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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

NESTOR ANDRES ARRIETA PATERNINA, Petitioner v. SERGIO ALBARRAN, et al., Respondents	No. 4:25-cv-10378-YGR **RESPONDENTS' RETURN TO HABEAS PETITION**

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I. INTRODUCTION

Respondents respectfully request that the Court deny Petitioner's petition for writ of habeas corpus because under the applicable immigration statutes, Petitioner falls within the category of "applicants for admission" who are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See* 8 U.S.C. § 1225(a)(1); 8 U.S.C. § 1182(a)(6)(A)(i) (categorizing certain classes of noncitizens as inadmissible, and therefore ineligible to be admitted to the United States, including those "present in the United States without being admitted or paroled"). Petitioner remains an "applicant for admission" subject to mandatory detention despite being encountered after unlawfully crossing the border between ports of entry and released into the country. Petitioner's release was not an "admission" or "parole"; instead, it was expressly conditioned on appearing in removal proceedings based on his unlawful entry. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138–40 (2020) (a noncitizen who is neither admitted nor paroled, nor otherwise lawfully present in this country, remains an "applicant for admission" who is "on the threshold" of initial entry, even if released into the country "for years pending removal," and continues to be "'treated' for due process purposes 'as if stopped at the border'"); *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (such individuals are "treated as 'an applicant for admission'").

"Applicants for admission" like Petitioner are subject to mandatory detention under the Illegal Immigration Reform and Immigration Responsibility Act of 1996 ("IIRIRA"). Before 1996, federal immigration laws required the detention of noncitizens who presented at a port of entry, but allowed those who had entered between ports of entry and were already unlawfully present in the United States when encountered to obtain release pending removal proceedings. Congress overhauled the immigration system by passing IIRIRA, which included the specific objective of ending preferential treatment of noncitizens who attempted to evade inspection by entering the United States unlawfully between ports of entry.

Relevant here, Congress enacted what is now codified at 8 U.S.C. § 1225. That provision "deem[s]" any "alien present in the United States who has not been admitted or who arrives in the United States" to be "an applicant for admission." 8 U.S.C. § 1225(a)(1). And it mandates the detention of any "applicant for admission" who cannot show that they are "clearly and beyond a doubt entitled to be admitted." *Id.* § 1225(b)(2)(A). The statute makes no exception for how far into the country a noncitizen has traveled or how long he or she manages to avoid detection. Unless the Secretary exercises narrow and

discretionary parole authority not applicable here, mandatory detention is the rule for individuals who have never been lawfully admitted.

Here, Petitioner entered the country without inspection, was never "admitted," and unambiguously remains an "applicant for admission" subject to mandatory detention despite his prior conditional release. *Thuraissigiam*, 591 U.S. at 138–40. Further, while courts in this district have concluded that § 1225(b) is not applicable to individuals who were conditionally released under § 1226(a), several courts in other districts in this Circuit have recently denied motions for temporary restraining orders or for preliminary injunctive relief for individuals like Petitioner who are detained under 8 U.S.C. § 1225(b)(2) after prior conditional release. These courts have upheld, at least preliminarily, mandatory detention under § 1225(b)(2). *See Altamirano Ramos v. Lyons*, No. 25-cv-09785, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025) (acknowledging that the court had previously rejected the government's interpretation of § 1225(b)(2), but "after additional research and analysis, the court has concluded that Petitioner is subject to mandatory detention under § 1225(b)(2)(a), and that Petitioner is not eligible for a bond hearing under 8 U.S.C. § 1226(a)"); *Sixtos Chavez v. Noem*, No. 25-cv-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), *appeal docketed*, No. 25-7077 (9th Cir. Nov. 7, 2025); *Valencia v. Chestnut*, No. 25-cv-01550, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025); *Alonzo v. Noem*, No. 25-cv-01519, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025); *see also In re Matter of Yajure Hurtado*, 29 I & N Dec. 216, 225 (B.I.A. 2025) (examining the plain language of § 1225, the INA's statutory scheme, Supreme Court and BIA precedent, the legislative history of IIRIRA, and DHS's prior practices before holding that "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission").[1]

Likewise here, Petitioner is subject to mandatory detention and is not entitled to a custody

[1] Moreover, a growing number of courts in districts under other circuits have also reached the same conclusion. *See, e.g.*, *Suarez v. Noem*, 2025 WL 3312168, *1-2 (E.D. Mo. Nov. 28, 2025); *Tenemasa-Lema v. Hyde*, --- F. Supp. 3d ----, 2025 WL 3280555, *1-4 (D. Mass. 2025); *Cabanas v. Bondi*, 2025 WL 3171331, *1, *3-6 (S.D. Tex. Nov. 13, 2025); *Silva Oliveira v. Patterson*, 2025 WL 3095972, *4-7 (W.D. La. Nov. 4, 2025); *Cirrus Rojas v. Olson*, 2025 WL 3033967, *5, *8-9 (E.D. Wis. Oct. 30, 2025); *Garibay-Robledo v. Noem*, No. 25-cv-177, Dkt. No. 9, at 1, 4-9 (N.D. Tex. Oct. 24, 2025); *Vargas Lopez v. Trump*, --- F. Supp. 3d ----, 2025 WL 2780351, *2, *6-10 (D. Neb. Sept. 30, 2025).

redetermination hearing prior to re-detention. Despite his conditional release, Petitioner remains an "applicant for admission" "on the threshold" of initial entry for due process purposes, and subject to mandatory detention under § 1225(b)(2). Past practice does not justify disregard of clear statutory language. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015). Indeed, the Supreme Court has rejected longstanding government interpretations that it has deemed incompatible with the INA specifically. *See Pereira v. Sessions*, 585 U.S. 198, 204-05, 208-09 (2018).

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen of Colombia. Pet. for Writ of Habeas Corpus ¶ 31, ECF No. 1. He most likely entered the United States in early 2024. ECF No. 6 at 1. The Department of Homeland Security apprehended Petitioner upon entry, detained him, and then released him on his own recognizance. ECF No. 1 ¶ 31. On January 27, 2024, Petitioner filed an application for asylum with the San Francisco Immigration Court. *Id.* On December 3, 2025, ICE officers detained Petitioner. *Id.* ¶ 4.

On December 3, 2025, Petitioner filed a Petition for Writ of Habeas Corpus and an *Ex Parte* Motion for Temporary Restraining Order against Respondents. ECF Nos. 1, 4. That same day, this Court issued an order granting Petitioner's temporary restraining order. ECF No. 6. The Court ordered Respondents to immediately release Petitioner from Respondents' custody and enjoined and restrained Respondents from re-detaining Petitioner without notice and a pre-deprivation hearing before a neutral decisionmaker, and from removing Petitioner from the United States. *Id*

III. STATUTORY BACKGROUND

A. The Pre-IIRIRA Framework Gave Preferential Treatment to Noncitizens Who Unlawfully Entered and Were Present in the United States

The Immigration and Nationality Act ("INA"), as amended, contains a comprehensive framework governing the regulation of noncitizens, including the creation of proceedings for the removal of individuals who unlawfully enter the United States or are otherwise removable and requirements for when the Executive is obligated to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether he or she had presented at a port of entry or avoided inspection and entered the United States. *Hurtado*, 29 I. & N. Dec. at 222–23 (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 individual had physically entered the United States (or not) "dictated what type of [immigration] proceeding applied" and whether he or she would be detained pending those proceedings. *Hing Sum*, 602 F.3d at 1099.[2]

At the time, the INA "provided for two types of removal proceedings: deportation hearings and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). A noncitizen who arrived at a port of entry would be placed in "exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole." *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. §§ 1225(a)–(b) (1995), 1226(a) (1995). In contrast, a noncitizen who evaded inspection and physically entered the United States would be placed in deportation proceedings. *Hurtado*, 29 I. & N. Dec. at 223; *Hing Sum*, 602 F.3d at 1100. Noncitizens in deportation proceedings, unlike those in exclusion proceedings, "were entitled to request release on bond." *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

> Thus, the INA's prior framework distinguishing between aliens based on "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 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").

B. IIRIRA Eliminated the Preferential Treatment of Noncitizens Who Unlawfully Entered the United States and Mandated Detention of "Applicants for Admission"

Congress discarded that prior regime through enactment of IIRIRA, Pub. L. 104-208, 110 Stat. 3009

[2] Noncitizens who arrive at a port of entry have physically "entered" the United States, but under the longstanding "entry fiction" doctrine, "aliens who arrive at ports of entry . . . are 'treated' for due process purposes as if stopped at the border." *Thuraissigiam*, 591 U.S. at 139.

(Sept. 30, 1996). Among other things, that law sought to "ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres 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 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 no longer distinguish between noncitizens based on whether they manage to avoid detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" is "whether or not the alien has been *lawfully* admitted." House Rep. 225 (emphasis added); *Hing Sum*, 602 F.3d at 1100 (similar). IIRIRA also eliminated the exclusion/deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Hurtado*, 29 I. & N. Dec. at 223.

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

1. Section 1225(a)

Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. That provision states that "[a]n alien present in the United States who has not been admitted or who arrives in the United States" "shall be deemed . . . an applicant for admission":

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and 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.

8 U.S.C. § 1225(a)(1). "All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers." *Id.* § 1225(a)(3). The inspection by the immigration officer is designed to determine whether the immigrant may be lawfully "admitted" to the country or, instead, must be referred to removal proceedings.

2. Section 1225(b)

IIRIRA also provided for expedited removal and non-expedited "Section 240" proceedings and mandated that applicants for admission be detained pending either of those proceedings. 8 U.S.C. § 1225(b)(1)–(2).

Section 1225(b)(1) provides for so-called "expedited removal proceedings," *Thuraissigiam*, 591 U.S. at 109–113, which may be applied to a subset of aliens: those who (1) are "arriving in the United States," or (2) have "not been admitted or paroled into the United States" and have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(i)–(iii). As to these individuals, the immigration officer shall "order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution." *Id.* § 1225(b)(1)(A)(i). In that event, the alien "shall be detained pending a final determination of credible fear or persecution and, if found not to have such fear, until removed." *Id.* § 1225(b)(1)(B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(4)(ii). An individual processed for expedited removal who does not indicate an intent to apply for asylum or a fear of persecution or who is determined not to have a credible fear is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

Section 1225(b)(2) is a "catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)]." *Jennings*, 583 U.S. at 287.[3] It requires that those individuals be detained pending Section 240 removal proceedings:

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

8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see* 8 C.F.R. § 235.3(b)(1)(ii) (mirroring Section 1225(b)(2)'s detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin").

While Section 1225(b)(2) does not allow for detainees to be released on bond, the INA grants DHS discretion to exercise its parole authority to temporarily release an applicant for admission, but "only on a

[3] Section 1225(b)(2)(A) also does not apply to (1) crewmen or (2) stowaways. 8 U.S.C. § 1225(b)(2)(B). In addition, the Executive has discretion to return aliens who have arrived on land from a contiguous territory to that territory pending removal proceedings. *Id.* § 1225(b)(2)(C).

case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). However, parole "shall not be regarded as an admission of the alien." *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that "the purposes of such parole . . . have been served," the "alien shall . . . be returned to the custody from which he was paroled" and be "dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A).

3. Section 1226

IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This provision governs the detention of individuals who were admitted to the country but later become removable — for example, admitted noncitizens who overstay or otherwise violate the terms of their visas, engage in conduct that renders them removable despite having permanent resident status, or are later determined to have been improperly admitted. *See* 8 U.S.C. § 1227(a).

The statute provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Detention under this provision is generally discretionary. The Attorney General "may" either "continue to detain the arrested alien" or release the individual on bond or conditional parole. *Id.* § 1226(a)(1)–(2).[4] In practice, DHS makes the initial custody determination. 8 C.F.R. § 236.1(d)(1). The detainee may seek custody redetermination (a bond hearing) before an immigration judge and can appeal an immigration judge's custody determination to the Board of Immigration Appeals. 8 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19.

This "default rule" does not apply to certain criminal aliens who are being released from the custody of another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c). Section 1226(c) provides that "[t]he Attorney General shall take into custody" certain classes of criminal aliens — those who are inadmissible or deportable because the alien (1) "committed" certain offenses delineated in 8 U.S.C. §§ 1182 and 1227; or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The Executive must

[4] Conditional parole under Section 1226(a) is distinct from parole under Section 1182(d)(5)(A). *See Ortega-Cervantes v. Gonzalez*, 501 F.3d 1111, 1116 (9th Cir. 2007).

detain these criminal aliens after "the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense." *Id.* Such individuals may be released only if DHS determines "that release of the alien from custody is necessary" to protect a witness to a "major criminal activity" or similar person, and then only if the alien "will not pose a danger" to public safety and is not a flight risk. *Id.* § 1226(c)(4).

Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3 (2025), which additionally requires detention of (and prohibits parole for) criminal aliens who (1) are inadmissible because they are physically present in the United States without admission or parole (8 U.S.C. § 1182(a)(6)(A)), have committed a material misrepresentation or fraud, (*id.* § 1182(a)(6)(C)), or lack required documentation, (*id.* § 1182(a)(7); and (2) are "charged with, [] arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of" certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

C. DHS Concludes that Section 1225(b)(2)(A) Requires Detention of All Applicants for Admission

For many years after IIRIRA, DHS and most immigration judges treated aliens who entered the United States without admission as being subject to discretionary detention under 8 U.S.C. § 1226(a), rather than mandatory detention under 8 U.S.C. § 1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6. Until this year, however, the Board of Immigration Appeals had not issued any precedential opinion on the appropriate detention authority for such individuals.

On July 8, 2025, DHS "revisited its legal position on detention and release authorities" and issued interim guidance that brought the Executive's practices in line with the statute's plain text. Memorandum from Commissioner Rodney S. Scott (July 10, 2025), available at https://www.cbp.gov/sites/default/files/2025-09/intc-46100_-_c1_signed_memo_-_07.10.2025.pdf (last visited Dec. 16, 2025). Specifically, DHS concluded that all noncitizen who enter the country without being admitted are "subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)] and may not be released from ICE custody except by INA § 212(d)(5) parole." *Id.* As a result, the "only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under the INA § 236(a) [8 U.S.C. § 1226(a)] are aliens admitted to the United

States and chargeable with deportability under INA § 237 [8 U.S.C. § 1127]." *Id.*

The BIA also adopted this interpretation in *Hurtado*. The Board concluded that Section 1225(b)(2)'s mandatory detention regime applies to *all* noncitizens who entered the United States without inspection and admission:

> Aliens . . . who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United State for a lengthy period of time following entry without inspection, by itself, does not constitute an "admission."

29 I. & N. Dec. at 228. Thus, under Board precedent, "Immigration Judges lack authority to hear bond requests or to grant bond to aliens . . . who are present in the United States without admission." *Id.* at 225.

IV. ARGUMENT

A. Petitioner's Immediate Custodian Is The Only Proper Respondent

Respondents move for all Respondents other than Petitioner's immediate custodian to be dismissed from this case. *See Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024) (emphasizing the "clear rule requiring core habeas petitioners challenging their present physical confinement to name their immediate custodian, the warden of the facility where they are detained, as the respondent to their petition" (citing *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004)); *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) (noting that for habeas petitions challenging detention, "the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official"). Release from custody is the remedy available in habeas and Petitioner's immediate custodian is who can provide that relief. *See Thuraissigiam*, 591 U.S at 117-120. Additional respondents and prayers for relief are beyond the scope of a habeas petition. *Id.*

B. Section 1225(b)(2) Mandates Detention of Noncitizens, Like Petitioner, Who Are Present in the United States Without Having Been Admitted

Under the plain language of Section 1225(b)(2), DHS is required to detain all individuals, like Petitioner, who are present in the United States without admission and are subject to removal proceedings — regardless of how long they have been in the United States or how far from the border they traveled. 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."). While Respondents

recognize that the Court concluded otherwise in granting the motion for preliminary injunction, Respondents provide a more developed analysis for the Court's consideration, and submit that Petitioner falls squarely within the § 1225(b)(2) framework. *Cf. Altamirano Ramos*, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025) ("after additional research and analysis, the court has concluded that Petitioner is subject to mandatory detention under § 1225(b)(2)(a), and that Petitioner is not eligible for a bond hearing under 8 U.S.C. § 1226(a)").

1. The Plain Language of Section 1225(b)(2) Mandates Detention of Applicants for Admission

Section 1225(a) deems all individuals who are "present in the United States [and] ha[ve] not been admitted or who arrive[] in the United States" to be "applicant[s] for admission." 8 U.S.C. § 1225(a)(1). And "admission" under the INA means not mere physical entry, but "lawful entry . . . after inspection" by immigration authorities. 8 U.S.C. § 1101(a)(13)(A). Thus, an alien who enters the country without inspection and admission is and remains an applicant for admission, regardless of the duration of the individual's presence in the United States or distance traveled from the border. *See Mejia Olalde v. Noem*, 2025 WL 3131942, at *2–3 (E.D. Mo. Nov. 10, 2025).

In turn, Section 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). The statute's use of the term "shall" denotes that detention is mandatory. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998); *see Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) "mandate[s] detention"). And the statute makes no exception for the duration of the alien's presence in the country or how far the alien traveled into the country. Therefore, except for those aliens expressly exempted, the statute's plain text mandates that DHS detain all "applicants for admission" who are not "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A).

Petitioner falls squarely within the statutory definition. He was "present in the United States," there is no dispute that he has "not been admitted," and he does not fall within any of the exceptions to Section 1225(b)(2)(A). 8 U.S.C. § 1225(a), (b)(2)(B). Moreover, he cannot — and did not — establish that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Therefore,

Petitioner "shall be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

2. Attempts to Construe Section 1225(b)(2) Narrowly Ignore the Plain Language of the Statute.

a. Section 1225 Is Not Limited to "Arriving Aliens"

At least one court in this district has concluded that § 1225(b)(2) applies narrowly to "arriving aliens." *See Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025) at *10, 11.[5] Yet Section 1225's text makes clear that it applies to individuals who are already physically present in the United States, not just to those who are "arriving." Section 1225(a)(1) deems noncitizens already "present in the United States who ha[ve] not been admitted" to be applicants for admission, and it differentiates those individuals from noncitizens who are "arriv[ing] in the United States." 8 U.S.C. § 1225(a)(1). And nothing in Section 1225(b)(2)(A) refers to "arriving aliens." The same goes for the neighboring subsection (b)(1): It extends expedited removal procedures not just to "arriving" aliens but also to aliens who have been "physically present in the United States" for up to two years. 8 U.S.C. § 1225(b)(1)(A)(i), (iii)(II). If Congress had wished for § 1225(b)(2) to apply exclusively to "arriving aliens," it would have used that term and not "applicants for admission." Reading § 1225(b)(2) to apply narrowly to "arriving aliens" itself violates the rule against surplusage.

b. Section 1225(b)(2)'s Reference to Aliens "Seeking Admission" Does Not Narrow the Statute's Scope

At least one court in this district has also found that "applicant for admission" is broader than "seeking admission" because it covers "someone who is not 'admitted' but is not *necessarily* 'seeking admission.'" *See Salcedo Aceros*, 2025 WL 2637503 at *11 (emphasis in original). As the argument goes, § 1225(b)(2) covers only a smaller set of aliens "actively seeking admission" — not individuals who are residing unlawfully in the United States *without* making any effort to gain admission. That is wrong. The statute itself makes clear that an alien who is an "applicant for admission" *is* necessarily "seeking admission."

First, Section 1225(b)(2) requires the detention of an "applicant for admission, if the examining

[5] The petitioners' bar in this district has also referred to § 1225(b)(2) as an "arriving alien statute." *See Salcedo Aceros*, No. 3:25-cv-06924-EMC, ECF No. 24 (Sept. 4, 2025 H'rg Tr.) at 14:10, 23:4–5, 25:1–2.

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, not applicable here, to pursue voluntary withdrawal or voluntary departure.

Section 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 Att'y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *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"); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482–83 (7th Cir. 2019). Being an "applicant for admission" is thus a particular "way or manner" of seeking admission, such that any alien who is an "applicant for admission" *is* "seeking admission" for purposes of Section 1252(b)(2)(A).

"Seeking admission" is thus "a term of art" that includes not only aliens who "entered the United States with visas or other entry documents before their presence became lawful," but also aliens who "entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of section 235(a)(1) of the Act." *Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 n.6 (BIA 2012) (emphases omitted). As a result, "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Id.* at 743 (emphasis in original). For example, an alien who previously unlawfully entered the United States and is never admitted, departs, and subsequently submits a literal application for admission to the United States — e.g., applies for a visa — is deemed to be "*again* seek[ing] admission" to the United States. *Id.* at 743–44 & n.6 (emphasis added) (quoting and discussing 8 U.S.C. § 1182(a)(9)(B)(i)(I)-(II)). Mere presence without admission *is* seeking admission "by operation of law." *Id.*

Neither the duration of an individual's unlawful presence in the United States nor her distance from the border alters the legal reality that an "applicant for admission" is "seeking admission."

"Congress knows how to limit the scope" of the INA "geographically and temporally when it wants to." *Mejia Olalde*, 2025 WL 3131942, at *4. For example, Section 1225(b)(1) may apply to aliens "arriving in the United States" or who "ha[ve] been physically present in the United States continuously for [a] 2-year period." 8 U.S.C. § 1225(b)(1). So, "[i]f Congress meant to say that an alien no longer is 'seeking admission' after some amount of time in the United States, Congress knew how to do so." *Mejia Olalde*, 2025 WL 3131942, at *4. It did not. To the contrary, Section 1225(a)(1)'s inclusion of *both* aliens "arriving" and those "present in the United States" confirms that *all* aliens who are not admitted are "applicants for admission," regardless of the length of their presence in the country. 8 U.S.C. § 1225(a)(1).

None of this is to say, however, that "seeking admission" has no meaning beyond "applicant for admission." As Section 1225(a)(3) shows, being an "applicant for admission" is only *one* "way or manner" of "seeking admission" — not the exclusive way. For example, lawful permanent residents returning to the United States are not "applicants for admission" but they still may be deemed to be "seeking admission" in some circumstances. *See* 8 U.S.C. § 1103(A)(13)(C). But for purposes of Section 1225(b)(2) and its regulation of "applicants for admission," the statute 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 admission.

The government previously operated under a narrower application of Section 1225(b)(2)(A), such that aliens present in the United States who had entered without admission were instead detained under Section 1226(a). But past practice does not justify disregard of clear statutory language. *See* 8 C.F.R. § 235.3(b)(1)(ii) (requiring detention of applicants for admission pending removal proceedings "in accordance with section 235(b)(2) of the Act"); *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015). Indeed, the Supreme Court has rejected longstanding government interpretations that it has deemed incompatible with the INA specifically. *See Pereira v. Sessions*, 585 U.S. 198, 204–05, 208–09 (2018). Therefore, a court must always interpret the statute "as written," *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019), and here the statute as written requires detention of *any* applicant for admission, regardless of whether the applicant is taking affirmative steps toward admission. *See Mejia Olalde*, 2025 WL 3131942, at *5 (rejecting the prior interpretation of Section 1225(b)(2) as "nontextual" and unsupported by any "thorough, reasoned analysis").

Second, the government's reading does not render the term "seeking admission" redundant of the phrase "applicant for admission" in Section 1252(b)(2)(A); the structure of Section 1252(b)(2)(A) gives each independent meaning. Section 1225(b)(2)(A) is composed of a primary (operative) clause, which is modified by two prefatory clauses offset by commas. The operative clause requires detention of aliens "seeking admission" who cannot show their admissibility ("if the examining immigration officer . . . , [then] the alien shall be detained"). That clause's mandate is modified by two prefatory clauses. The first excludes aliens covered by subparagraphs (B) and (C). 8 U.S.C. § 1225(b)(2)(A) ("[s]ubject to . . ."). Like the first, the second prefatory clause narrows the operative clause to a subset of "case[s]" — namely, "in the case of an alien who is an applicant for admission . . . ." *Id.* (emphasis added). Section 1225(b)(2) thus lays out a general command (the operative clause), and then qualifies that directive: "[I]f an alien seeking admission is not clearly and beyond a doubt entitled to be admitted," then "the alien shall be detained" — but only if the alien (1) is seeking admission by being "an applicant for admission" under Section 1225(a)(1); and (2) is not covered by subparagraphs (B) or (C). No portion of the statute is redundant.

Even if it were otherwise, the cannon against surplusage "is not a silver bullet." *Rimini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019). "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. Thus, "[t]he Court has often recognized: Sometimes the better overall reading of a statute contains some redundancy." *Id.* (quoting *Rimini St., Inc.*, 586 U.S. at 346) (internal quotations omitted). For that reason, "the surplusage cannon . . . must be applied with statutory context in mind," *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017), and "redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text," *Barton*, 590 U.S. at 239.

That is the case here. Under a straightforward reading of the statute, being an "applicant for admission" is "seeking admission." Although that reading may lead to some redundancy in Section 1225(b)(2)(A), that is "not a license to rewrite" Section 1225 "contrary to its text." *Barton*, 590 U.S. at 239; *see Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) ("Th[e] principle [that drafters do repeat themselves] carries extra weight where . . . the arguably redundant words that the drafters employed . . . are functional synonyms."). And that is especially true where that re-writing would be so clearly contrary to

Congress's objective in passing the law.

Third, even if "seeking admission" required 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 by any definition "seeking admission."

Section 1225(b)(2)(A) applies to a noncitizen who is present in the United States without admission, even for years. Although the individual may not have been affirmatively seeking admission during those years of illegal presence, Section 1225(b)(2) is not concerned with the noncitizen'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" — i.e., presently "endeavor[ing] to obtain," American Heritage Dictionary of the English Language 1174 (1980) — admission into the United States; if it were otherwise, the applicant would seek to voluntarily "depart immediately from the United States" in lieu of removal proceedings. *See* 8 U.S.C. § 1225(a)(4). An applicant who, like Petitioner here, forgoes that statutory option and instead endeavors to remain in the United States by participating in Section 240 removal proceedings — proceedings in which the alient has the "burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted" or satisfies the criteria for "relief from removal," 8 U.S.C. § 1229a(c)(2)(A), (c)(4) — is plainly "endeavor[ing] to obtain" admission to the United States. American Heritage Dictionary, at 1174

3. The Overlap Between Section 1226(c) and Section 1225(b)(2) Does Not Support Re-Writing Section 1225(b)(2) to Eliminate Mandatory Detention

At least one court in this district has found that redundancies between the government's interpretation of § 1225(b)(2) and § 1226(c)'s mandatory detention provisions is problematic given conventional rules of statutory interpretation. *See Salcedo Aceros*, 2025 WL 2637503 at *11. However, although Section 1226(c) and Section 1225(b)(2) do overlap for some noncitizens, each provision has independent effect. Mere overlap is no basis for re-writing unambiguous statutory text.

As an initial matter, the government's interpretation of Section 1225(b)(2)(A) does not render Section 1226(a)'s discretionary detention authority superfluous. Section 1226(a) authorizes the Executive to "arrest[] and detain[]" *any* "alien" pending removal proceedings but provides that the Executive also "may

release the alien" on bond or conditional parole. 8 U.S.C. § 1226(a). That provision provides the detention authority for the significant group of aliens who are *not* "applicants for admission" subject to Section 1225(b)(2)(A), *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("the specific governs the general") — that is, aliens who have already been admitted to the United States but are now removable. For example, the detention of any of the multitude of noncitizens who overstay their visas or are lawful permanent residents is governed by Section 1226(a), because those aliens (unlike Petitioner) *were* previously admitted to the United States.

Likewise, the government's reading of Section 1225(b)(2)(A) does not render Section 1226(c) superfluous. As described above, Section 1226(c) is the exception to Section 1226(a)'s discretionary detention regime, and it requires the Executive to detain "any alien" who is deportable or inadmissible for having committed specified offenses or engaged in terrorism-related actions "when the alien is released" from the custody of another law enforcement entity. *See* 8 U.S.C. § 1226(c)(1)(A)–(E). Like Section 1226(a), subsection (c) applies to significant groups of criminal aliens *not* encompassed by Section 1225(b)(2). Most obvious, Section 1226(c)(1) requires the Executive to detain aliens who *have been admitted* to the United States and are now "deportable." *See* 8 U.S.C. § 1226(c)(1)(B). By contrast, Section 1225(b)(2) has no application to admitted noncitizens who, owing to their prior admission, are necessarily not applicants for admission. Next, Section 1226(c)(1) requires detention of aliens who are "inadmissible" on certain grounds. *See* 8 U.S.C. § 1226(c)(1)(A), (D), (E). Here, too, Section 1226(c) sweeps more broadly than Section 1225(b)(2), because the referenced grounds cover aliens who are inadmissible but were erroneously admitted. *See* 8 U.S.C. § 1227(a), (a)(1)(A) (providing for the removal of "[a]ny alien … in *and admitted to* the United States," including "[a]ny alien who at the time of entry or adjustment of status was within one or more of the classes of aliens *inadmissible* by the law existing at the time . . . ." (emphasis added)). Finally, as noted above, Section 1225(b)(2)(A) does "not apply to an alien . . . who is a crewman" or "a stowaway." 8 U.S.C. 1225(b)(2)(B)–(C). Section 1226(c) applies to those aliens who are inadmissible or deportable on one of the specified grounds.

Section 1226(c) also differs from Section 1225(b)(2) in another crucial way: Section 1226(c) narrows the circumstances under which aliens may be *released* from mandatory detention. Section 1226(a)(2)(B) permits the release of noncitizens on bond or conditional parole. Section 1226(c)(1) takes that option off the

table for admitted noncitizens who have committed the offenses or engaged in the conduct specified in Section 1226(c)(1)(A)–(E). As to those aliens, Section 1226(c) *prohibits* their release except if "necessary to provide protection to" a witness or similar person "and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." 8 U.S.C. § 1226(c)(4).

Finally, the Government's reading does not render superfluous Congress's recent amendment of Section 1226(c) through the Laken Riley Act. That law requires mandatory detention of criminal aliens who are "inadmissible" under 8 U.S.C. § 1182(a)(6)(A), (a)(6)(C), or (a)(7). *See* 8 U.S.C. § 1226(c)(E)(i)–(ii). As with the other grounds of "inadmissibility" listed in Section 1226(c), both (a)(6)(C) and (a)(7) may apply to inadmissible aliens who were admitted in error, as well as those never admitted. *See Mejia Olalde*, 2025 WL 3131942, at *4 (noting that "the Laken Riley Act may apply to situations where § 1225 might not" (citing 8 U.S.C. § 1182(a)(6)(C)(i))). Again, Section 1225(b)(2) has no application to aliens admitted in error.

To be sure, the Laken Riley Act's application to aliens who are inadmissible under §1182(a)(6)(A) — for being "present . . . without being admitted or paroled" — overlaps with Section 1225(b)(2)(A). But again, "[r]edundancies are common in statutory drafting," and are "not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Barton*, 590 U.S. at 239; *see Mejia Olalde*, 2025 WL 3131942, at *4 ("even assuming there were surplusage, that cannot trump the plain meaning of [Section] 1225(b)(2)"). That is especially true where, as here, there is overlap under *any* possible reading of the statute. *See Microsoft Corp. v. I4I Ltd. P'ship*, 564 U.S. 91, 106 (2011) ("[T]he canon against superfluity assists only where a competing interpretation gives effect to every clause and word of a statute") (internal quotation omitted).

In any event, Section 1226(c) still does independent work, despite the overlap, by preventing the Executive from releasing the specified criminal aliens who were previously admitted. In fact, Congress's desire to further limit the release power with respect to criminal aliens was one reason it enacted the Laken Riley Act. The Act was adopted in the wake of a 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). Congress passed it out of concern that the executive branch "ignore[d] its

fundamental duty under the Constitution to defend its citizens." *Id.* at H269 (statement of Rep. Roy). The Act thus reflects a "congressional effort to be double sure," *Barton*, 590 U.S. at 239, that criminal aliens are not paroled or otherwise released from detention.

4. Failing to Uphold Mandatory Detention Would Subvert Congressional Intent

Failing to uphold mandatory detention here would not only violate the statutes' plain text, but also subvert IIRIRA's express goal of eliminating preferential treatment for aliens who enter the country unlawfully. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to 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.").

One of IIRIRA's express objectives was to dispense with the pre-1996 regime under which aliens who entered the United States unlawfully were given "equities and privileges in immigration proceedings that [were] not available to aliens who present[ed] themselves for inspection" at the border, including the right to secure release on bond. House Rep. at 225. Failing to uphold Petitioner's mandatory detention here 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. That is exactly the "perverse incentive to enter" unlawfully, *Thuraissigiam*, 591 U.S. at 140, that IIRIRA sought to eradicate. The Court should reject any interpretation that is so subversive of Congress's stated objective. *King*, 576 U.S. at 492.

The government's reading, by contrast, not only adheres to the statute's text and congressional intent, but it also brings the statute in line with the longstanding "entry fiction" that courts have employed for well over a century to avoid giving favorable treatment to aliens who have not been lawfully admitted. Under that doctrine, all "aliens who arrive at ports of entry . . . are treated for due process purposes as if stopped at the border," including aliens "paroled elsewhere in the country for years pending removal" who have developed significant ties to the country. *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). For example, *Kaplan v. Tod*, 267 U.S. 228 (1925), held that an alien who was paroled for nine years into the United States was still "regarded as stopped at the boundary line" and "had gained no foothold in the United States." *Id.* at 230; *see also Mezei*, 345 U.S. at 214–15. The "entry

fiction" thus prevents favorable treatment of aliens who have not been admitted — including those who have "entered the country clandestinely." *Yamataya v. Fisher*, 189 U.S. 86, 100 (1903). IIRIRA sought to implement that same principle with respect to detention. The government's reading is true to that purpose.

5. The Government's Reading Is Consistent with *Jennings*

The government's interpretation is also consistent with the Supreme Court's decision in *Jennings*, 583 U.S. 281. *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 Sections 1225(b) and 1226. 583 U.S. 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 Section 1225(b) or Section 1226. Nonetheless, consistent with the government's reading, the Court recognized in its description of Section 1225(b) that "Section 1225(b)(2) . . . serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1)." *Id.* at 287.

It is true that in describing the detention authorities in Section 1225(b) and Section 1226, the Court summarized Section 1226 as applying to aliens "already in the country":

> In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

583 U.S. at 289; *see also id.* at 288 (characterizing Section 1226 as applying to aliens "once inside the United States"). But "[t]he language of an opinion is not always to be parsed [like the] language of a statute," and instead "must be read with a careful eye to context." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373–74 (2023) (quotation omitted). When describing the scope of Section 1226 in particular, *Jennings* refers to aliens "present in the country" who are removable under 8 U.S.C. § 1227(a) — a provision that applies *only* to admitted aliens. *See* 583 U.S. at 288. The government's interpretation here is consistent with that understanding: it allows that Section 1226 is the exclusive source of detention authority for the substantial category of aliens who were admitted into the United States but are now removable or deportable.

Moreover, nothing in the quoted language from *Jennings* suggests that Section 1226 is the *sole* detention authority for *every* "alien[] already in the country," and the passage's use of the word "certain" conveys the opposite. At a minimum, the quoted language is ambiguous and such uncertain language is

insufficient to displace the statute's plain text and the manifest congressional purpose; that is especially so, as no part of the holding in *Jennings* required resolution of the precise scope of Sections 1225(b) and 1226.

C. The Court May Not Disregard Section 1225(b)(2)'s Mandatory Detention Framework, Which Is Applicable To Petitioner as an Applicant for Admission.

1. The *Mathews* Factors Do Not Apply

Given his status as an applicant for admission subject to mandatory detention, Petitioner's reliance on *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) is misplaced. *See* Mot. 10. As an initial matter, the Supreme Court has upheld mandatory civil immigration detention without utilizing the multi-factor "balancing test" of *Mathews*. *See Demore v. Kim*, 538 U.S. 510 (2003) (upholding mandatory detention under 8 U.S.C. § 1226(c)); *cf. Zadvydas v. Davis*, 533 U.S. 678 (2001) (upholding mandatory detention under 8 U.S.C. § 1231(a)(2) for the 90-day removal period); *Khotesouvan v. Morones*, 386 F.3d 1298, 1301 (9th Cir. 2004).[6] Even in the context of discretionary detention under 8 U.S.C. § 1226(a), the detainees are not statutorily entitled to pre-deprivation hearings. Immigration detention without notice and a pre-detention hearing, therefore, is a fundamental component of the statutory framework that Congress created and that the Supreme Court has repeatedly upheld. Due process does not invariably require a bond hearing before a noncitizen can be constitutionally detained. *See Aguilar Garcia v. Kaiser*, No. 25-cv-05070-JSC, 2025 WL 2998169, at *5 (N.D. Cal. Oct. 24, 2025) ("Petitioner is within the 90-day mandatory detention window of Section 1231(a)(2) and due process does not require a bond hearing at least until he is in the post-removal period.").

In any event, applicants for admission like Petitioner, who were not admitted or paroled into the country, lack a liberty interest in *additional* procedures including a custody redetermination or pre-detention bond hearing. Their conditional release does not provide them with additional rights above and beyond the process already provided by Congress in § 1225. *See Thuraissigiam*, 591 U.S. at 139 ("aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are 'treated' for due

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[6] As the Ninth Circuit has recognized, "the Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*." *Rodriguez Diaz v. Garland*, 53 F.4th 1206 (9th Cir. 2022) (citations omitted). Whether the *Mathews* test applies in this context is an open question in the Ninth Circuit. *Id.*, 53 F.4th at 1207 (applying *Mathews* factors to uphold constitutionality of Section 1226(a) procedures in a prolonged detention context; "we assume without deciding that *Mathews* applies here").

process purposes 'as if stopped at the border'"); *Ma v. Barber*, 357 U.S. 185, 190 (1958) (concluding that the parole of an alien released into the country while admissibility decision was pending did not alter her legal status); *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913, *2 (D. Mass. July 28, 2025) (finding that mandatory detention under § 1225(b)(2)(A) of an alien arrested at a traffic stop in the interior of the United States "comports with due process").

Indeed, for "applicants for admission" who are amenable to § 1225(b)(1) — i.e., because they were not physically present for at least two years on the date of inspection, 8 U.S.C. § 1225(b)(1)(A)(iii)(II) — "[w]hatever the procedure authorized by Congress . . . is due process," whether or not they are apprehended at the border or after entering the country. *Thuraissigiam*, 591 U.S. at 138–139 ("This rule would be meaningless if it became inoperative as soon as an arriving alien set foot on U.S. soil."). These noncitizens have "only those rights regarding admission that Congress has provided by statute." *Id.* at 140; *see Dave v. Ashcroft*, 363 F.3d 649, 653 (7th Cir. 2004). Thus, as regards his detention pending immigration proceedings, Petitioner is entitled only to the protections set forth by statute, and "the Due Process Clause provides nothing more." *Thuraissigiam*, 591 U.S. at 140.[7]

2. Petitioner's Detention Authority Cannot Be Converted To § 1226(a)

As an "applicant for admission," Petitioner's detention is governed by the § 1225(b) framework. This remains true even where the government previously released an alien under 8 U.S.C. § 1226(a). By citing § 1226(a), DHS does not permanently alter an alien's status as an "applicant for admission" under § 1225; to the contrary, the alien's release is expressly subject to an order to appear for removal proceedings based on *unlawful* entry. Nor is DHS prevented from clarifying the detention authority to conform to the requirements of the statutory framework as DHS now interprets it. *See, e.g.*, *United Gas Improvement v. Callery*, 382 U.S. 223, 229 (1965) (explaining that an agency can correct its own error). Pursuant to the correct statutory framework, an alien's conditional release is not the type of "lawful entry into this country"

[7] Courts in this district have cited to *Morrissey v. Brewer*, 408 U.S. 471 (1972), in support of their conclusion that aliens in similar circumstances to Petitioner are entitled to a pre-deprivation hearing. While the Supreme Court did find that post-arrest process should be afforded to the parolee in *Morrissey*, the government respectfully submits that the framework for determining process for parolees differs from that for aliens illegally present in the United States. A fundamental purpose of the parole system is "to help individuals reintegrate into society" to lessen the chance of committing antisocial acts in the future. *Id.* at 478–80. That same goal of integration, to support the constructive development of parolees and to lessen any recidivistic tendencies, is not present with unlawfully present aliens.

that is necessary to "establish[] connections" that could form a liberty interest requiring additional process, and he or she remains an "applicant for admission" who is "at the threshold of initial entry" and subject to mandatory detention under § 1225. *Thuraissigiam*, 591 U.S. at 106–07 ("While aliens who have established connections in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for an alien's lawful entry into this country and that, as a result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause.").

This binding Supreme Court authority is in conflict with recent district court decisions finding that the government's "election to place Petitioner in full removal proceedings under § 1229a and releasing Petitioner under § 1226(a) provided Petitioner a liberty interest that is protected by the Due Process Clause." *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *3 (N.D. Cal. Aug. 21, 2025). The government's decision to place aliens in full removal proceedings under § 1229a is consistent with § 1225(b)(2), and its decision to cite § 1226(a) in releasing an alien does not render his or her entry lawful; it remains unlawful, as the alien's release is expressly conditioned on appearing for removal proceedings based on *unlawful* entry. Indeed, as the Supreme Court confirmed in *Thuraissigiam*, the noncitizen who has not been admitted remains "on the threshold of initial entry," is "treated for due process purposes as if stopped at the border," and "cannot claim any greater rights under the Due Process Clause" than what Congress provided in § 1225. 591 U.S. at 139–40; *see also Pena*, 2025 WL 2108913 at *2 ("Based upon the inherent authority of the United States to expel aliens, however, applicants for admission are entitled only to those rights and protections Congress set forth by statute.").

The Supreme Court's holding in *Thuraissigiam* is also consistent with its earlier holding in *Landon v. Plasencia*, where the Court observed that only "once an alien gains admission to our country and begins to develop the ties that go with permanent residence [does] his constitutional status change[]." 459 U.S. 21, 32 (1982). In *Thuraissigiam*, the Court reiterated that "established connections" contemplate "an alien's lawful entry into this country." 591 U.S. at 106–07. Here, Petitioner was neither admitted nor paroled, nor lawfully present in this country as required by *Landon* and *Thuraissigiam* to claim due process rights beyond what § 1225(b) provides. She instead remains an applicant for admission who — even if released into the country "for years pending removal" — continues to be "'treated' for due process purposes 'as if stopped at the border.'" *Thuraissigiam*, 591 U.S. at 139–140.

D. Petitioner Is Not Entitled to a Pre-Detention Hearing Under § 1226(a) or a Reversed Burden of Proof

Finally, even if this Court finds that § 1226(a) applies here, Petitioner would still not be entitled to a pre-detention hearing. For aliens detained under § 1226(a), "an ICE officer makes the initial custody determination" *post*-detention, which the alien can later request to have reviewed by an immigration judge. *Rodriguez Diaz*, 53 F.4th at 1196. The Supreme Court has long upheld the constitutionality of the basic process of immigration detention. *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that "the INS procedures are faulty because they do not provide for automatic review by an immigration judge of the initial deportability and custody determinations"); *Abel v. United States*, 362 U.S. 217, 233–34 (1960) (noting the "impressive historical evidence of acceptance of the validity of statutes providing for administrative deportation arrest from almost the beginning of the Nation"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States,* 163 U.S. 228, 235 (1896) ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid."). Under § 1226(a), aliens are not guaranteed *pre*-detention review and may instead only seek review of their detention by an ICE official once they are in custody — a process the Ninth Circuit has found constitutionally sufficient in the prolonged-detention context. *Rodriguez Diaz*, 53 F.4th at 1196–97.[8]

Moreover, at any bond hearing, Petitioner should have the burden of demonstrating that she is not a flight risk or danger. That is the ordinary standard applied in bond hearings. *Matter of Guerra*, 24 I&N Dec. 37, 40 (B.I.A. 2006) ("The burden is on the alien to show to the satisfaction of the Immigration Judge that he or she merits release on bond."). It would be improper to reverse the burden of proof and place it on the government in these circumstances. *See Rodriguez Diaz*, 53 F.4th at 1210–12 ("Nothing in this record suggests that placing the burden of proof on the government was constitutionally necessary to minimize the risk of error, much less that such burden-shifting would be constitutionally necessary in all, most, or many cases."). While the Ninth Circuit previously held that the government bears the burden by clear and

[8] Although *Rodriguez Diaz* did not arise in the pre-detention context, the Ninth Circuit noted the petition's argument that the § 1226(a) framework was unlawful "'for any length of detention'" and concluded that the claims failed "whether construed as facial or as-applied challenges to § 1226(a)." 53 F.4th at 1203.

convincing evidence that an alien is not a flight risk or danger to the community for bond hearings in certain circumstances, *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011) (bond hearing after allegedly prolonged detention), following intervening Supreme Court decisions, the Ninth Circuit has explained that "*Singh's* holding about the appropriate procedures for those bond hearings . . . was expressly premised on the (now incorrect) assumption that these hearings were statutorily authorized." *Rodriguez Diaz*, 53 F.4th at 1196, 1200–01 (citing *Jennings*, 583 U.S. 281, and *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022)). Thus, prior Ninth Circuit decisions imposing such a requirement are "no longer good law" on this issue, *Rodriguez Diaz*, 53 F.4th at 1196, and the Court should follow *Rodriguez Diaz* and the Supreme Court.

E. Any Ruling On This Habeas Petition Must Allow For Re-Detention Upon a Final Administrative Removal Order.

Petitioner's habeas petition asks this Court to enjoin his re-detention without a pre-detention hearing before a neutral arbiter. ECF No. 1 at 10. But any indefinite injunction would interfere with Respondents' ability to execute a valid order of removal and would both exceed the Court's jurisdiction and contravene the Supreme Court's unambiguous holding in *Zadvdas v. Davis* that mandatory detention without a bond hearing during the removal period is constitutionally permitted.

Petitioner's immigration proceedings will continue even after the Court rules on his habeas petition. At some point, Petitioner may be subject to a final order of removal. Assuming Petitioner becomes subject to a final order of removal, his detention is mandatory under the INA. *See* 8 U.S.C. § 1231(a)(2)(A) ("During the removal period, the Attorney General shall detain the alien. Under no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title"). The Supreme Court has upheld the constitutionality of both the mandatory 90-day detention during the removal period and the presumptively reasonable six-month discretionary detention period following the removal period, both without the requirements of any bond hearing. *See Zadvydas*, 533 U.S. at 701. Thus, if Petitioner becomes subject to a future final order of removal, his detention will be both constitutionally permissible and statutorily required. Any ruling by this Court, therefore, must allow for the detention of Petitioner to execute a final removal order. *See Aguilar Garcia*, 2025 WL 2998169, at *4 (denying motion for preliminary injunction in petition seeking

pre-detention hearing after petitioner's detention authority shifted to § 1231(a)(2)).

Moreover, the Court lacks jurisdiction to enjoin respondents from removing Petitioner from the United States. Under 8 U.S.C. 1252(g), "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." This jurisdictional bar applies to section 2241 of title 28 and any other habeas provision. Id. Thus, as the Ninth Circuit has itself affirmed, if the Court grants a preliminary injunction, it should not include a prohibition on the removal of Petitioner. See Rauda v. Jennings, 55 F.4th 773, 776-79 (9th Cir. 2022) (holding that the district court lacked jurisdiction in habeas to issue TRO enjoining noncitizen's removal).

V. CONCLUSION

Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Accordingly, Respondents respectfully request that the Court deny Petitioner's habeas petition. To the extent the Court grants Petitioner relief, it must limit any injunction to permit the execution of a future final order of removal.

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Respectfully submitted,

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