**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 1:25-cv-25604-LEIBOWITZ**

**MIGUEL VICTOR CHACLAN VELASQUEZ,**

**Petitioner,**

**v.**

**MITHCELL DIAZ, et al.,**

**Respondents.**

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**RESPONDENTS' RETURN IN OPPOSITION**
**TO THE PETITION FOR WRIT OF HABEAS CORPUS**

Respondents, by and through the undersigned Assistant United States Attorney, submit the following return in opposition to the Emergency Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 and Complaint for Declaratory and Injunctive Relief and Emergency Motion for Temporary Restraining Order and Stay of Removal ("the Petition"). [D.E. 1] For the reasons set forth below, the Petition should be denied.[1]

**INTRODUCTION**

By way of the Petition, Petitioner Miguel Victor Chaclan Velasquez, ("Petitioner") in relevant part, asks this Court to (1) "[i]ssue an immediate Temporary Restraining Order, without prior notice if necessary, prohibiting Respondents from removing Petitioner from the United States, and specifically from removing him to Mexico or any other country, pending resolution of this Petition and Petitioner's administrative and judicial appeals" or, alternatively, "order

[1] 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.

Petitioner's release from custody under appropriate conditions of supervision pending the outcome of his immigration and federal court proceedings upon posting of a bond to be determined at a bond hearing." *See* Petition, D.E. 1, at 19–20.

Regarding the first form of relief, the Respondents issued a corrected Order on December 1, 2025, that corrected Immigration Judge Martz's prior Order dated November 3, 2025. In this Order, the IJ notes that the Petitioner has a right to appeal the decision to the Board of Immigration Appeals ("BIA"), but must do so within thirty (30) days. *See* Immigration Judge's Removal Order dated December 1, 2025, attached and redacted as Exhibit A. By operation of federal regulations, the Petitioner's order of removal is stayed for 30 days, unless he waives his right to an appeal, and then is further stayed pending the resolution of an appeal before the BIA. *See* BIA Practice Manual, Section 6.2, "Automatic Stays," available at https://www.justice.gov/eoir/reference-materials/bia/chapter-6/2 (last accessed Dec. 5, 2025) (citing 8 C.F.R. § 1003.6). Therefore, the Petitioner's request is moot as his removal is already stayed. *See also* 8 C.F.R. § 1003.39, Finality of Decision (decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs first).

Regarding the second form of relief, this request hinges on what statutory provision controls Petitioner's detention. Section 1225(b)(2)(A) mandates detention for "an alien who is an applicant for admission." 8 U.S.C. § 1225(b)(2)(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). 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). For the reasons explained more fully below, the Petitioner's request for a bond hearing should be denied.

## BACKGROUND

The Petitioner is a native and citizen of Guatemala. *See* Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213), July 11, 2025, attached and redacted as Exhibit B. Petitioner claims to have last entered the United States without inspection on an unknown date and place not designated as a port of entry. *Id.* He was not inspected, admitted or paroled in violation of 8 U.S.C. § 1182. *Id.*

On or about October 25, 2016, Petitioner applied for benefits with the U.S. Citizenship and Immigration Service ("USCIS"). On January 14, 2019, USCIS referred his applications to the immigration court. On January 29, 2019, USCIS placed Petitioner in removal proceedings in the Miami Immigration Court, by the filing of a Notice to Appear ("NTA") with the Executive Office for Immigration Review ("EOIR"), based on his removability in violation of INA § 212(a)(6)(A)(i) 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. *See* NTA dated January 22, 2019, attached and redacted as Exhibit C. On or about July 11, 2023, Petitioner, though his prior counsel, admitted and conceded to the allegations and charges on the NTA. *See* Declaration of Deportation Officer John Mansey at ¶ 10, attached and redacted as Exhibit D.

On July 11, 2025, Petitioner was encountered by law enforcement after a traffic violation and was transported to U.S. Customs and Border Patrol ("CBP"). *See* Ex. B, Form I-213. CBP determined that Petitioner had unlawfully entered the United States. *Id.* On the same date, CBP served Petitioner with a Form I-286, Notice of Custody Determination. The Form I-286, Notice of Custody Detention, was cancelled by ERO on December 8, 2025, because the form was improvidently issued and is inapplicable, since Petitioner is subject to mandatory detention as an applicant for admission pursuant to INA § 235. *See* Cancelled Form I-286, Notice of Custody

Determination, attached and redacted as Exhibit E; Ex. D, Declaration of Deportation Officer John Mansey at ¶ 11.

The U.S. Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") detained Petitioner on July 15, 2025, at the Broward Transitional Center ("BTC"), located in Pompano Beach, Florida. *See* Detention History, attached and redacted as Exhibit F. The venue of Petitioner's removal proceedings was transferred to the BTC Immigration Court. On July 15, 2025, Petitioner filed a bond redetermination request with the BTC Immigration Court. *See* Motion for Custody Redetermination filed July 15, 2025, attached and redacted as Exhibit G. On July 23, 2025, Petitioner's counsel withdrew the motion before the immigration judge, noting that Petitioner was to provide an original identification document from his home country and be prepared to address court's jurisdiction for bond before resubmitting his request. *See* Immigration Judge's Bond Order dated July 23, 2025, attached and redacted as Exhibit H. On July 28, 2025, Petitioner filed a second bond redetermination request with the BTC Immigration Court. *See* Motion for Custody Redetermination filed July 28, 2025, attached and redacted as Exhibit I. On August 6, 2025, Petitioner's counsel withdrew the request. *See* Immigration Judge's Bond Order dated August 6, 2025, attached and redacted as Exhibit J. On August 21, 2025, Petitioner filed a third request for a bond redetermination with the BTC Immigration Court. *See* Request for Custody Redetermination, attached and redacted as Exhibit K. On August 29, 2025, following a hearing on the bond request, the immigration judge issued a "no action" after counsel withdrew the request. *See* Immigration Judge's Bond Order dated August 29, 2025, attached and redacted as Exhibit L.

On September 30, 2025, the immigration judge heard Petitioner's applications for relief. *See* Ex. D, Declaration of Deportation Officer Mansey at ¶ 17. On November 3, 2025, the

immigration judge issued a written decision, denying his applications for relief but inadvertently ordered him removed to Mexico instead of Guatemala. *See* Immigration Judge's Removal Order dated November 3, 2025, attached and redacted as Exhibit M. Petitioner filed a motion to reconsider his November 3, 2025, removal order with the BTC Immigration Court, arguing in part that Petitioner's country of removal did not reflect his country of citizenship. *See* Motion for Reconsider, attached and redacted as Exhibit N. On December 1, 2025, the immigration judge granted Petitioner's motion to reconsider as to Petitioner's request for corrected order. *See* Immigration Judge's Order granting the Motion to Reconsider, attached and redacted as Exhibit O. On December 1, 2025, the immigration judge issued a written order, denying Petitioner's applications for relief and ordered him removed to Guatemala. *See* Ex. A., Immigration Judge's Removal Order dated December 1, 2025. Petitioner reserved appeal but has not filed an appeal with the Board of Immigration Appeals ("BIA").

Petitioner remains detained by ICE ERO at the BTC. *See* Ex. F., Detention History, Ex. D, Declaration of Deportation Mansey at ¶ 21.

## ARGUMENT

### I. Petitioner's Prayer for a Temporary Restraining Order is Moot during the Pendency of any appeal before the BIA.

Petitioner requests for the Court to issue a Temporary Restraining Order ("TRO") prohibiting the Respondents from removing the Petitioner from the United States pending the resolution of this litigation as well as any appeals he is entitled to in his immigration case. *See* Petition, D.E. 1, at 19–20. This request is moot as the United States concedes that it has no intention to remove the Petitioner while he is either entitled to an appeal before the Board of Immigration Appeals ("BIA") or he has an actual appeal pending. However, his request for a TRO during the

pendency of this litigation, and any potential appeal, is improper as the Court lacks jurisdiction to stay the removal order.

On December 1, 2025, ERO issued a Corrected Order that addressed several issues in Immigration Judge Martz's prior Order dated November 3, 2025. *See* Ex. A. At the conclusion of the Corrected Order, the IJ notes that the Petitioner has a right to appeal that decision to the BIA but must do so within thirty (30) days from December 1, 2025, the date the Corrected Order was issued. *See* Ex. A. This instruction follows the BIA Practice Manual as well as Federal Regulations.

> After an Immigration Judge issues a final decision on the merits of a case (not including bond or custody, credible fear, claimed status review, or reasonable fear determinations), the order is automatically stayed for the 30-day period for filing an appeal with the Board. However, the order is not stayed if the losing party waived the right to appeal. 8 C.F.R. § 1003.6(a).

BIA Practice Manual, Section 6.2(a), "Automatic Stays," available at https://www.justice.gov/eoir/reference-materials/bia/chapter-6/2 (last accessed Dec. 9, 2025).

> If a party appeals an Immigration Judge's decision on the merits of the case (not including bond and custody determinations) to the Board during the appeal period, the order of removal is automatically stayed during the Board's adjudication of the appeal. 8 C.F.R. § 1003.6(a). The stay remains in effect until the Board renders a final decision in the case.

*Id.* at Section 6.2(b).

Petitioner has not waived his right to an appeal and, therefore, his removal order is stayed during his window to file an appeal and, should he file an appeal before the BIA, while that matter is under consideration.[2]

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[2] As of the date of the filing of this Return, the Petitioner has not yet filed an appeal of the Immigration Judge's decision

## II. The Court lacks subject matter jurisdiction to enjoin the Petitioner's removal during this litigation.

Petitioner also asks the Court to issue a TRO enjoying the Respondents from executing his removal order during this litigation and any potential appeal. In support, Petitioner cites the All Writs Act, 28 U.S.C. § 1651(a), as the basis for his request for the Court to enjoin the Respondents to execute any order of removal while this litigation is ongoing. *See* Petition, D.E. 1, at 19–20. However, the jurisdiction stripping provision of 8 U.S.C. § 1252 precludes the review of orders of removal in district court. *Vasquez Monroy v. Dep't of Homeland Sec.*, 396 F. Supp. 3d 1206, 1209 (S.D. Fla. 2019) (dismissing a complaint for declaratory, injunctive, and habeas relief where the plaintiffs "contest the process rather than the ultimate outcome" of a removal order because the claim "aris[es] from" a removal order) (citing 8 U.S.C. § 1252(g)). Accordingly, All Writs Act does not provide and independent ground for subject matter jurisdiction for the review and stay of an order of removal. *Id.* (citing *Burr & Forman v. Blair*, 470 F.3d 1019, 1027 (11th Cir. 2006)). The All Writs Act cannot serve the basis for subject matter jurisdiction in this matter and, thus, the Court lacks subject matter jurisdiction to issue an independent stay of the Petitioner's removal order pending the resolution of this litigation.

## III. 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 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 Immigration and Nationality Act ("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) (emphasis added). 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 was "present in the United States," and there is no dispute that he has "not been admitted." 8 U.S.C. § 1225(a); *See* Ex. B, Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213), July 11, 2025. 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. The statute itself makes clear that an alien who is an "applicant for admission" *is* necessarily "seeking admission." Moreover, an alien like Petitioner, who is identified by immigration authorities as unlawfully present, and who does not choose to depart from the United States voluntarily, is "seeking admission," i.e., seeking legal authority to remain in the United States.

#### 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 "seeking admission," at least absent a choice to pursue voluntary withdrawal or 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).[3] No separate affirmative act is necessary. *See Matter of Lemus-Losa*, 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

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[3] 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).

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." *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.

**3. Applicants for admission are seeking admission when they seek to lawfully remain in the United States.**

Even if "seeking admission" requires some separate affirmative conduct by the alien, an applicant for admission who attempts to avoid removal from the United States, rather than trying to voluntarily depart, is "seeking admission."

Section 1225(b)(2)(A) applies to an alien who is present in the United States unlawfully, regardless of how long the alien has been in the United States. Although the alien may not have been affirmatively seeking admission during those years of illegal presence, § 1225(b)(2) is not concerned with the alien's pre-inspection conduct. Rather, the statute's use of present tense language ("seeking" and "determines") shows that its focus is a specific point in time—when "the examining immigration officer" is making a "determin[ation]" regarding the alien's admissibility.

8 U.S.C. § 1225(b)(2)(A). At *that* point, the alien is "seeking" admission into the United States. *See* The American Heritage Dictionary of the English Language (defining "seek" and "seeking" as "to endeavor to obtain"). If it were otherwise, the applicant would not attempt to show that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). That inference is confirmed by § 1225(a)(4), which authorizes an alien to voluntarily "depart immediately from the United States." 8 U.S.C. § 1225(a)(4). An applicant who forgoes that statutory option and instead endeavors to prove admissibility and is placed in § 240 removal proceedings—proceedings in which the alien has the "burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted," *id.* § 1229a(c)(2)(A)—is endeavoring to obtain admission to the United States in the same way someone who is encountered just after crossing the border is attempting to obtain admission to the United States.

**C. Section 1226 Does Not Apply.**

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 does not create a redundance 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.[4] Thus,

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[4] 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.

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). 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 as explained below, it does not create a redundancy as the amendment does independent work.

The Laken Riley Act provides for mandatory 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). Aliens subject to detention under § 1226(c)(1)(E) are effectively applicants for admission that committed one of the enumerated acts and, as applicants for admission, would also be subject to mandatory detention under § 1225(b)(2). There is no redundancy, however, because the two statutes provide for different forms of release. 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) are not and may only be released pursuant to the stricter requirements of that statute.

Under § 1182(b)(5), "[t]he Secretary of Homeland Security may … in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States." 8 U.S.C. § 1182(b)(5). Section 1226(c)(1) takes that option off the table for aliens who have also committed the offenses or engaged in the conduct specified in § 1226(c)(1)(A)-(E). As to those aliens, § 1226(c) *prohibits* their parole and authorizes their release only if "necessary to provide protection to" a witness or similar person "and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." 8 U.S.C. § 1226(c)(4). So even as to aliens who are already subject to mandatory detention under § 1225(b)(2), § 1226(c) is not superfluous: It significantly narrows the Executive's parole power with respect to those aliens.

In fact, Congress's desire to further limit the parole power with respect to criminal aliens was one of the principal reasons that it enacted the Laken Riley Act. The Act was adopted in the wake of a heinous murder committed by an inadmissible alien who was "paroled into this country through a shocking abuse of that power," 171 Cong. Rec. at H278 (daily ed. Jan. 22, 2025) (Rep. McClintock), and an abdication of the Executive's "fundamental duty under the Constitution to defend its citizens," 171 Cong. Rec. at H269 (Rep. Roy). The Act thus reflects a "congressional effort to be double sure," *Barton*, 590 U.S. at 239, that unadmitted criminal aliens are not paroled into the country through an abuse of the Secretary's exceptionally narrow parole authority. It does not suggest congressional uncertainty about § 1225(b)(2)(A)'s detention mandate, but rather congressional desire to shut down a parole loophole that allowed the Government to circumvent that mandate.

**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.

*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 (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).

Granting the bond hearing 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 request. *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**

Any argument that prior agency practice applying § 1226(a) to Petitioner is unavailing 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. *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.

**Dated: December 9, 2025** **Respectfully submitted,**

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 9, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the Service List via CM/ECF.

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