

1 TIMOTHY COURCHAINÉ  
United States Attorney  
2 District of Arizona  
3 BROOKS CHUPP  
Assistant United States Attorney  
4 Arizona State Bar No. 040231  
Two Renaissance Square  
5 40 North Central Avenue, Suite 1800  
6 Phoenix, Arizona 85004-4449  
Telephone: (602) 514-7500  
7 Fax: (602) 514-7760  
8 Email: brooks.chupp@usdoj.gov  
*Attorneys for Respondents*

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

12 David Zarza Davalos,  
Petitioner,  
13 v.  
14 Kristi Noem, *et al.*,  
15 Respondents.

No. 2:25-cv-04459-SHD (ASB)

**RESPONSE TO ORDER TO SHOW  
CAUSE**

16  
17 Respondents, by and through undersigned counsel, hereby respond to the Court's  
18 Order to Show Cause (Doc. 4), and hence to the Petition for Writ of Habeas Corpus (Doc.  
19 1).

20 **I. INTRODUCTION.**

21 Before 1996, the federal immigration laws required the detention of aliens who  
22 presented at a port of entry but allowed aliens who were already unlawfully present in the  
23 United States to obtain release pending removal proceedings. Congress passed the Illegal  
24 Immigration Reform and Immigration Responsibility Act ("IIRIRA") specifically to stop  
25 conferring greater privileges and benefits on aliens who enter the United States unlawfully  
26 as compared to those who lawfully present themselves for inspection at a port of entry.

27 As relevant here, Congress enacted what is now 8 U.S.C. § 1225, which requires the  
28 detention of any alien "who is an applicant for admission" and defines that term to

1 encompass any “alien present in the United States who has not been admitted” following  
2 inspection by immigration authorities. 8 U.S.C. § 1225(a), (b)(2)(A). The statute makes no  
3 exception for how far into the country the alien traveled or how long the alien managed to  
4 evade detection. Unless the Secretary exercises the narrow and discretionary parole  
5 authority, mandatory detention is the rule for aliens who have never been lawfully admitted.

6 Petitioner is an “applicant for admission” under Section 1225(a). That provision  
7 specifically provides that any “alien present in the United States who has not been admitted  
8 ... shall be deemed for purposes of this chapter an applicant for admission.” § 1225(a)(1).  
9 Petitioner admits that he entered the United States without inspection in 2001. Petition at  
10 ¶ 19. Because Petitioner entered the country without inspection, he was never “admitted”  
11 and thus unambiguously remains an “applicant for admission” who is subject to mandatory  
12 detention.

## 13 **II. STATUTORY FRAMEWORK.**

### 14 **A. The pre-IIRIRA framework gave preferential treatment to aliens 15 unlawfully present in the United States.**

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

20 Prior to 1996, the INA treated aliens differently based on whether the alien had  
21 physically “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-  
22 223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); see *Hing Sum v. Holder*, 602  
23 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). “Entry” referred to “any coming of an alien  
24 into the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically  
25 entered the United States (or not) “dictated what type of [removal] proceeding applied” and  
26 whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at  
27 1099.

28 At the time, the INA “provided for two types of removal proceedings: deportation  
hearing and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc).

1 An alien who arrived at a port of entry would be placed in “exclusion proceedings and  
2 subject to mandatory detention, with potential release solely by means of a grant of parole.”  
3 *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In  
4 contrast, an alien who physically entered the United States unlawfully would be placed in  
5 deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens in deportation  
6 proceedings, unlike those in exclusion proceedings, “were entitled to request release on  
7 bond.” *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

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

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

16 *Hurtado*, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y Gen. of U.S.*,  
17 693 F.3d 408, 413 n.5 (3d Cir. 2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R.  
18 Rep. No. 104-469, pt. 1, at 225 (1996) (“House Rep.”) (“illegal aliens who have entered the  
19 United States without inspection gain equities and privileges in immigration proceedings  
20 that are not available to aliens who present themselves for inspection”).

21 **B. IIRIRA eliminated the preferential treatment of aliens unlawfully present  
22 in the United States and mandated detention of all “applicants for  
23 admission.”**

24 Congress discarded that regime through enactment of IIRIRA, Pub. L. 104-208, 110  
25 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of “ensur[ing] that  
26 all immigrants who have not been lawfully admitted, regardless of their legal presence in  
27 the country, are placed on equal footing in removal proceedings under the INA.” *Torres v.*  
28 *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

1 immigration officer.” 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the  
2 immigration laws would no longer distinguish aliens based on whether they had managed  
3 to evade detection and enter the country without permission. Instead, the “pivotal factor in  
4 determining an alien’s status” would be “whether or not the alien has been *lawfully*  
5 admitted.” House Rep., *supra*, at 226 (emphasis added); *Hing Sum*, 602 F.3d at 1100  
6 (similar). IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated  
7 both sets of proceedings into “removal proceedings.” *Hurtado*, 29 I. & N. Dec. at 223.

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

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

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

17 8 U.S.C. § 1225(a)(1) (emphasis added). “All aliens ... who are applicants for admission or  
18 otherwise seeking admission or readmission to or transit through the United States” are  
19 required to “be inspected by [an] immigration officer[.]” *Id.* § 1225(a)(3). The inspection by  
20 the immigration officer is designed to determine whether the alien may be lawfully  
21 “admitted” to the country or, instead, must be referred to removal proceedings.

22 **Section 1225(b):** IIRIRA also divided removal proceedings into two tracks—  
23 expedited removal and non-expedited “Section 240” proceedings—and mandated that  
24 applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-  
25 (2).

26 Section 1225(b)(1) provides for so-called “expedited removal proceedings,” *Dep’t of*  
27 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be  
28 applied to a subset of aliens—those who (1) are “arriving in the United States,” or who (2)

1 have “not been admitted or paroled into the United States” and have “not affirmatively  
2 shown, to the satisfaction of an immigration officer, that the alien has been physically  
3 present in the United States continuously for the 2-year period immediately prior to the date  
4 of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens,  
5 the immigration officer shall “order the alien removed from the United States without further  
6 hearing or review unless the alien indicates either an intention to apply for asylum ... or a  
7 fear of persecution.” *Id.* § 1225(b)(1)(A)(i). In that event, the alien “shall be detained  
8 pending a final determination of credible fear or persecution and, if found not to have such  
9 fear, until removed.” *Id.* § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). An  
10 alien processed for expedited removal who does not indicate an intent to apply for a form  
11 of relief from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i),  
12 (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

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

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

21 8 U.S.C. § 1225(b)(2)(A) (emphasis added).<sup>1</sup> *See* 8 C.F.R. § 235.3(b)(1)(ii) (mirroring  
22 Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section  
23 1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable  
24 proceedings and not just at the moment those proceedings begin”).

25 While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA  
26 grants DHS discretion to exercise its parole authority to temporarily release an applicant for  
27 admission, but “only on a case-by-case basis for urgent humanitarian reasons or significant  
28

---

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

1 public benefit.” 8 U.S.C. § 1182(d)(5)(A). Parole, however, “shall not be regarded as  
2 admission of the alien.” *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority).  
3 Moreover, when the Secretary determines that “the purposes of such parole ... been served,”  
4 the “alien shall ... be returned to the custody from which he was paroled” and be “dealt with  
5 in the same manner as that of any other applicant for admission to the United States.” 8  
6 U.S.C. § 1182(d)(5)(A).

7 **Section 1226:** IIRIRA also created a separate authority addressing the arrest,  
8 detention, and release of aliens generally (versus applicants for admission specifically). *See*  
9 8 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for  
10 example, lawfully enter the country but overstay or otherwise violate the terms of their visas,  
11 or are later determined to have been improperly admitted. The statute provides that “[o]n a  
12 warrant issued by the Attorney General, an alien may be arrested and detained pending a  
13 decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a).  
14 Detention under this provision is generally discretionary: The Attorney General “may”  
15 either “continue to detain the arrested alien” or release the alien on bond or conditional  
16 parole. *Id.* § 1226(a)(1)-(2).<sup>2</sup>

17 That “default rule,” however, does not apply to certain criminal aliens who are being  
18 released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see*  
19 8 U.S.C. § 1226(c). Section 1226(c) provides that “[t]he Attorney General shall take into  
20 custody” certain classes of criminal aliens—those who are inadmissible or deportable  
21 because the alien (1) “committed” certain offenses delineated in 8 U.S.C. §§ 1182 and 1227;  
22 or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The Executive must  
23 detain these aliens “when the alien is released, without regard to whether the alien is released  
24 on parole, supervised release, or probation, and without regard to whether the alien may be  
25 arrested or imprisoned again for the same offense.” *Id.*

26 Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L.  
27 No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for)

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

1 aliens who (1) are inadmissible because they are physically present in the United States  
2 without admission or parole, have committed a material misrepresentation or fraud, or lack  
3 required documentation; and (2) are “charged with, arrested for, [] convicted of, admit[]  
4 having committed, or admit[] committing acts which constitute the essential elements of”  
5 certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

6 **III. FACTUAL BACKGROUND.**

7 Petitioner is a citizen of Mexico. Doc. 1-1 at 3. According to Petitioner, he entered  
8 the United States in 2001. Doc. 1 at ¶ 19. Petitioner was arrested by ICE in October 2025  
9 and issued a Notice to Appear charging him with being an alien present in the United States  
10 without having been admitted or paroled. Doc. 1 at ¶ 23. An immigration judge denied  
11 Petitioner release on bond on the grounds that Petitioner was subject to mandatory detention  
12 under 8 U.S.C. § 1225(b)(2). Doc.1 at ¶ 24. However, the immigration judge held that, in  
13 the alternative, the immigration judge would grant Petitioner release upon the posting of a  
14 \$10,000 bond. *Id.*

15 **IV. ARGUMENT**

16 **A. Under the plain text of § 1225, Petitioner must be detained pending the  
17 outcome of his removal proceedings.**

18 The Court should reject Petitioner’s argument that § 1226(a) governs his detention  
19 instead of § 1225. When there is “an irreconcilable conflict in two legal provisions,” then  
20 “the specific governs over the general.” *Karczewski v. DCH Mission Valley LLC*, 862 F.3d  
21 1006, 1015 (9th Cir. 2017). Section 1226(a) applies to aliens “arrested and detained pending  
22 a decision” on removal. 8 U.S.C. § 1226(a). In contrast, § 1225 is narrower. *See* 8 U.S.C.  
23 § 1225. It applies only to “applicants for admission”; that is, as relevant here, aliens present  
24 in the United States who have not be admitted. *Id.*; *see also Fla. v. United States*, 660 F.  
25 Supp. 3d 1239, 1275 (N.D. Fla. 2023), *appeal dismissed*, No. 23-11528, 2023 WL 5212561  
26 (11th Cir. July 11, 2023). Because Petitioner falls within that category, the specific detention  
27 authority under § 1225 governs over the general authority found at § 1226(a).

28 Under 8 U.S.C. § 1225(a), an “applicant for admission” is defined as an “alien present  
in the United States who has not been admitted or who arrives in the United States.”

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

13 The BIA has long recognized that “many people who are not *actually* requesting  
14 permission to enter the United States in the ordinary sense are nevertheless deemed to be  
15 ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*, 25 I. & N. Dec.  
16 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.” *Marquez-*  
17 *Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*,  
18 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) must be read  
19 in the context of the definition of “applicant for admission” in § 1225(a)(1). Applicants for  
20 admission are both those individuals present without admission and those who arrive in the  
21 United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission”  
22 under §1225(a)(1). *See Lemus-Losa*, 25 I. & N. Dec. at 743. Congress made that clear in  
23 § 1225(a)(3), which requires all aliens “who are applicants for admission or otherwise  
24 seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word  
25 “or” here “introduce[s] an appositive—a word or phrase that is synonymous with what  
26 precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*,  
571 U.S. 31, 45 (2013).

27 One of the most basic interpretative canons instructs that a “statute should be  
28 construed so that effect is given to all its provisions.” *See Corley v. United States*, 556 U.S.

1 303, 314 (2009) (cleaned up). The court’s decision in *Florida v. United States* is instructive  
2 here. The district court held that 8 U.S.C. § 1225(b) mandates detention of applicants for  
3 admission throughout removal proceedings, rejecting the assertion that DHS has discretion  
4 to choose to detain an applicant for admission under either section 1225(b) or 1226(a). 660  
5 F. Supp. 3d at 1275. The court held that such discretion “would render mandatory detention  
6 under § 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to include illegal  
7 border crossers would make little sense if DHS retained discretion to apply § 1225(a) and  
8 release illegal border crossers whenever the agency saw fit.” *Id.* The court pointed to *Demore*  
9 *v. Kim*, 538 U.S. 510, 518 (2003), in which the Supreme Court explained that “wholesale  
10 failure” by the federal government motivated the 1996 amendments to the INA. *Florida*, 660  
11 F. Supp. 3d at 1275. The court also relied on, *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G.  
12 2019), in which the Attorney General explained “section [1225] (under which detention is  
13 mandatory) and section [1226(a)] (under which detention is permissive) can be reconciled  
14 only if they apply to different classes of aliens.” *Florida*, 660 F. Supp. 3d at 1275. Petitioner,  
15 present in the United States without being admitted, is an applicant for admission and is  
16 therefore subject to mandatory detention without bond under 8 U.S.C. § 1225(b).

17 **B. Congress did not intend to treat individuals who unlawfully enter the**  
18 **United States better than those who appear at a port of entry.**

19 When the plain text of a statute is clear, “that meaning is controlling” and courts “need  
20 not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848  
21 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing “refutes the  
22 plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th  
23 Cir. 2011). Congress passed IIRIRA to correct “an anomaly whereby immigrants who were  
24 attempting to lawfully enter the United States were in a worse position than persons who had  
25 crossed the border unlawfully.” *Torres*, 976 F.3d at 928. The Court should reject the  
26 Petitioner’s interpretation because it would put aliens who “crossed the border unlawfully”  
27 in a better position than those “who present themselves for inspection at a port of entry.” *Id.*  
28 Aliens who presented at port of entry would be subject to mandatory detention under § 1225,  
but those who crossed illegally would be eligible for a bond under § 1226(a).

1           The Board of Immigration Appeals recognized this issue in *Matter of Yajure Hurtado*.  
2 In its decision, the BIA affirmed “the Immigration Judge’s determination that he did not have  
3 authority over [a] bond request because aliens who are present in the United States without  
4 admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8  
5 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”  
6 29 I. & N. Dec. at 220. The BIA concluded that aliens “who surreptitiously cross into the  
7 United States remain applicants for admission until and unless they are lawfully inspected  
8 and admitted by an immigration officer. Remaining in the United States for a lengthy period  
9 of time following entry without inspection, by itself, does not constitute an ‘admission.’” *Id.*  
10 at 228. To hold otherwise would lead to an “incongruous result” that rewards aliens who  
11 unlawfully enter the United States without inspection and subsequently evade apprehension  
12 for number of years. *Id.*

13           In so concluding, the BIA rejected the alien’s argument that “because he has been  
14 residing in the interior of the United States for almost 3 years . . . he cannot be considered as  
15 ‘seeking admission.’” *Id.* at 221. The BIA determined that this argument “is not supported  
16 by the plain language of the INA” and creates a “legal conundrum.” *Id.* If the alien “is not  
17 admitted to the United States (as he admits) but he is not ‘seeking admission’ (as he  
18 contends), then what is his legal status?” *Id.* (parentheticals in original). The BIA’s decision  
19 in *Matter of Yajure Hurtado* is consistent not only with the plain language of 8 U.S.C.  
20 § 1225(b)(2), but also with the Supreme Court’s 2018 decision in *Jennings* and other caselaw  
21 issued subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that  
22 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8  
23 U.S.C. § 1225(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. 583 U.S. at  
24 300, 303 (explaining that “the word ‘shall’ usually connotes a requirement” (quoting  
*Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).

25           Similarly, relying on *Jennings* and the plain language of 8 U.S.C. §§ 1225 and  
26 1226(a), the Attorney General, in *Matter of M-S-*, unequivocally recognized that 8 U.S.C.  
27 §§ 1225 and 1226(a) do not overlap but describe “different classes of aliens.” 27 I. & N. Dec.  
28 at 516. The Attorney General also held—in an analogous context—that aliens present

1 without admission and placed into expedited removal proceedings are detained under 8  
2 U.S.C. § 1225 even if later placed in 8 U.S.C. § 1229a removal proceedings. *Id.* at 518-19.  
3 In *Matter of Li*, the BIA held that an alien who illegally crossed into the United States and  
4 was apprehended without a warrant while arriving is detained under 8 U.S.C. § 1225(b). 29  
5 I. & N. Dec. at 71. This ongoing evolution of the law makes clear that all applicants for  
6 admission are subject to detention under 8 U.S.C. § 1225(b). *Cf. Niz-Chavez v. Garland*, 593  
7 U.S. 155, 171 (2021) (providing that “no amount of policy-talk can overcome a plain  
8 statutory command”); *see generally Florida*, 660 F. Supp. 3d at 1275 (explaining that “the  
9 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if  
10 DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the  
11 agency saw fit”). *Florida’s* conclusion “that § 1225(b)’s ‘shall be detained’ means what it  
12 says and . . . is a mandatory requirement . . . flows directly from *Jennings*.” *Florida*, 660 F.  
13 Supp. 3d at 1273.

14 **C. The Court should not follow the decision in *Echevarria*.**

15 Respondents are aware of this Court’s prior decision rejecting Respondents’ position,  
16 *see Echevarria v. Bondi*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct.  
17 3, 2025), but respectfully maintain that Petitioner falls within the definition of an “arriving  
18 alien” warranting mandatory detention as the removal process unfolds. Respondents also  
19 respectfully maintain that an alien is an “applicant for admission” until an immigration  
20 official has inspected that person and determined that he or she is admissible into the United  
21 States.<sup>3</sup>

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

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

27 <sup>3</sup> Respondents notify the Court of the Government’s affirmative appeal in *Rodriguez*  
28 *Vazquez v. Bostock*, No. 25-6842 (9th Cir. Oct. 29, 2025), which addresses this issue. The  
Government’s opening brief in that case is due on December 21, 2025.

1 It is hard to see how Petitioner could be deemed to have been “seeking”  
2 admission at the time of the encounter on July 2, 2025. By that point,  
3 Petitioner had already been present in the United States for 24 years, having  
4 arrived and entered in 2001. Moreover, under Respondents’ interpretation of  
5 § 1225(a)(1), Petitioner became an “applicant for admission” in 2001, upon  
6 his arrival and entry. Implicit in Respondents’ position, then, is that  
7 Petitioner somehow existed in a perpetual state of “seeking” admission  
8 during the 24-year period between when he first became an “applicant for  
9 admission” in 2001, by virtue of his entry into the country, and when he was  
10 encountered and inspected by an immigration officer in 2025.

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

12 However, this analysis fails to consider other pieces of statutory context. Respondents  
13 respectfully argue that the phrase “applicants for admission” carves out a subset of those who  
14 are “seeking admission.” For example, elsewhere in section 1225, the statute says that “[a]ll  
15 aliens who are applicants for admission *or otherwise seeking admission* or readmission to or  
16 transit through the United States shall be inspected by immigration officers.” 8 U.S.C.  
17 § 1225(a)(3) (emphasis added). In other words, 8 U.S.C. § 1225(a)(3) shows that an alien  
18 may be “seeking admission” either by being an “applicant for admission,” or in some  
19 different way. As discussed earlier, the phrase “applicant for admission” unambiguously  
20 includes aliens who have already entered the United States. “In all but the most unusual  
21 situations, a single use of a statutory phrase must have a fixed meaning.” *See Cochise*  
22 *Consultancy, Inc. v. United States ex rel. Hunt*, 587 U.S. 262, 268 (2019) (referring to *Ratzlaf*  
23 *v. United States*, 510 U.S. 135, 143 (1994)). “We therefore avoid interpretations that would  
24 ‘attribute different meanings to the same phrase.’” *Id.* (quoting *Reno v. Bossier Par. Sch.*  
25 *Bd.*, 528 U. S. 320, 329 (2000)). Thus, the *Echevarria* decision is not supported by the text  
26 of the statute, and Respondents respectfully request the Court reach a different result in this  
27 case.

28 Furthermore, Respondents direct the Court’s attention to a decision issued on  
September 30, 2025, in the United States District Court for the District of Nebraska: *Vargas*  
*Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). In that case,  
the court denied a similar habeas petition brought by an alien who entered the United States

1 in 2013, and held that the petitioner was properly detained under § 1225(b)(2) as an alien  
2 within the “catchall” scope of § 1225(b)(2) subject to detention without possibility of release  
3 on bond through § 1229a removal proceedings. 2025 WL 2780351, at \*6-9. The court noted  
4 that illegally remaining in the country for years did not mean the petitioner, who “wish[ed]  
5 to stay in this country,” was suddenly not an “applicant for admission.” *Id.* at \*9.  
6 Additionally, “even if Vargas Lopez might fall within the scope of § 1226(a), he certainly  
7 fits within the language of § 1225(b)(2) as well.” *Id.*

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

23 The Southern District of California also denied a temporary restraining order sought  
24 by an alien who was detained under § 1225(b)(2) despite having been surreptitiously present  
25 in the United States for years. *See Chavez v. Noem*, --F. Supp. 3d --, No. 3:25-cv-02325-  
26 CAB, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), *appeal docketed sub nom. Sixtos Chavez*  
27 *v. Noem*, No. 25-7077 (9th Cir. Nov. 7, 2025). The court noted, among other arguments, that  
28 “Section 1225(a)(1) expressly defines that ‘[a]n alien present in the United States who has  
not been admitted . . . shall be deemed for purposes of this Act *an applicant for admission.*”

1 *Id.* at \*4 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). The court reasoned that,  
2 “Petitioners do not contest that they are ‘alien[s] present in the United States who ha[ve]not  
3 been admitted.’ By the plain language of § 1225(a)(1), then, Petitioners are ‘applicants for  
4 admission’ and thus subject to the mandatory detention provisions of ‘applicants for  
5 admission’ under § 1225(b)(2).” *Id.* (cleaned up). *See also Rojas v. Olson*, No. 25-CV-1437-  
6 BHL, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Sandoval v. Acuna*, No. 6:25-CV-01467,  
7 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Oliveira v. Patterson*, No. 6:25-CV-01463,  
8 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 1:25-CV-00168-  
9 JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, 1:25-cv-  
10 00177 (N.D. Tex. 2025); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D.  
11 Tex. Nov. 13, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL  
12 3199872 (C.D. Cal. Nov. 12, 2025); *Alonzo v. Noem*, No. 1:25-CV-01519 WBS SCR, 2025  
13 WL 3208284 (E.D. Cal. Nov. 17, 2025); *Valencia v. Chestnut*, -- F. Supp. 3d --, No. 1:25-  
14 cv-01550 WBS JDP, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025).

15 **D. Impact of the *Maldonado Bautista* rulings.**

16 In the Order to Show Cause (Doc. 4), the Court directed Respondents to address  
17 whether Petitioner is a member of the class certified in *Maldonado Bautista v. Santacruz*,  
18 No. 5:25-CV-01873-SSS-BFM, -- F.R.D. --, 2025 WL 3288403, at \*9 (C.D. Cal. Nov. 25,  
19 2025) (the “Class Certification Ruling”), and if so, whether they are obligated to provide  
20 him a bond hearing based on the orders entered in that case or whether an additional order  
21 from this Court is required to entitled Petitioner to a bond hearing. Doc. 5 at 1-2.

22 On November 20, 2025, Judge Sunshine Sykes of the United States District Court  
23 for the Central District of California granted partial summary judgment in favor of the four  
24 individual petitioners in the *Maldonado Bautista* case finding that the “Interim Guidance  
25 Regarding Detention Authority for Applicants for Admission” instituted by the Department  
26 of Homeland Security on July 8, 2025, was unlawful, but declining to enter final judgment.  
27 *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, -- F. Supp. 3d --, 2025  
28 WL 3289861, at \*11 (C.D. Cal. Nov. 20, 2025) (the “Partial MSJ Ruling”) (“Consistent  
with the discussion above, Petitioners’ Motion for Partial Summary Judgment is

1 GRANTED. The Court further DENIES Petitioners' Request to enter final judgment."  
2 (internal citations to docket omitted) (emphasis removed)).

3 In the Class Certification Ruling that followed, Judge Sykes certified a class in the  
4 *Maldonado Bautista* case entitled "Bond Eligible Class" which is defined as "[a]ll  
5 noncitizens in the United States without lawful status who (1) have entered or will enter the  
6 United States without inspection; (2) were not or will not be apprehended upon arrival; and  
7 (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or  
8 § 1231 at the time the Department of Homeland Security makes an initial custody  
9 determination." 2025 WL 3288403, at \*9. Respondents aver that Petitioner is a member of  
10 Bond Eligible Class certified in *Maldonado Bautista*.

11 Neither the Partial MSJ Ruling nor the Class Certification Ruling entered declaratory  
12 judgment as to the nationwide class or otherwise provided for class-wide relief. *See* 2025  
13 WL 3289861, at \* 11 (granting motion for partial summary judgment but expressly not  
14 ordering any relief) and 2025 WL 3288403, at \*9-10 (granting motion for class certification  
15 but ordering only that class be certified, Petitioners be appointed class representatives,  
16 Petitioners' counsel be appointed class counsel, ordering a joint status report and setting  
17 status conference). In the Partial MSJ Ruling, the court also expressly declined to enter final  
18 judgment as to the claims at issue in the motion under Federal Rule of Civil Procedure 54(b).  
19 2025 WL 3289861, at \* 11. Rather, in the Class Certification Order, the court set a January  
20 9, 2026, joint status report deadline and January 16, 2026, status conference indicating that  
21 the court intends to address the question of final relief at a later date. 2025 WL 3288403, at  
\*10.

22 To be proper, a declaratory judgment must have preclusive effect. "Without  
23 preclusive effect, a declaratory judgment is little more than an advisory opinion." *Haaland*  
24 *v. Brackeen*, 599 U.S. 255, 293 (2023); *see also Wells v. Johnson*, 150 F.4th 289, 301 (4th  
25 Cir. 2025) (stating that the only reason a proper declaratory judgment does not violate  
26 Article III's requirements is because it has preclusive effect between the parties).  
27 *Headwaters Inc. v. U.S. Forest Serv.*, 399 F.3d 1047, 1051 (9th Cir. 2005). And preclusive  
28 effect cannot be obtained without sufficient finality. *B & B Hardware, Inc. v. Hargis Indus.*,

1 *Inc.*, 575 U.S. 138, 148 (2015) (citing Restatement (Second) of Judgments § 27, p. 250  
2 (1980), for the general rule that an issue must be determined by a “valid and final judgment”  
3 for preclusion to apply); *Luben Indus., Inc. v. United States*, 707 F.2d 1037, 1040 (9th Cir.  
4 1983) (affirming district court decision not to apply preclusive effect to an interlocutory  
5 decision that “could not have been the subject of an appeal at the time”); Restatement  
6 (Second) of Judgments § 28, p. 273 (1980) (issue preclusion does not apply when the “party  
7 against whom preclusion is sought could not, as a matter of law, have obtained review of  
8 the judgment in the initial action”; *id.* at cmt. a (“[T]he availability of review for the  
9 correction of errors has become critical to the application of preclusion doctrine.”)).

10 Absent an entry of final judgment on the entire case, or a certification of partial final  
11 judgment under Rule 54(b), there is no declaratory judgment. The Partial MSJ Ruling does  
12 not operate as a “judgment” because it is not an appealable order and “does not end the  
13 action as to any of the claims or parties and may be revised at any time before the entry of  
14 a judgment adjudicating all the claims and all the parties’ rights and liabilities.” Fed. R. Civ.  
15 P. 54(a), (b). Thus, there is no class-wide judgment, let alone any final judgment that could  
16 have preclusive effect as to class members. In short, there is currently no declaratory relief,  
17 let alone relief with preclusive effect on the *Maldonado Bautista* class members’ claims  
18 concerning the proper interpretation of 8 U.S.C. § 1225(b)(2)(A)’s mandatory detention  
19 provision. As such, though Respondents have already provided Petitioner with a bond  
20 hearing, Respondents are not obligated to do so based on the orders issued in *Maldonado*  
21 *Bautista*.<sup>4</sup>

22 <sup>4</sup> Respondents note that because the class certified in *Maldonado Bautista* was certified  
23 pursuant to Fed. R. Civ. P. 23(b)(2), it is a non-opt out class, Petitioner will be entitled to  
24 and bound by the relief the *Maldonado Bautista* court ultimately grants, and that this parallel  
25 action seeking the same relief sought in the *Maldonado Bautista* class action is subject to  
26 dismissal. *See, e.g., Crawford v. Bell*, 599 F.2d 890, 892-93 (9th Cir. 1979) (holding that a  
27 district court may dismiss “those portions of [the] complaint which duplicate the [class  
28 action’s] allegations and prayer for relief”); *McNeil v. Guthrie*, 945 F.2d 1163, 1165-66  
(10th Cir. 1991) (finding that individual suits for injunctive and declaratory relief cannot be  
brought where a class action with the same claims exists); *Gillespie v. Crawford*, 858 F.2d  
1101, 1103 (5th Cir. 1988) (once a class action has been certified, “[s]eparate individual  
suits may not be maintained for equitable relief”); *Goff v. Menke*, 672 F.2d 702, 704 (8th

1 **V. CONCLUSION.**

2 In light of the above, Respondents respectfully request the Court deny Petitioner's  
3 Petition for Writ of Habeas Corpus. If the Court grants the Petition, the Court should order  
4 that Petitioner be released on \$10,000 bond as ordered by the immigration judge in the  
5 alternative, not direct Petitioner's immediate release from immigration detention.

6 Respectfully submitted this 9th day of December, 2025.

7 TIMOTHY COURCHAINE  
8 United States Attorney  
9 District of Arizona

10 *s/ Brooks Chupp*  
11 BROOKS CHUPP  
12 Assistant United States Attorney  
13 *Attorneys for Respondents*

14  
15  
16  
17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on this 9th day of December, 2025, I electronically transmitted  
19 the attached document to the Clerk's Office using the CM/ECF System for filing.

20  
21 *s/B. Chupp*  
22 United States Attorney's Office

23  
24  
25  
26  
27 \_\_\_\_\_  
28 Cir. 1982) ("If a class member cannot relitigate issues raised in a class action after it has  
been resolved, a class member should not be able to prosecute a separate equitable action  
once his or her class has been certified").