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9
 10 **UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

11 HUMBERTO PEREZ,
 12
 Petitioner,
 13
 v.

Case No. 2:25-cv-02390-CDS-BNW
**Federal Respondents' Response to
 Petition for Writ of Habeas Corpus**

14 PAMELA BONDI, Attorney General of the
 United States; KRISTI NOEM, Secretary,
 United States Department of Homeland
 15 Security; MICHAEL BERNACKE, Field
 Director, Salt Lake City Office; TODD
 16 LYONS, Acting Director; JOHN MATTOS,
 Nevada Southern Detention Center,
 17
 Respondents.
 18

19 Federal Respondents Pamela Bondi, Kristi Noem, Michael Bernacke, and Todd
 20 Lyons, hereby respond to Petitioner Humberto Perez' Petition for Writ of Habeas Corpus.
 21 ECF No. 2. The petition should be denied for the reasons stated below. This response is
 22 supported by the accompanying memorandum of points and authorities.

23 Respectfully submitted this 7th day of January 2026.

24 TODD BLANCHE
 Deputy Attorney General of the United States
 25 SIGAL CHATTAH
 First Assistant United States Attorney

26
 27 /s/ Virginia T. Tomova
 VIRGINIA T. TOMOVA
 Assistant United States Attorney
 28

1 Memorandum of Points and Authorities

2 **I. INTRODUCTION**

3 Petitioner erroneously argues that his detention is under 8 U.S.C. § 1231. He is
4 lawfully detained under detention is under 8 U.S.C. § 1225 because he does not have a final
5 order of removal. Petitioner has a removal order to Cuba, but an Immigration Judge granted
6 withholding of removal. Exhibit C. Petitioner is appealing the IJ's order to the Board of
7 Immigration Appeals (BIA). In his order, the IJ denied Petitioner's asylum application, a
8 waiver under INA § 212 (h) and an adjustment of status under INA § 245(a). Exhibit C. The
9 IJ withheld his decision on the Petitioner's application for protection under the Convention
10 Against Torture (CAT). That means that the IJ has not yet decided on the Petitioner's CAT
11 application. This decision is typically made after the case has been reviewed by an IJ and
12 the BIA. The withholding of the decision indicates that the IJ is still evaluating the case and
13 has not yet rendered a final decision. The Petitioner has the right to appeal this decision
14 which the Petitioner has done in this case on November 6, 2025. Exhibit D. If the Court
15 finds that Petitioner is detained under 8 U.S.C. § 1226(a), then the Court may order that this
16 Petitioner has a bond hearing before an IJ, who will consider Petitioner's extensive criminal
17 conviction history for burglary and larceny from 2009 to 2023. Exhibit B.

18 Petitioner's writ of habeas corpus contains inaccurate and incomplete factual and
19 procedural background. Petitioner is an illegal alien in the United States, a native and
20 citizen of Cuba, who came into DHS custody on July 2, 2025. Petitioner has multiple
21 convictions for larceny starting in 2009 through 2023. On October 24, 2025, Petitioner had
22 his final hearing before the Immigration Court on his asylum and withholding of removal
23 applications. The Immigration Judge denied Petitioner an asylum but withheld his removal
24 to Cuba. On November 6, 2025, petitioner filed an appeal of the IJ's order which is
25 currently pending before the Board of Immigration Appeals (BIA). At some point,
26 Petitioner was served with paperwork related to potential third country removal – Mexico.
27 On November 9, 2025, Petitioner did not consent to his removal to Mexico. Because
28 Petitioner filed an appeal before the BIA, he does not have a final order of removal and he is

1 lawfully detained under 8 U.S.C. § 1225. Prior to filing an appeal, Petitioner had not
2 requested a bond hearing before the Immigration Court.

3 Before 1996, the federal immigration laws required the detention of aliens who
4 presented at a port of entry but allowed aliens who were already unlawfully present in the
5 United States to obtain release pending removal proceedings. Congress passed the Illegal
6 Immigration Reform and Immigration Responsibility Act (“IIRIRA”) specifically to stop
7 conferring greater privileges and benefits on aliens who enter the United States unlawfully
8 as compared to those who present themselves for inspection at a port of entry. In addition,
9 Petitioner’s reliance on the decision in *Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec.
10 18, 2025), is misplaced and not applicable to his case.

11 The December 18, 2025, partial final judgment in *Bautista v. Noem*, No. 5:25-CV-
12 1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92, is neither binding nor applicable here and
13 presents no basis for granting the petition. First, the *Bautista* declaratory judgment is void
14 with respect to petitioners and custodians outside the Central District of California because
15 it was issued despite a palpable lack of jurisdiction. Second, the Court should not give
16 preclusive effect to the declaratory judgment because it is on appeal, creating a serious risk
17 of inconsistent judgments and unfair results if the *Bautista* judgment is reversed or vacated
18 on appeal. Finally, issue preclusion is inapplicable here, particularly as preclusion principles
19 apply with less force both against the government and in habeas corpus proceedings.

20 As relevant here, Congress enacted what is now 8 U.S.C. § 1225, which requires the
21 detention of any alien “who is an applicant for admission” and defines that term to
22 encompass any “alien present in the United States who has not been admitted” following
23 inspection by immigration authorities. 8 U.S.C. § 1225(a), (b)(2)(A). The statute makes no
24 exception for how far into the country the alien traveled or how long the alien managed to
25 evade detection. Unless the Secretary exercises the narrow and discretionary parole
26 authority, detention is the rule for aliens who have never been lawfully admitted. There is
27 no dispute that Petitioner is an “applicant for admission” under Section 1225(a), because he
28 entered the country without inspection. *see* Notice to Appear, attached as Exhibit A. He was

1 neither admitted nor paroled into the United States. *Id.* This clear statutory text means that
2 Petitioner is not entitled to a bond hearing and potential release. Despite the clear statutory
3 text, this Court has held in prior cases before it that Petitioners are entitled to bond hearings,
4 bond, and release. *Torralba et al v. Wright et al*, 2:25-cv-1366; *Maldonado Vasquez v. Feely*, 2:25-
5 cv-01542; *Berto Mendez v. Noem et al*, 2:25-cv-02062; *Alvarado Gonzalez v. Mattos et al.*, 2:25-cv-
6 01599; *Serrano Gonzalez v. Knight et al.*, 2:25-cv-02081; *Sanchez Aparicio v. Noem et al.*, 2:25-cv-
7 01919; *Cornejo-Meijia v. Bernacke et al.*, 2:25-cv-02139; *E.C. v. Noem et al.*, 2:25-cv-01789. The
8 Court reasoned that this narrow construction is necessary to avoid surplusage, but
9 “[r]edundancies are common in statutory drafting,” and are “not a license to rewrite or
10 eviscerate another portion of the statute contrary to its text.” *Barton v. Barr*, 590 U.S. 222,
11 223 (2020).

12 Besides, that canon has no relevance where, as here, portions of a statute are
13 superfluous under any interpretation. Nor is the Petitioner’s atextual reading necessary to
14 give meaning to the separate detention authority in Section 1226. On its face, that provision
15 applies to numerous aliens *not* subject to Section 1225(b)(2)(A), including all *admitted* aliens
16 who are now removable, and the mere fact of partial overlap is not a reason to rewrite clear
17 statutory text. Although the Government has previously operated under a different
18 understanding of the law, this Court must apply the language of Section 1225(b)(2)(A) as
19 written. The Court’s interpretation in the above referenced cases and most likely in this case
20 is not only contrary to text, but it would reimpose the same perverse regime that IIRIRA
21 was meant to eliminate — requiring the detention of aliens who present at a port of entry as
22 the law requires, but authorizing the release of those aliens who enter the United States in
23 violation of law. The Court should not endorse such a backwards outcome — particularly
24 one that is so plainly subversive of congressional intent.

25 For the same reasons, Petitioner’s due process arguments fail, because they are based
26 on entirely derivative of his mistaken interpretation of Section 1225.

27 **II. STATUTORY FRAMEWORK**

1 **a. The Pre-IIRIRA Framework Gave Preferential Treatment to Aliens Who**
2 **Unlawfully Entered and Were Unlawfully Present in the United States.**

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

7 Prior to 1996, the INA treated aliens differently based on whether the alien had
8 physically “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222–
9 223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); see *Hing Sum v. Holder*, 602 F.3d
10 1092, 1099–1100 (9th Cir. 2010) (same). “Entry” referred to “any coming of an alien into
11 the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically
12 entered the United States (or not) “dictated what type of [removal] proceeding applied” and
13 whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at
14 1099.

15 At the time, the INA “provided for two types of removal proceedings: deportation
16 hearing and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc).
17 An alien who arrived at a port of entry would be placed in “exclusion proceedings and
18 subject to mandatory detention, with potential release solely by means of a grant of parole.”
19 *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223; see 8 U.S.C. § 1225(a)-(b) (1995); *id.*
20 § 1226(a) (1995). By contrast, an alien who physically entered the United States unlawfully
21 would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens in
22 deportation proceedings, unlike those in exclusion proceedings, “were entitled to request
23 release on bond.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. §
24 1252(a)(1) (1994)).

25 Thus, the INA’s prior framework distinguishing between aliens based on physical
26 “entry” had the “‘unintended and undesirable consequence’ of having created a statutory
27 scheme where aliens who entered without inspection ‘could take advantage of the greater
28 procedural and substantive rights afforded in deportation proceedings,’ *including the right to*

1 *request release on bond*, while aliens who had ‘actually presented themselves to authorities for
 2 inspection’ ... were subject to mandatory custody.” *Matter of Yajure Hurtado*, 29 I. & N. Dec.
 3 at 223 (emphasis added) (quoting *Martinez v. Att’y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d
 4 Cir. 2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at
 5 225 (1996) (“House Rep.”) (“illegal aliens who have entered the United States without
 6 inspection gain equities and privileges in immigration proceedings that are not available to
 7 aliens who present themselves for inspection”).

8 **b. IIRARA Eliminated the Preferential Treatment of Aliens Unlawfully Present**
 9 **in the United States and Mandated Detention of all “Applicants for**
 10 **Admission.”**

11 Congress discarded that regime through enactment of IIRIRA, Pub. L. 104-208, 110
 12 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of “ensur[ing] that all
 13 immigrants who have not been lawfully admitted, regardless of their legal presence in the
 14 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).

15 To that end, IIRIRA replaced the focus on physical “entry” with a focus on lawful
 16 “admission.” IIRIRA defined “admission” to mean “the *lawful* entry of the alien into the
 17 United States after inspection and authorization by an immigration officer.” 8 U.S.C.
 18 § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer
 19 distinguish aliens based on whether they had managed to evade detection and enter the
 20 country without permission. Instead, the “pivotal factor in determining an alien’s status”
 21 would be “whether or not the alien has been *lawfully* admitted.” House Rep., *supra*, at 226
 22 (emphasis added); *Hing Sum*, 602 F.3d at 1100 (similar). IIRIRA also eliminated the
 23 exclusion-deportation dichotomy and consolidated both sets of proceedings into “removal
 24 proceedings.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223.

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

27 **Section 1225(a):** Section 1225(a) codifies Congress’s decision to make lawful
 28 “admission,” rather than physical entry, the touchstone. That provision states that an alien

1 “present in the United States who has not been admitted or who arrives in the United
2 States” “shall be deemed ... an applicant for admission”:

3 An alien present in the United States who has not been admitted or who arrives in
4 the United States (whether or not at a designated port of arrival and including an alien who
5 is brought to the United States after having been interdicted in international or United States
6 waters) shall be deemed for purposes of this chapter an applicant for admission. 8 U.S.C.
7 § 1225(a)(1) (emphasis added). “All aliens ... who are applicants for admission or otherwise
8 seeking admission or readmission to or transit through the United States” are required to
9 “be inspected by [an] immigration officer[.]” *Id.* § 1225(a)(3). The inspection by the
10 immigration officer is designed to determine whether the alien may be lawfully “admitted”
11 to the country or, instead, must be referred to removal proceedings.

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

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

1 8 C.F.R. § 235.3(b)(2)(iii).

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

5 Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for
6 admission, if the examining immigration officer determines that an alien seeking admission
7 is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a
8 proceeding under section 1229a of this title [Section 240]. 8 U.S.C. § 1225(b)(2)(A)
9 (emphasis added).¹ See 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention
10 mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention
11 of aliens throughout the completion of applicable proceedings and not just at the moment
12 those proceedings begin”).

13 While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA
14 grants DHS discretion to temporarily release an applicant for admission “only on a case-by-
15 case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C.
16 § 1182(d)(5)(A). Parole, however, “shall not be regarded as admission of the alien.” *Id.*;
17 *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary
18 determines that “the purposes of such parole ... been served,” the “alien shall ... be returned
19 to the custody from which he was paroled” and be “dealt with in the same manner as that of
20 any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A).

21 **Section 1226:** IIRIRA also created a separate authority addressing the arrest,
22 detention, and release of aliens generally (versus applicants for admission specifically). See 8
23 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for
24 example, lawfully enter the country but overstay, otherwise violate the terms of their visas,
25 or later determined to have been improperly admitted. The statute provides that “[o]n a
26 warrant issued by the Attorney General, an alien may be arrested and detained pending a

27 _____
28 ¹ Subsection (b)(2) does not apply to (1) aliens subject to expedited removal, (2) crewman, (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 decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a).
2 Detention under this provision is generally discretionary: The Attorney General “may”
3 either “continue to detain the arrested alien” or release the alien on bond or conditional
4 parole. *Id.* § 1226(a)(1)-(2).²

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

14 Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L.
15 No. 119-1, § 2, 139 Stat. 3, 3 (January 29, 2025), which requires detention of (and prohibits
16 parole for) aliens who (1) are inadmissible because they are physically present in the United
17 States without admission or parole, have committed a material misrepresentation or fraud,
18 or lack required documentation; and (2) are “charged with, arrested for, [] convicted of,
19 admit[] having committed, or admit[] committing acts which constitute the essential
20 elements of” certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

21 **III. STANDARD OF REVIEW**

22 In a petition for a writ of habeas corpus, the petitioner is challenging the legality of
23 his restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show
24 the confinement is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941). Specifically,
25 here, Petitioner challenges his temporary civil immigration detention pending his removal
26 proceeding.

27
28

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

1 Judicial review of immigration matters, including of detention issues, is limited.
2 *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. Am.-Arab Anti-Discrimination*
3 *Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo*
4 *v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow*
5 *Sun Wong*, 426 U.S. 88, 101 n.21 (1976) (“the power over aliens is of a political character
6 and therefore subject only to narrow judicial review”). The Supreme Court has thus
7 “underscore[d] the limited scope of inquiry into immigration legislation,” and “has
8 repeatedly emphasized that over no conceivable subject is the legislative power of Congress
9 more complete than it is over the admission of aliens.” *Fiallo*, 430 U.S. at 792 (internal
10 quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S.
11 522, 531 (1954).

12 The plenary power of Congress and the Executive Branch over immigration
13 necessarily encompasses immigration detention, because the authority to detain is elemental
14 to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United*
15 *States ex rel. Mezei*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to
16 expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's
17 political departments largely immune from judicial control.”); *Carlson v. Landon*, 342 U.S.
18 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong*
19 *Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be
20 vain if those accused could not be held in custody pending the inquiry into their true
21 character, and while arrangements were being made for their deportation.”); *Demore v. Kim*,
22 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally
23 permissible part of that process.”).

24 **IV. FACTUAL AND PROCEDURAL BACKGROUND**

25 Petitioner Humberto Perez, is an illegal alien in the United States, a native and
26 citizen of Cuba who came into DHS custody on July 2, 2025. He entered without an
27 inspection the United States. Exhibit A. Petitioner has multiple convictions for larceny
28 starting in 2009 through 2025. *See* I-213, attached as Exhibit B. On March 10, 2009, he was

1 arrested for larceny which resulted in a conviction on March 25, 2009. *Id.* On March 17,
2 2011, he was arrested again for larceny which resulted in another conviction on March 22,
3 2011. On January 30, 2014, he was arrested, charged, convicted and sentenced to 364 days
4 for larceny. *Id.* On April 25, 2019, he was arrested, charged, convicted and sentenced to 60
5 months for burglary. *Id.* On December 22, 2023, he was arrested, charged, convicted of
6 larceny. *Id.* On October 24, 2025, Petitioner had his final hearing before the Immigration
7 Court on his asylum and withholding of removal applications. The Immigration Judge
8 denied Petitioner an asylum but withheld his removal to Cuba. *See* Order of an Immigration
9 Judge, attached as Exhibit C. On November 6, 2025, petitioner filed an appeal of the IJ's
10 order which is currently pending before the Board of Immigration Appeals (BIA). *See* Filing
11 Receipt for Appeal, attached as Exhibit D. Petitioner was served with paperwork related to
12 potential third country removal – Mexico. On November 9, 2025, Petitioner did not consent
13 to his removal to Mexico. Because Petitioner is appealing the IJ's order before the BIA, his
14 removal order is not final, and thus Petitioner is lawfully detained under 8 U.S.C. § 1225.
15 Prior to filing an appeal, Petitioner had not requested a bond hearing before the
16 Immigration Court.

17 Petitioner is an applicant for admission, and is in removal proceedings pursuant to 8
18 U.S.C. § 1229a. Petitioner is inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as a noncitizen
19 who entered the United States without being admitted or paroled, and under 8 U.S.C. §
20 1182(a)(7)(A)(i)(I) as an immigrant not in possession of a valid unexpired immigrant visa
21 or other valid entry document at the time of application for admission.

22 **V. ARGUMENT**

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

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

1 *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020)

2 (“Our analysis begins and ends with the text.”).

3 **1. *The Plain Language of Section 1225(b)(2) Mandates the Detention of the Petitioner***
4 ***Who is an Applicant for Admission.***

5 Section 1225(a) defines “applicant for admission” to encompass an alien who either
6 “arrives in the United States” or who is “present in the United States who has not been
7 admitted.” 8 U.S.C. § 1225(a)(1). And “admission” under the INA means not physical
8 entry, but lawful entry after inspection by immigration authorities. 8 U.S.C.
9 § 1101(a)(13)(A). Thus, an alien who enters the country without permission is and remains
10 an applicant for admission, regardless of the duration of the alien’s presence in the United
11 States or the alien’s distance from the border.

12 In turn, Section 1225(b)(2) provides that “an alien who is an applicant for
13 admission” “shall be detained” pending removal proceedings if the “alien seeking admission
14 is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1125(b)(2)(A)
15 (emphasis added). The statute’s use of the term “shall” makes clear that detention is
16 mandatory, *see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998),
17 and the statute makes no exception for the duration of the alien’s presence in the country or
18 where in the country he is located. Therefore, the statute’s plain text mandates that DHS
19 detain all “applicants for admission” who do not fall within one of its exceptions.

20 Petitioner falls squarely within the statute. He was “present in the United States,”
21 and there is no dispute that he has “not been admitted.” 8 U.S.C. § 1225(a), *see also* Exhibit
22 A. Moreover, Petitioner cannot — and did not — establish that he is “clearly and beyond a
23 doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Petitioner is appealing an IJ’s
24 order of removal and denial of his asylum application. Petitioner is lawfully detained while
25 his appeal before the BIA is pending. Therefore, Petitioner is appropriately detained and
26 “shall be detained for a proceeding under [8 U.S.C. § 1229a].”

27 **2. *Section 1225(b)(2)’s Reference to Aliens “Seeking Admission” Does Not Narrow Its***
28 ***Scope.***

There is no denial that Petitioner (and others like him) are “applicants for

1 admission” under Section 1225(b)(2). Petitioner has neither referenced nor pointed out, that
2 he is anything else but an applicant for admission under Section 1225(b)(2). In his statement
3 of facts, Petitioner presents inaccurate and incomplete factual and procedural background.
4 Petitioner is in removal proceedings. While his appeal regarding his removal is pending
5 before the BIA, he is detained under 8 U.S.C. § 1225(b). The statute itself makes clear that
6 an alien who is an “applicant for admission” is necessarily “seeking admission.” Moreover,
7 an alien like Petitioner, who is identified by immigration authorities as unlawfully present,
8 and who does not choose to depart from the United States voluntarily, is “seeking
9 admission” under any interpretation of that phrase. Here, the Petitioner entered the United
10 States without an inspection.

11 Section 1225(b)(2) requires the detention of an “applicant for admission, if the
12 examining officer determines that [the] alien *seeking admission* is not clearly and beyond a
13 doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory
14 text and context show that being an “applicant for admission” is a means of “seeking
15 admission” — no additional affirmative step is necessary. In other words, every “applicant
16 for admission” is inherently and necessarily “seeking admission,” at least absent a choice to
17 pursue voluntary withdrawal or voluntary departure.

18 Section 1225(a) provides that “[a]ll aliens ... who are applicants for admission *or*
19 *otherwise* seeking admission or readmission ... shall be inspected.” 8 U.S.C. § 1225(a)(3)
20 (emphasis added). The word “[o]therwise” means “in a different way or manner[.]” *Texas*
21 *Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015)
22 (quoting Webster’s Third New International Dictionary 1598 (1971)); *see also Att’y Gen. of*
23 *United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds*
24 *Tobacco Co.*, 839 F.3d 958, 963–64 (11th Cir. 2016) (en banc) (“or otherwise” means “the
25 first action is a subset of the second action”); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482–
26 83 (7th Cir. 2019). Being an “applicant for admission” is thus a particular “way or manner”
27 of seeking admission, such that an alien who is an “applicant for admission” is “seeking
28 admission” for purposes of Section 1252(b)(2)(A). No separate affirmative act is necessary.

1 *See Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) (“[M]any people who are not
2 *actually* requesting permission to enter the United States in the ordinary sense are
3 nevertheless deemed to be ‘seeking admission’ under the immigration laws”).

4 This reading is consistent with the everyday meaning of the statutory terms. One
5 may “seek” something without “applying” for it — for example, one who is “seeking”
6 happiness is not “applying” for it. But one *applying* for something is necessarily *seeking* it.
7 *Compare* Webster’s New World College Dictionary 69 (4th ed.) (“apply” means “To make a
8 formal request (*to someone for something*)”), *with id.* at 1299 (“seek” means “to request, ask
9 for”). For example, a person who is “applying” for admission to a college or club is
10 “seeking” admission to the college or club. *See* The American Heritage Dictionary of the
11 English Language 63 (1980) (“American Heritage Dictionary”) (“apply” means “[t]o
12 request or *seek* employment, acceptance, or *admission*”) (emphasis added). Likewise, an alien
13 who is “applying” for admission to the United States (*i.e.*, an “applicant for admission”) is
14 “seeking admission” to the United States.

15 None of this is to say, however, that “seeking admission” has no meaning beyond
16 “applicant for admission.” As Section 1225(a)(3) shows, being an “applicant for admission”
17 is only *one* “way or manner” of “seeking admission,” not the exclusive way. For example,
18 lawful permanent residents returning to the United States are not “applicants for admission”
19 because they are already admitted, but they still may be “seeking admission.” *See* 8 U.S.C.
20 § 1103(A)(13)(C). But for purposes of Section 1225(b)(2) and its regulation of “applicants for
21 admission,” the statute unambiguously provides that an alien who is an “applicant for
22 admission” is “seeking admission,” even if the alien is not engaged in some separate,
23 affirmative act to obtain lawful admission.

24 To be sure, the Government previously operated under a narrower understanding of
25 Section 1225(b)(2)(A). But past practice does not justify disregard of clear statutory
26 language. A court must always interpret the statute “as written,” *Henry Schein, Inc. v. Archer*
27 *& White Sales, Inc.*, 586 U.S. 63, 68 (2019), and here the statute as written requires detention
28 of *any* applicant for admission, regardless of whether the applicant is taking affirmative steps

1 toward admission.

2 That is the case here with this Petitioner. Under a straightforward reading of the
3 statute, being an “applicant for admission” is “seeking admission.” Although that reading
4 may lead to some redundancy in Section 1225(b)(2)(A), that is “not a license to rewrite”
5 Section 1225 “contrary to its text.” *Barton*, 590 U.S. at 223; see *Heyman v. Cooper*, 31 F.4th
6 1315, 1322 (11th Cir. 2022) (“The principle [that drafter do repeat themselves carries extra
7 weight where ... the arguably redundant words that the drafters employed ... are functional
8 synonyms”). And that is especially true, where that re-writing would be so clearly contrary
9 to Congress’s objective in passing the law.

10 Even if “seeking admission” required some separate affirmative conduct by the alien,
11 an applicant for admission who attempts to avoid removal from the United States, rather
12 than trying to voluntarily depart, is by any definition “seeking admission.” Section
13 1225(b)(2)(A) applies to an alien who is present in the United States unlawfully, even for
14 years. Although the alien may not have been affirmatively seeking admission during those
15 years of illegal presence, Section 1225(b)(2) is not concerned with the alien’s pre-inspection
16 conduct. Rather, the statute’s use of present tense language (“seeking” and “determines”)
17 shows that its focus is a specific point in time — when “the examining immigration officer”
18 is making a “determin[ation]” regarding the alien’s admissibility. 8 U.S.C. § 1225(b)(2)(A).
19 At *that* point, the alien is “seeking” — *i.e.*, presently “endeavor[ing] to obtain,” American
20 Heritage Dictionary, *supra*, at 1174 — admission into the United States; if it were otherwise,
21 the applicant would not attempt to show that he is “clearly and beyond a doubt entitled to
22 be admitted.” 8 U.S.C. § 1225(b)(2)(A). That inference is confirmed by Section 1225(a)(4),
23 which authorizes an alien to voluntarily “depart immediately from the United States.” An
24 applicant who forgoes that statutory option and instead endeavors to prove admissibility
25 and opts for Section 240 removal proceedings — proceedings in which the alien has the
26 “burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted,” *id.* §
27 1229a(c)(2)(A) — is plainly “endeavor[ing] to obtain” admission to the United States.
28 American Heritage Dictionary, *supra*, at 1174.

1 Here, Petitioner entered the United States without inspection and is in removal
2 proceedings, subject to mandatory detention under 1225(b). Petitioner’s reliance on § 1231
3 is erroneous, as he does not have a final removal order, because he is appealing an IJ’s order
4 regarding denial of his asylum application and IJ’s decision to withhold on the Petitioner’s
5 CAT application, which makes his detention lawful under § 1225(b). A contrary view would
6 make mandatory detention turn on the fortuity happenstance of when an alien attempts to
7 prove admissibility. *See United States v. Wilson*, 503 U.S. 329, 334 (1992) (courts must not
8 “presume lightly” that statute’s application will turn on “arbitrary” issue of timing). Aliens
9 subject to Section 1225(b)(2) must prove admissibility at two stages — first, at the time of
10 inspection, 8 U.S.C. § 1225(b)(2)(A); and second, during Section 240 removal proceedings if
11 the alien cannot show admissibility “clearly and beyond a doubt” at the time of inspection,
12 *id.* § 1229a(c)(2)(A) (alien has “burden of establishing that [he] is clearly and beyond a doubt
13 entitled to be admitted”). Petitioner has failed to meet these two stages. There is “no reason
14 why Congress would desire” the applicability of something so significant as mandatory
15 detention “to depend on the timing” of when an alien attempts to show admissibility,
16 *Wilson*, 503 U.S. at 334 — particularly given how susceptible that rule is to manipulation by
17 the alien.

18 To be sure, the Laken Riley Act’s application to aliens who are inadmissible under
19 §1182(a)(6)(A) — for being “present ... without being admitted or paroled” — overlaps with
20 Section 1225(b)(2)(A). Both statutes mandate detention of “applicants for admission” who
21 fall within the specified grounds of inadmissibility. But again, “[r]edundancies are common
22 in statutory drafting,” and are “not a license to rewrite or eviscerate another portion of the
23 statute contrary to its text.” *Barton*, 590 U.S. at 223. That is particularly true here, where this
24 portion of the Laken Riley Act overlaps with Section 1225(b)(2)(A) even under *Petitioner’s*
25 reading, which recognizes that applicants for admission who are “seeking admission” must
26 be detained under Section 1225(b)(2)(A). *See Microsoft Corp. v. I4I Ltd. P’ship*, 564 U.S. 91,
27 106 (2011) (“the canon against superfluity assists only where a competing interpretation
28 gives effect to every clause and word of a statute”).

1
2 **b. The Recent *Vargas Lopez v. Trump* Decision Is Highly Instructive and Supports**
3 **Petitioner's Detention Under 8 U.S.C. § 1225.**

4 The United States District Court for the District of Nebraska's decision denying the
5 habeas corpus petition in *Vargas Lopez v. Trump* is particularly relevant here. In *Vargas Lopez*,
6 the petitioner, an undocumented alien who had been residing in the United States since
7 2013, sought immediate release from detention. *Vargas Lopez v. Trump*, No. 8:25CV526,
8 2025 WL 2780351, at *1 (D. Neb. Sept. 30, 2025). Prior to filing his petition, Vargas Lopez
9 had received a bond hearing, and the immigration judge ordered that he be released from
10 custody under bond of \$10,000. *Id.* at *3. DHS however appealed the bond determination,
11 which automatically stayed Vargas Lopez's release on bond. *Id.* Vargas Lopez then filed a
12 petition for habeas corpus alleging that the automatic stay was *ultra vires* and violated his
13 due process rights. *Id.* He also alleged that application of 8 U.S.C. § 1225 in his case was
14 unlawful because 8 U.S.C. § 1226 should control his detention. *Id.*

15 First, the court denied the petition because Vargas Lopez failed to carry his burden of
16 demonstrating by a preponderance of the evidence that his detention was unlawful. *Id.* at *6.
17 Vargas Lopez argued that he fell under § 1226, not 1225, but his petition and filings failed to
18 provide proof of the "warrant for Vargas Lopez's arrest" that § 1226 requires.

19 Second, the court concluded that Vargas Lopez was subject to detention without
20 possibility of bond under § 1225(b)(2). To do so, the court analyzed the Supreme Court's
21 decision in *Jennings* to reject the notion that § 1225(b)(2) and § 1226(a) apply to two distinct
22 groups of aliens; the two sections are not mutually exclusive. *Id.* at *6–8. The court then
23 concluded that Vargas Lopez is an alien within the "catchall" scope of § 1225(b)(2), subject
24 to detention without possibility of release on bond through a proceeding on removal under §
25 1229a. *Id.* at *9. The court found that Vargas Lopez was an "applicant for admission"
26 because his counsel admitted that Vargas Lopez "wishe[d] to stay in this country." *Id.* That
27 finding, according to the court, was consistent with the conclusions of the BIA
28 in *Hurtado* and *Jennings*.

1 Pursuant to the language of the statute and the holding of *Jennings*, the court said that
2 “just because Vargas Lopez illegally remained in this country *for years* does not mean that he
3 is suddenly not an ‘applicant for admission’ under § 1225(b)(2).” *Id.* “Even if Vargas Lopez
4 might have fallen within the scope of § 1226(a),” the court found “he also certainly fit
5 within the language of § 1225(b)(2) as well.” *Id.* “The Court thus conclude[d] that the *plain*
6 *language* of § 1225(b)(2) and the “all applicants for admission” language
7 of *Jennings* permitted the DHS to detain Vargas Lopez under § 1225(b)(2).” *Id.*

8 **c. The Recent *Chavez v. Noem* Decision Is Also Instructive.**

9 The United States District Court for the Southern District of California’s decision in
10 *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228, at *1 (S.D. Cal. Sept. 24,
11 2025), is also instructive. In *Chavez*, the court denied a motion for a temporary restraining
12 order (“TRO”) filed by the petitioners who were detained under 8 U.S.C. § 1225(b)(2).
13 *Chavez*, 2025 WL 2730228, at *1. The *Chavez* petitioners argued they should not have been
14 mandatorily detained and instead they should have received bond redetermination hearings
15 under § 1226(a). *Id.* The *Chavez* petitioners filed a motion for TRO, seeking to “enjoin[]
16 Respondents from continuing to detain them unless [they received] an individualized bond
17 hearing . . . pursuant to 8 U.S.C. § 1226(a) within fourteen days of the TRO.” *Id.*

18 In denying the TRO, the *Chavez* court went no further than the plain language of §
19 1225(a)(1). *Id.* at *4. Beginning and ending with the statutory text, the *Chavez* court correctly
20 found that because petitioners did not contest that they are “alien[s] present in the United
21 States who ha[ve] not been admitted,” then the *Chavez* petitioners are “applicants for
22 admission” and thus subject to the mandatory detention provisions of “applicants for
23 admission” under § 1225(b)(2). *Id.*; see also *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221–
24 222 (finding that an alien who entered without inspection is an “applicant for admission”
25 and his argument that he cannot be considered as “seeking admission” is unsupported by
26 the plain language of the INA, and further stating, “[i]f he is not admitted to the United
27 States . . . but he is not ‘seeking admission’ . . . then what is his legal status?”).

1 **d. The BIA’s Decision in *Hurtado* Is Entitled to Significant Weight in Construing**
2 **the Scope of 8 U.S.C. § 1225(b)(2).**

3 While *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), eliminated Chevron
4 deference, *Hurtado* nonetheless should be afforded substantial weight under *Skidmore v. Swift*
5 & *Co.*, 323 U.S. 134 (1944). Under *Skidmore*, the weight owed to an agency interpretation
6 depends on “the thoroughness evident in its consideration, the validity of its reasoning, its
7 consistency with earlier and later pronouncements, and all those factors which give it power
8 to persuade, if lacking power to control.” *Id.* at 140. *Hurtado* scores highly on these factors.

9 First, the BIA applied its specialized expertise in immigration detention law, the very
10 subject Congress charged it with administering. Its decision addressed the interplay between
11 §§ 1225 and 1226 in detail, relying on statutory text, legislative history, and decades of
12 experience resolving custody questions. Second, the BIA’s reasoning is thorough and well
13 supported. It carefully explained why noncitizens who entered without inspection remain
14 “applicants for admission” under § 1225(a)(1) and why reclassifying them under § 1226(a)
15 would create statutory issues and undermine congressional intent. Third, the BIA’s
16 interpretation is consistent with Supreme Court precedent, including *Jennings*, which
17 recognized that detention under § 1225(b) is mandatory. Finally, adopting *Hurtado* promotes
18 uniformity and coherence in federal immigration law by preventing detention outcomes
19 from turning on the happenstance of when and where a noncitizen is apprehended.

20 **e. Under *Loper Bright*, the Statute Controls, Not Prior Agency Practices.**

21 Any argument that prior agency practice supports applying § 1226(a) to Petitioner is
22 unavailing because under *Loper Bright*, the plain language of the statute and not prior
23 practice controls. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 225–26. In overturning
24 *Chevron*, the Supreme Court recognized that courts often change precedents and “correct[]
25 our own mistakes” *Loper Bright Enterprises*, 603 U.S. at 411 (overturning *Chevron, U.S.A.,*
26 *Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). *Loper Bright* overturned a decades
27 old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management
28 Act that itself predated IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380.

1 Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*. The
2 weight given to agency interpretations “must always ‘depend upon their thoroughness, the
3 validity of their reasoning, the consistency with earlier and later pronouncements, and all
4 those factors which give them power to persuade.’” *Loper Bright Enterprises*, 603 U.S. at
5 432–33 (quoting *Skidmore*, 323 U.S. at 140 (cleaned up)).

6 The BIA’s recent precedent decision in *Hurtado* includes thorough reasoning. *Matter*
7 *of Yajure Hurtado*, 29 I. & N. Dec. at 221–22. In *Hurtado*, the BIA analyzed the statutory
8 text and legislative history. *Id.* at 223–225. It highlighted congressional intent that aliens
9 present without inspection be considered “seeking admission.” *Id.* at 224. The BIA
10 concluded that rewarding aliens who entered unlawfully with bond hearings while
11 subjecting those presenting themselves at the border to mandatory detention would be an
12 “incongruous result” unsupported by the plain language “or any reasonable interpretation
13 of the INA.” *Id.* at 228.

14 To be sure, “when the best reading of the statute is that it delegates discretionary
15 authority to an agency,” the Court must “independently interpret the statute and effectuate
16 the will of Congress.” *Loper Bright Enterprises*, 603 U.S. at 395. But “read most naturally, §§
17 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain
18 proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does
19 not support Petitioner’s position that the plain language mandates detention under
20 § 1226(a).

21 **f. Petitioner’s Temporary Detention Does Not Offend Due Process.**

22 As mentioned above, Congress broadly crafted “applicants for admission” to include
23 undocumented aliens present within the United States like Petitioner. *See* 8 U.S.C. §
24 1225(a)(1). And Congress directed aliens like the Petitioner to be detained during their
25 removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 (“Read most
26 naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until
27 certain proceedings have concluded.”). In so doing, Congress made a legislative judgment to
28 detain undocumented aliens during removal proceedings, as they — by definition — have

1 crossed borders and traveled in violation of United States law. As explained above, that is
2 the prerogative of the legislative branch serving the interest of the government and the
3 United States.

4 The Supreme Court has recognized this profound interest. *See Shaughnessy*, 345 U.S.
5 at 210 (“Courts have long recognized the power to expel or exclude aliens as a fundamental
6 sovereign attribute exercised by the Government's political departments largely immune
7 from judicial control.”). And with this power to remove aliens, the Supreme Court has
8 recognized the United States’ longtime Constitutional ability to detain those in removal
9 proceedings. *Carlson*, 342 U.S. at 538 (“Detention is necessarily a part of this deportation
10 procedure.”); *Wong Wing*, 163 U.S. at 235 (“Proceedings to exclude or expel would be vain
11 if those accused could not be held in custody pending the inquiry into their true character,
12 and while arrangements were being made for their deportation.”); *Demore*, 538 U.S. at 531
13 (“Detention during removal proceedings is a constitutionally permissible part of that
14 process.”); *Jennings*, 583 U.S. at 286 (“Congress has authorized immigration officials to
15 detain some classes of aliens during the course of certain immigration proceedings.
16 Detention during those proceedings gives immigration officials time to determine an alien's
17 status without running the risk of the alien's either absconding or engaging in criminal
18 activity before a final decision can be made.”).

19 In another immigration context (aliens already ordered removed awaiting their
20 removal), the Supreme Court has explained that detaining these aliens less than six months
21 is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this
22 presumptive constitutional limit has been subsequently distinguished as perhaps
23 unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court
24 explained Congress was justified in detaining aliens during the entire course of their removal
25 proceedings who were convicted of certain crimes. *Demore*, 538 U.S. at 513. In that case,
26 similar to undocumented aliens like Petitioner, Congress provided for the detention of
27 certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court
28 emphasized the constitutionality of the “definite termination point” of the detention, which

1 was the length of the removal proceedings.³ *Id.* at 512.⁴ In light of Congress’s interest in
 2 dealing with illegal immigration by keeping specified aliens in detention pending the
 3 removal period, the Supreme Court dispensed of any Due Process concerns without
 4 engaging in the “*Mathews v. Eldridge* test” *See id. generally.*

5 Likewise, in the case at bar, Petitioner’s temporary detention pending his removal
 6 proceedings does not violate Due Process. Petitioner’s ample available process in his current
 7 removal proceedings demonstrate no lack of Procedural Due Process — nor any deprivation
 8 of liberty “sufficiently outrageous” required to establish a Substantive Due Process claim.
 9 *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244
 10 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001).
 11 Congress simply made the decision to detain him pending removal which is a
 12 “constitutionally permissible part of that process.” *See Demore*, 538 U.S. at 531.

13 In this case, Petitioner, who is present in the United States without admission or
 14 parole, is an applicant for admission in INA § 240 removal proceedings and is therefore
 15 detained pursuant to 8 U.S.C. § 1225. As discussed above, his detention is mandatory. The
 16 United States is aware of prior rulings in this District and others rejecting these arguments,
 17 but the United States respectfully maintains Petitioner has not been deprived of Due Process
 18 in light of the aforementioned precedent.

19 **g. Request for EAJA Fees Should be Denied.**

20 Petitioner seeks attorney’s fees and costs pursuant to § 2412 of the Equal Access for
 21 Justice Act (“EAJA”), which allows fee-shifting in civil actions by or against the United
 22 States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504,
 23 and fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioner cannot obtain
 24

25 ³ “In contrast, because the statutory provision at issue in this case governs detention of deportable criminal
 26 aliens *pending their removal proceedings*, the detention necessarily serves the purpose of preventing the aliens
 27 from fleeing prior to or during such proceedings. Second, while the period of detention at issue in *Zadvydas*
 28 was ‘indefinite’ and ‘potentially permanent,’ 533 U.S. 678, 690–691, the record shows that § 1226(c) detention
 not only has a definite termination point, but lasts, in the majority of cases, for less than the 90 days the Court
 considered presumptively valid in *Zadvydas*.”

⁴ In 2018, the Court again highlighted the significance of a “definite termination point” for detention of certain
 aliens pending removal. *See Jennings*, 583 U.S. at 304.

1 fees in this case under 5 U.S.C. § 504 since that provision excludes administrative
2 immigration proceedings. *Ardestani v. I.N.S.*, 502 U.S. 129 (1991). His only recourse for fees
3 is pursuant to § 2412(d)(1)(A), which provides, subject to exceptions not relevant here, that
4 in an action brought by or against the United States, a court must award fees and expenses
5 to a prevailing non-government party “unless the court finds that the position of the United
6 States was substantially justified or that special circumstances make an award unjust.” 28
7 U.S.C. § 2412(d)(1)(A).

8 Here, Petitioner’s request is premature because he is not a prevailing party. Second,
9 even if Petitioner were to prevail in this case, the Federal Respondents’ position asserted in
10 this Response is substantially justified because other courts have found the arguments
11 presented herein to be persuasive and that DHS can lawfully detain, under the mandatory
12 detention provisions of 8 U.S.C. § 1225, other petitioners who are similarly situated to this
13 Petitioner.

14 As described above, the United States District Court for the District of Nebraska
15 and the United States District Court for the Southern District of California have both
16 issued decisions holding that, under the plain language of § 1225(a)(1), aliens present in the
17 United States who have not been admitted are “applicants for admission” and are thus
18 subject to the mandatory detention provisions of “applicants for admission” under §
19 1225(b)(2). *See Vargas Lopez*, 2025 WL 2780351; *Chavez*, 2025 WL 2730228. Because other
20 federal judges have found persuasive the positions advanced by the Federal Respondents in
21 this case, the Federal Respondents’ position is substantially justified. *See Medina Tovar v.*
22 *Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that the district court did not abuse
23 its discretion, in finding that the United States’ position was substantially justified for
24 purposes of EAJA, where different judges disagreed about the proper reading of the statute
25 and the case involved an issue of first impression). Because the United States’ position in
26 this case is substantially justified, Petitioner’s request for attorney’s fees under EAJA
27 cannot prevail.

28 / / /

1 **VI. CONCLUSION**

2 For the foregoing reasons, Federal Respondents respectfully request that the Court
3 deny the Petition for Writ of Habeas Corpus.

4 Respectfully submitted this 7th day of January 2026.

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