code is "replete with meaning-reinforcing redundancies" including "null and void:," "arbitrary and capricious," "cease and desist," and "free and clear"). "[A]n alien who is an applicant for admission" and "an alien seeking admission" are functional synonyms. *See Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) ("That principle [that drafters do repeat themselves] carries extra weight where, as already explained, the arguably redundant words that the drafters

employed—'rental' and 'lease'—are functional synonyms.") In *Doe v. Boland*, the Sixth Circuit determined that "any person who, while a minor, was a *victim* of a variety of sex crimes and *who suffers personal injury* as a result" in 18 U.S.C. § 2255 a "victim by definition is someone who suffers an injury" and Congress did not intend for those phrases to have separate meanings. *Doe*, 698 F.3d at 882. "If one possible interpretation of a statute would cause some redundancy and another interpretation would avoid redundancy, that difference in the two interpretations can supply a clue as to the better interpretation of a statute. But only a clue. Sometimes the better overall reading of the statute contains some redundancy." *Rimini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334 (2019). In Section 1225(b)(2), "an alien who is an applicant for admission" is by definition "an alien seeking admission."

Presumably once in removal proceedings, petitioner will seek relief from removal and therefore will be seeking admission. *See, e.g., Ocampo-Duran v. Ashcroft*, 254 F.3d 1133, 1134–35 (9th Cir. 2001) (concluding that a post-entry adjustment of status is an admission). Petitioners' reading would create an absurd result where an alien in removal proceedings, not subject to mandatory detention, would then be "seeking admission" and subject to mandatory detention when they filed for relief in immigration court, but not before seeking relief from removal. If Petitioners contest this reading, then there would be no category of alien section 1225(b)(2) would apply to. Interpreting the statute as congress drafting a detention section that applies to no one is an absurd result. Under the plain language of the statute, Petitioners are subject to detention under § 1225(b)(2). *Yajure,* 21 I. & N. Dec. at 220–21.

B. Congress did not intend to place aliens who enter without inspection in a more favorable position than aliens who appear at ports of entry.

The Ninth Circuit disfavors construction of the INA that would provide "aliens who entered this country illegally [with] greater rights . . . than those who entered lawfully."

Gonzalez-Gonzalez v. Ashcroft, 390 F.3d 649, 652 (9th Cir. 2004) (holding that Congress did not intend to make aliens convicted of domestic violence who entered illegally eligible for cancellation of removal while specifically excluding aliens who had entered lawfully). The "IIRIRA amendments sought to ensure sensibly enough, that those who enter the country illegally, without proper inspection, are not treated more favorably under the INA than those who seek admission through proper channels, but are denied access." *Wilson v. Zeithern*, 265 F. Supp. 2d 628, 631 (E.D. Va. 2003). Petitioners' reading of the statute ignores the context and purpose of IIRIRA in the treatment of aliens present without inspection. *See Norfolk & W. Ry. Co. v. Am. Train Dispatchers Ass'n*, 499 U.S. 117, 129 (1991) (noting that interpretive canons must yield "when the whole context dictates a different conclusion); *see also U.S. Nat. Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993) ("In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.").

The Supreme Court has long held that "the due process rights of an alien seeking initial entry" are no greater than "[w]hatever the procedures authorized by Congress." *Thuraissigiam*, 591 U.S. at 139 (citation omitted). For unadmitted aliens, like the Petitioners here, "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *accord Thuraissigiam*, 591 U.S. at 138–140.[5]

To this end, the Supreme Court has also long applied the so-called "entry fiction" that all "aliens who arrive at ports of entry . . . are treated for due process purposes as if

[5] Congress has chosen to provide aliens present without inspection, despite being applicants for admission, with the due process of full removal proceedings. *See* 8 U.S.C. § 1229a(a)(4). But with those full removal proceedings, Congress indicated that aliens present without inspection "shall be detained." 8 U.S.C. § 1225(b)(2)(A).

stopped at the border." *Thuraissigiam*, 591 U.S. at 139. Indeed, that is so "even [for] those paroled elsewhere in the country for years pending removal." *Id.* The Supreme Court has applied the entry fiction to aliens with highly sympathetic claims to having "entered" and developed significant ties to this country. *See, e.g.*, *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (holding that a mentally disabled girl paroled into the care of relatives for nine years must be "regarded as stopped at the boundary line" and "had gained no foothold in the United States"); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 214–215 (1953) (holding that an alien with 25 years of lawful presence who sought to reenter enjoyed "no additional rights" beyond those granted by "legislative grace"). With the backdrop of these cases, it follows that Congress intended for an unlawful entrant who violates immigration laws and evades detection must, once found, be "treated as if stopped at the border." *See Mezei*, 345 U.S. at 215.

Supreme Court precedents indicate that aliens who entered illegally by evading detection while crossing the border should be treated the same as those who were stopped at the border in the first place. *See Thuraissigiam*, 591 U.S. at 138–140. While aliens who have been admitted may claim due-process protections beyond what Congress has provided even when their legal status changes (*e.g.*, an alien who overstays a visa, or is later determined to have been admitted in error), *see Wong Yang Sung v. McGrath*, 339 U.S. 33, 49–50 (1950), the Supreme Court has never held that aliens who have "entered the country clandestinely" are entitled to such additional rights. *The Yamataya v. Fisher*, 189 U.S. 86, 1000 (1903). Congress has codified that distinction by treating all aliens who have not been admitted—including unlawful entrants who evade detection for years—as "applicants for admission." 8 U.S.C. § 1225(a)(1). In line with these cases and the statute, Congress created a detention system where applicants for admission, including those who entered the country unlawfully, are

detained for removal proceedings under § 1225 and aliens who have been admitted to the country are detained under § 1226. It does not matter whether an alien was apprehended "25 yards into U.S. territory" or 25 miles, nor does it matter if he was here unlawfully and evades detection for 25 minutes or 25 years; when an alien has never been admitted to the country by immigration officers, his detention is no different from an alien stopped at the border. *See Thuraissigiam*, 591 U.S. at 139.

C. Under *Loper Bright*, the statute controls, not prior agency practices.

Any argument that prior agency practice applying § 1226(a) to Petitioners is unavailing because under *Loper Bright*, 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 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)). *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380. Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*. The weight given to agency interpretations "must always 'depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.'" *Loper Bright Enterprises*, 603 U.S. at 432–33 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)).

The BIA's recent precedent decision in *Matter of Yajure-Hurtado* includes thorough reasoning. 29 I. & N. Dec. at 221–22. In *Yajure*, the BIA analyzed the statutory text and legislative history. *Id.* at 223-225. It highlighted congressional intent that aliens present

without inspection be considered "seeking admission." *Id.* at 224. The BIA concluded that rewarding aliens who entered unlawfully with bond hearings while subjecting those presenting themselves at the border to mandatory detention would be an "incongruous result" unsupported by the plain language "or any reasonable interpretation of the INA." *Id.* at 228.

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

IV. CONCLUSION

Congress intended for aliens present without inspection to be treated as applicants for admission. These aliens are subject to inspection like all other aliens are inspected. Aliens who have been present without inspection for more than two years, like Petitioners, are entitled to full removal proceedings. But Congress directed that these aliens are subject to detention, without bond eligibility, for the course of proceedings. The court should deny Petitioners' Petition for Writ of Habeas Corpus.

Respectfully submitted this 4th day of December 2025.

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