

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 0:25-cv-62474 LEIBOWITZ

HENRY WALDIMIR  
BELTRAND LANDAVERDE

Petitioner,

vs.

GARRETT RIPA, ICE ERO Miami  
Field Office Director,<sup>1</sup>

Defendant.

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

Respondents, by and through the undersigned Assistant United States Attorney, submit the following return in opposition to the Petition for Writ of Habeas Corpus [DE 1] (Petition). For the reasons set forth below, the Petition should be denied.<sup>2</sup>

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<sup>1</sup> 28 U.S.C. § 2243 specifies that the proper respondent to a § 2241 petition is “the person having custody of the person detained.” “The consistent use of the definite article in reference to the custodian indicates that there is generally only one proper respondent to a given prisoner’s habeas petition.” *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004). Sections 2241 and 2243 thus “contemplate a proceeding against [a] person who has the immediate custody of the party detained, with the power to produce the body of such party before the court or judge, that he may be liberated if no sufficient reason is shown to the contrary.” *Wales v. Whitney*, 114 U.S. 564, 574 (1885). This is known as the “immediate custodian rule.” *Padilla*, 542 U.S. at 435. Therefore, the proper respondent in this action is Petitioner’s immediate custodian, Acting Field Office Director Juan Gonzalez.

<sup>2</sup> Respondents recognize that courts in this District have rejected similar arguments in granting habeas petitions. *See, e.g., Perez v. Parra*, Case No. 25cv24820

## INTRODUCTION

By way of the Petition, Petitioner, Henry Waldimir Beltrand Landaverde in relevant part, “seeks a writ of habeas corpus to remedy his unlawful detention by the Respondents.” Petition, ¶ 1. Petitioner is currently subject to mandatory detention without bond pursuant to 8 U.S.C. § 1225(b)(2)(A). *Id.*, ¶ 58, 59. Petitioner claims this is unlawful for two reasons. First, Petitioner argues that he is properly subject to 8 U.S.C. § 1226(a), and thus his current detention is ultra vires and requires his immediate release. *Id.*, ¶ 51-54. Alternatively, Petitioner argues that his detention pursuant to 8 U.S.C. § 1225(b)(2)(A), “without establishing a change in circumstances from his initial detention and release exceeds statutory authority and is arbitrary and capricious,” and constitutes a violation of the Administrative Procedure Act (“APA”). *Id.*, ¶ 59. Accordingly, this case comes down to a question of statutory interpretation. Specifically, what statutory provision controls Petitioner’s detention.

Section 1226(b) authorizes the revocation of, in relevant part, conditional parole authorized under 1226(a). Once in detention, section 1225(b)(2)(A) mandates detention for “an alien who is an applicant for admission.” 8 U.S.C. § 1225(b)(2)(A). Pursuant to § 1225(a), “[a]n alien present in the United States who has not been admitted ... shall be deemed for purposes of this chapter an applicant for admission.” 8 U.S.C. § 1225(a)(1). Petitioner entered the U.S. without inspection or admission.

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WILLIAMS (S.D. Fla.). Nonetheless, Respondents maintain and preserve these arguments for the record in this case.

*See* ECF 1-3, p. 1.<sup>3</sup> Accordingly, under a plain language reading of § 1225, Petitioner is an applicant for admission and is subject to mandatory detention pursuant to § 1225(b)(2)(A). For the reasons explained more fully below, the Petition should be denied.

### BACKGROUND

Henry Waldimir Beltrand-Landaverde (“Petitioner”) is a native and citizen of Honduras who last entered the United States without inspection on December 2, 2023. *See Exhibit 1*, Form I-862, Notice to Appear (“NTA”), dated December 7, 2023. Petitioner was encountered on December 3, 2023, in the Eagle Pass Zone near Eagle Pass, Texas by a U.S. Customs and Border Protection (“CBP”) Del Rio Sector Border Patrol (“BP”) agent. *See Exhibit 2*, Form I-213, Record of Deportable/Inadmissible Alien, dated December 7, 2023. CBP determined that Petitioner unlawfully entered the United States from Mexico by crossing the international boundary, and that Petitioner had no right to be in, or remain in, the United States legally. *Id.*

On December 7, 2023, CBP issued Petitioner a Warrant for Arrest. *See Exhibit 3*, Form I-200, Warrant for Arrest of Alien, dated December 7, 2023. CBP also served Petitioner with a Notice to Appear (NTA) on December 7, 2023. *See Exhibit 1*, NTA. The NTA charged Petitioner with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“Act”), in that Petitioner was an alien present

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<sup>3</sup> Note that Petitioner was initially processed for § 240 removal proceedings and released pursuant to INA § 236 (i.e., released on recognizance - aka conditional parole.) His re-detention must conform to the requirements of the initial release authority, i.e., INA § 236(b). Now in detention, however, he is subject to INA § 235(b)(2). *See, e.g., Matter of Yajure Hurtado*, 29 I. & N. Dec. at 216.

in the United States without being admitted or paroled, or who arrived in the United States at a time or place other than as designated by the Attorney General. *Id.* On that same day, Petitioner was also served a Notice of Custody Determination and released on his own recognizance. *See Exhibit 4*, Form I-286, Notice of Custody Determination, dated December 7, 2023. Petitioner was provided with an Order of Release on Recognizance, and Petitioner was directed to report for any hearing or interview as directed by the Department of Homeland Security (“DHS”) or the Executive Office for Immigration Review (“EOIR”). *See Exhibit 5*, Form I-220A, Order of Release on Recognizance, dated December 7, 2023; *See also Exhibit 6*, Form OREC G-56, dated December 6, 2023. The NTA was filed with the Executive Office for Immigration Review (“EOIR”) on January 24, 2024, thereby initiating removal proceedings. *Id.*; *see also* 8 C.F.R. § 1003.39(a) (removal proceeding commenced upon filing of NTA).

On October 28, 2025, U.S. Immigration and Customs Enforcement (“ICE”) Enforcement and Removal Operations (“ERO”) officers assigned to Baltimore Alternatives to Detention Program (“ATD”) encountered Petitioner. *See Exhibit 7*, Form I-213, Record of Deportable/Inadmissible Alien, dated October 28, 2025. ICE ERO Baltimore ATD officers arrested Petitioner at the Baltimore Intensive Supervision Appearance Program (“ISAP”) Office. *Id.* From August 19, 2024, to October 20, 2025, Petitioner had six documented ATD violations. *Id.*

On October 28, 2025, Petitioner was issued a Warrant for Arrest. *See Exhibit 8*, Form I-200, Warrant for Arrest of Alien, dated October 28, 2025. To date, Petitioner

has not filed a request for custody redetermination with the Immigration Court. *See Exhibit 9*, Deportation Officer (“DO”) Declaration.

Petitioner remains in ICE custody at Broward Transitional Center (“BTC”), pending the conclusion of his removal proceedings. *See Exhibit 10*, Detention History. Petitioner is next scheduled for Immigration Court on December 15, 2025. *See Exhibit 11*, Notice of Hearing in Removal Proceedings, dated November 10, 2025.

In compliance with the Court’s Order to Show Cause, the remaining documents not previously discussed which complete the full record of Petitioner’s arrest, detention, and removal proceedings are attached. *See Exhibit 12*, Composite of Remaining Requested Documents.

## ARGUMENT

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

Under the plain language of § 1225(b)(2), the Government is prohibited from releasing all aliens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the alien has been in the United States or how far from the border they ventured. That unambiguous language resolves this case. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) (“Our analysis begins and ends with the text.”).

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

“As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute. It is well established that, when the statutory

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

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

Petitioner falls squarely within the statutory definition. He is “present in the United States,” and there is no dispute that he has “not been admitted.” 8 U.S.C. § 1225(a); *see* ECF 1-3, p. 1. Moreover, Petitioner cannot establish—and has not even alleged that he can establish—that he is “clearly and beyond a doubt entitled to be

admitted.” 8 U.S.C. § 1225(b)(2)(A). Therefore, § 1225(b)(2) mandates Petitioner “be detained for a proceeding under [8 U.S.C. § 1229a].” 8 U.S.C. § 1225(b)(2)(A).

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

As explained above, Petitioner is an “applicant[] for admission” under § 1225(b)(2) and is, therefore, seeking to be legally admitted into the United States. The statute itself makes clear that an alien who is an “applicant for admission” *is* necessarily “seeking admission.” Moreover, an alien like Petitioner, who is identified by immigration authorities as unlawfully present, and who does not choose to depart from the United States voluntarily, is “seeking admission,” i.e., seeking legal authority to remain in the United States.

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

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

For example, § 1225(a) provides that “[a]ll aliens ... who are applicants for admission *or otherwise* seeking admission or readmission ... shall be inspected.” 8 U.S.C. § 1225(a)(3) (emphasis added). The word “[o]therwise’ means ‘in a different

way or manner[.]” *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster’s Third New International Dictionary 1598 (1971)); *see also Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) (“or otherwise” means “the first action is a subset of the second action”). Being an “applicant for admission” is thus a particular “way or manner” of seeking admission, such that an alien who is an “applicant for admission” *is* “seeking admission” for purposes of § 1225(b)(2)(A).<sup>4</sup> No separate affirmative act is necessary. *See Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 (BIA 2012) (“[M]any people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws”). Accordingly, § 1225(b) unambiguously provides that an alien who is an “applicant for admission” is “seeking admission,” even if the alien is not engaged in some separate, affirmative act to obtain lawful admission.

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

As explained above, an “applicant for admission” is “seeking admission” under § 1225. To the extent this reading results in some redundancy in § 1225(b)(2)(A), that “is not a license to rewrite” § 1225 “contrary to its text.” *Barton v. Barr*, 590 U.S. 222, 239 (2020); *see Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) (“sometimes

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

drafters *do* repeat themselves and *do* include words that add nothing of substance” especially when “the arguably redundant words that the drafters employed ... are functional synonyms” (alterations accepted and emphasis in original)).

“The canon against surplusage is not an absolute rule.” *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013). “Redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication.” *Barton*, 590 U.S. at 239. “[R]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text.” *Id.* Thus, as the Supreme Court explained in *Barton*, “[s]ometimes the better overall reading of a statute contains some redundancy.” *Id.*

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

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

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

Section 1225(b)(2)(A) applies to an alien who is present in the United States unlawfully, regardless of how long the alien has been in the United States. Although the alien may not have been affirmatively seeking admission during those years of illegal presence, § 1225(b)(2) is not concerned with the alien’s pre-inspection conduct. Rather, the statute’s use of present tense language (“seeking” and “determines”) shows that its focus is a specific point in time—when “the examining immigration officer” is making a “determin[ation]” regarding the alien’s admissibility. 8 U.S.C. § 1225(b)(2)(A). At *that* point, the alien is “seeking” admission into the United States. *See* The American Heritage Dictionary of the English Language (defining “seek” and “seeking” as “to endeavor to obtain”). If it were otherwise, the applicant would not attempt to show that he is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). That inference is confirmed by § 1225(a)(4), which authorizes an alien to voluntarily “depart immediately from the United States.” 8 U.S.C. § 1225(a)(4). Aliens placed by DHS in § 240 removal proceedings—proceedings in which the alien has the “burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted,” *id.* § 1229a(c)(2)(A)—are endeavoring to obtain admission to the United States in the same way someone who is encountered just after crossing the border is attempting to obtain admission to the United States.

**C. Section 1226 Does Not Support Petitioner’s Argument.**

Petitioner’s reliance upon, and reference to, 8 U.S.C. § 1226 is unavailing. Petitioner’s detention is controlled by § 1225(b)(2), not § 1226.

Sections 1225 and 1226 are separate statutory provisions that provide independent bases for detention and, generally, apply to different groups of aliens. While, as explained below, there is some overlap between the aliens subject to detention under the two detention provisions, that overlap does not create a redundancy because the two statutes provide for different bases for release.

Section 1226(a) authorizes the Executive to “arrest[] and detain[]” *any* “alien” pending removal proceedings. Section 1226(a) provides the detention authority for the significant group of aliens who are *not* deemed “applicants for admission” subject to § 1225(b)(2)(A)—specifically, aliens who have been admitted to the United States but are now removable, like those who overstay a visa or lawful permanent residents who engage in conduct that renders them removable.<sup>5</sup> Thus, section 1225(b)(2) is the more specific detention provision. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (“the specific governs the general”). Accordingly, § 1226(a) does not control Petitioner’s detention.<sup>6</sup>

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

<sup>6</sup> Note that Petitioner was initially released under § 1226(a). Previously, as alluded to in BIA decisions, DHS and the Department of Justice interpreted 8 U.S.C. § 1226(a) to be an available detention authority for aliens present without admission placed directly in 8 U.S.C. § 1229a removal proceedings. *See, e.g., Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747 (BIA 2023); *Matter of R-A-V-P*, 27 I&N Dec. 803, 803 (BIA 2020); *Matter of Garcia-Garcia*, 25 I&N Dec. 93, 94 (BIA 2009); *Matter of D-J*, 23 I&N Dec. 572 (A.G. 2003). However, as noted by the BIA, the BIA had not

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

Earlier this year, Congress passed the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 2 (2025), which amended portions of § 1226(c). While that amendment adds some overlap between aliens subject to detention under § 1225(b)(2) and § 1226(c), that overlap does not apply to Petitioner, and as explained below, it does not create a redundancy as the amendment does independent work.

The Laken Riley Act provides for mandatory detention for an alien who is “present ... without being admitted or paroled”—i.e., is inadmissible under §1182(a)(6)(A)—and “is charged with, is arrested for, is convicted of, admits having committed, or admits committing” one of the enumerated criminal acts. 8 U.S.C. § 1226(c)(1)(E). Aliens subject to detention under § 1226(c)(1)(E) are effectively applicants for admission that committed one of the enumerated acts and, as applicants for admission, would also be subject to mandatory detention under § 1225(b)(2).

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previously addressed this issue in a precedential decision. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 216.

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

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

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

405, 419-20 (1973) (“We cannot interpret federal statutes to negate their own stated purposes.”).

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

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

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

*Hurtado*, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y General of U.S.*, 693 F.3d 408, 413 n.5 (2012)); see also *Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“House Rep.”) (“illegal aliens who have entered the United States without inspection gain equities and privileges in

immigration proceedings that are not available to aliens who present themselves for inspection”).

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

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

Petitioner's interpretation. *King*, 576 U.S. at 492 (rejecting "petitioners' interpretation because it would ... create the very [thing] that Congress designed the Act to avoid").

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

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

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

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

Any argument that prior agency practice applying § 1226(a) to Petitioner is unavailing because under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)), the plain language of the statute and not prior practice controls. *Hurtado*, 29 I. & N. Dec. at 225–26. In overturning *Chevron*, the Supreme Court recognized that

courts often change precedents and “correct[] our own mistakes.” *Loper Bright*, 603 U.S. at 411. *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years. *Id.* at 380. Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*.

## **II. Petitioner’s APA Claim is not Properly Before the Court.**

The APA authorizes a reviewing court to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). “Agency action” includes, in relevant part, “an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13) (emphasis added). The APA addresses concerns about bureaucratic limbo by mandating that “[w]ith due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it.” 5 U.S.C. § 555(b). However, the court’s power to compel agency action under the APA is limited: the APA “empowers a court only to compel an agency ‘to perform a ministerial or non-discretionary act,’ or ‘to take action upon a matter, without directing how it shall act.’” *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004) (emphasis in original) (quoting Attorney General’s Manual on the Administrative Procedure Act 108 (1947)).

Because habeas corpus actions and non-habeas corpus actions have different filing fee requirements, different pleading standards, and different substantive standards, it is generally inappropriate to bring a hybrid action asserting both habeas and non-habeas claims in one case. *Burnam v. Marberry*, 313 F. App’x 455, 456 n.2

(3d Cir. 2009) (noting that the district court should not have considered habeas claims and claims under the Privacy Act and Administrative Procedures Act in a single case); accord *Malcom v. Starr*, No. 20-cv-2503 (MJD/LIB), 2021 U.S. Dist. LEXIS 45387, 2021 WL 931213, at \*2 (D. Minn. Mar. 11, 2021) (“As many other cases from this District have noted, habeas petitions and civil complaints have different and incompatible rules regarding service of process, discovery, and even filing fees.”).

For example, Petitioner did not pay the required filing fee for any non-habeas claims. See ECF 1, \$5.00 filing fee receipt no. AFLSDC-19008442. The statute governing filing fees in district court clearly states: “The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$350, except that on application for a writ of habeas corpus the filing fee shall be \$5.” 28 U.S.C. § 1914(a). “The payment of the \$5 habeas filing fee relegates this action to habeas relief only. One cannot pay the minimal habeas fee and pursue non-habeas relief.” *Ndudzi v. Castro*, No. SA-20-CV-0492-JKP, 2020 WL 3317107, at \*2 (W.D. Tex. June 18, 2020); *King v. Carlton*, No. 21-cv-21634, 2021 U.S. Dist. LEXIS 83778, at \*4 (S.D. Fla. Apr. 30, 2021) (*Bloom, J.*) (finding that petitioner could not circumvent filing fee requirements by filing a “joint or hybrid” habeas action).

### CONCLUSION

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

Respectfully submitted,

**JASON A. REDING QUIÑONES**  
**UNITED STATES ATTORNEY**

By: *John S. Leinicke*  
JOHN S. LEINICKE  
ASSISTANT UNITED STATES ATTORNEY  
Fla. Bar No. 64927  
United States Attorney's Office  
Southern District of Florida  
99 N.E. 4th Street, 3rd Floor  
Miami, Florida 33132  
Tel: (305) 961-9212  
E-mail: [john.leinicke@usdoj.gov](mailto:john.leinicke@usdoj.gov)