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

11 JESUS PEREZ-REGALADO,
 12
 Petitioner,
 13 v.

14 THOMAS E. FEELEY, Director of
 Enforcement and Removal Operations, Salt
 Lake City Field Office, Immigration and
 15 Customs Enforcement; KRISTI NOEM,
 Secretary, U.S. Department of Homeland
 Security; U.S. DEPARTMENT OF
 16 HOMELAND SECURITY; PAMELA
 17 BONDI, U.S. Attorney General;
 EXECUTIVE OFFICE FOR
 18 IMMIGRATION REVIEW; JOHN
 19 MATTOS, Warden of NEVADA
 SOUTHERN DETENTION CENTER, in
 their official capacities,
 20
 Respondents.
 21

Case No. 2:25-cv-02409-RFB-EJY

**Federal Respondents' Response to
 Order to Show Cause (ECF No. 9)
 Regarding Amended Petition for Writ
 of Habeas Corpus (ECF No. 7)**

22 Federal Respondents Thomas Feeley, Kristi Noem, U.S. Department of Homeland
 23 Security, Pamela Bondi, and Executive Office for Immigration Review, through
 24 undersigned counsel, hereby respond to the Order to Show Cause (ECF No. 9) as to why
 25 the Court should not grant the Amended Petition for Writ of Habeas Corpus (ECF No. 7).
 26 This response is supported by the accompanying memorandum of points and authorities.

27 / / /

28 / / /

1 Respectfully submitted this 31st day of December 2025.

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3 Deputy Attorney General of the United States
4 SIGAL CHATTAH
5 First Assistant United States Attorney

6 /s/ Virginia T. Tomova
7 VIRGINIA T. TOMOVA
8 Assistant United States Attorney

9 **Memorandum of Points and Authorities**

10 **I. INTRODUCTION**

11 Based on the language in the petition, Federal Respondent's interpretation of the
12 basis for the Petitioner's writ is rooted into the distinctions between 8 USC § 1225(b)(2) and
13 § 1226(a) framework, post *Hurtado*. Before 1996, the federal immigration laws required the
14 detention of aliens who presented at a port of entry but allowed aliens who were already
15 unlawfully present in the United States to obtain release pending removal proceedings.
16 Congress passed the Illegal Immigration Reform and Immigration Responsibility Act
17 ("IIRIRA") specifically to stop conferring greater privileges and benefits on aliens who enter
18 the United States unlawfully as compared to those who present themselves for inspection at
19 a port of entry. In addition, Petitioner's reliance on the decision in *Bautista v. Noem*, No.
20 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), is misplaced and not applicable to his case.
21 The December 18, 2025, partial final judgment in *Bautista v. Noem*, No. 5:25-CV-1873 (C.D.
22 Cal. Dec. 18, 2025), ECF No. 92, is neither binding nor applicable here and presents no basis
23 for granting the petition. First, the *Bautista* declaratory judgement is void with respect to
24 petitioners and custodians outside the Central District of California because it was issued
25 despite a palpable lack of jurisdiction. Second, the Court should not give preclusive effect to
26 the declaratory judgment because it is on appeal, creating a serious risk of inconsistent
27 judgments and unfair results if the *Bautista* judgment is reversed or vacated on appeal. Finally,
28 issue preclusion is inapplicable here, particularly as preclusion principles apply with less force
both against the government and in habeas corpus proceedings.

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

1 encompass any “alien present in the United States who has not been admitted” following
2 inspection by immigration authorities. 8 U.S.C. § 1225(a), (b)(2)(A). The statute makes no
3 exception for how far into the country the alien traveled or how long the alien managed to
4 evade detection. Unless the Secretary exercises the narrow and discretionary parole
5 authority, detention is the rule for aliens who have never been lawfully admitted. There is
6 no dispute that Petitioner is an “applicant for admission” under Section 1225(a), because he
7 entered the country without inspection. ECF No. 7, ¶ 2; *see also* Notice to Appear, attached
8 as Exhibit A. He was neither admitted nor paroled into the United States. *Id.* This clear
9 statutory text means that Petitioner is not entitled to a bond hearing and potential release.
10 Despite the clear statutory text, this Court has held in prior cases before it that Petitioners
11 are entitled to bond hearings, bond, and release. *Torralba et al v. Wright et al*, 2:25-cv-1366;
12 *Maldonado Vasquez v. Feely*, 2:25-cv-01542; *Berto Mendez v. Noem et al*, 2:25-cv-02062; *Alvarado*
13 *Gonzalez v. Mattos et al.*, 2:25-cv-01599; *Serrano Gonzalez v. Knight et al.*, 2:25-cv-02081;
14 *Sanchez Aparicio v. Noem et al.*, 2:25-cv-01919; *Cornejo-Meijia v. Bernacke et al.*, 2:25-cv-02139;
15 *E.C. v. Noem et al.*, 2:25-cv-01789. The Court reasoned that this narrow construction is
16 necessary to avoid surplusage, but “[r]edundancies are common in statutory drafting,” and
17 are “not a license to rewrite or eviscerate another portion of the statute contrary to its text.”
18 *Barton v. Barr*, 590 U.S. 222, 223 (2020).

19 Besides, that canon has no relevance where, as here, portions of a statute are
20 superfluous under any interpretation. Nor is the Petitioner’s atextual reading necessary to
21 give meaning to the separate detention authority in Section 1226. On its face, that provision
22 applies to numerous aliens *not* subject to Section 1225(b)(2)(A), including all *admitted* aliens
23 who are now removable, and the mere fact of partial overlap is not a reason to rewrite clear
24 statutory text. Although the Government has previously operated under a different
25 understanding of the law, this Court must apply the language of Section 1225(b)(2)(A) as
26 written. The Court’s interpretation in the above referenced cases and most likely in this case
27 is not only contrary to text, but it would reimpose the same perverse regime that IIRIRA
28 was meant to eliminate — requiring the detention of aliens who present at a port of entry as

1 the law requires, but authorizing the release of those aliens who enter the United States in
2 violation of law. The Court should not endorse such a backwards outcome — particularly
3 one that is so plainly subversive of congressional intent.

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

6 **II. STATUTORY FRAMEWORK**

7 **a. The Pre-IIRIRA Framework Gave Preferential Treatment to Aliens** 8 **Unlawfully Present in the United States.**

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

13 Prior to 1996, the INA treated aliens differently based on whether the alien had
14 physically “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222–
15 223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); see *Hing Sum v. Holder*, 602 F.3d
16 1092, 1099–1100 (9th Cir. 2010) (same). “Entry” referred to “any coming of an alien into
17 the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically
18 entered the United States (or not) “dictated what type of [removal] proceeding applied” and
19 whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at
20 1099.

21 At the time, the INA “provided for two types of removal proceedings: deportation
22 hearing and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc).
23 An alien who arrived at a port of entry would be placed in “exclusion proceedings and
24 subject to mandatory detention, with potential release solely by means of a grant of parole.”
25 *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223; see 8 U.S.C. § 1225(a)-(b) (1995); *id.*
26 § 1226(a) (1995). By contrast, an alien who physically entered the United States unlawfully
27 would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens in
28 deportation proceedings, unlike those in exclusion proceedings, “were entitled to request

1 release on bond.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. §
2 1252(a)(1) (1994)).

3 Thus, the INA’s prior framework distinguishing between aliens based on physical
4 “entry” had the “‘unintended and undesirable consequence’ of having created a statutory
5 scheme where aliens who entered without inspection ‘could take advantage of the greater
6 procedural and substantive rights afforded in deportation proceedings,’ *including the right to*
7 *request release on bond*, while aliens who had ‘actually presented themselves to authorities for
8 inspection’ ... were subject to mandatory custody.” *Matter of Yajure Hurtado*, 29 I. & N. Dec.
9 at 223 (emphasis added) (quoting *Martinez v. Att’y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d
10 Cir. 2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at
11 225 (1996) (“House Rep.”) (“illegal aliens who have entered the United States without
12 inspection gain equities and privileges in immigration proceedings that are not available to
13 aliens who present themselves for inspection”).

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

17 Congress discarded that regime through enactment of IIRIRA, Pub. L. 104-208, 110
18 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of “ensur[ing] that all
19 immigrants who have not been lawfully admitted, regardless of their legal presence in the
20 country, are placed on equal footing in removal proceedings under the INA.” *Torres v. Barr*,
21 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

22 To that end, IIRIRA replaced the focus on physical “entry” with a focus on lawful
23 “admission.” IIRIRA defined “admission” to mean “the *lawful* entry of the alien into the
24 United States after inspection and authorization by an immigration officer.” 8 U.S.C.
25 § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer
26 distinguish aliens based on whether they had managed to evade detection and enter the
27 country without permission. Instead, the “pivotal factor in determining an alien’s status”
28 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). IIRIRA also eliminated the

1 exclusion-deportation dichotomy and consolidated both sets of proceedings into “removal
2 proceedings.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223.

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

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

9 An alien present in the United States who has not been admitted or who arrives in
10 the United States (whether or not at a designated port of arrival and including an alien who
11 is brought to the United States after having been interdicted in international or United States
12 waters) shall be deemed for purposes of this chapter an applicant for admission. 8 U.S.C.
13 § 1225(a)(1) (emphasis added). “All aliens ... who are applicants for admission or otherwise
14 seeking admission or readmission to or transit through the United States” are required to
15 “be inspected by [an] immigration officer[.]” *Id.* § 1225(a)(3). The inspection by the
16 immigration officer is designed to determine whether the alien may be lawfully “admitted”
17 to the country or, instead, must be referred to removal proceedings.

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

21 Section 1225(b)(1) provides for so-called “expedited removal proceedings,” *Dep’t of*
22 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which apply to a subset of
23 aliens — those who (1) are “arriving in the United States,” or who (2) have “not been
24 admitted or paroled into the United States” and have “not affirmatively shown, to the
25 satisfaction of an immigration officer, that the alien has been physically present in the
26 United States continuously for the 2-year period immediately prior to the date of the
27 determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, the
28 immigration officer shall “order the alien removed from the United States without further

1 hearing or review unless the alien indicates either an intention to apply for asylum ... or a
2 fear of persecution.” *Id.* § 1225(b)(1)(A)(i). In that event, the alien “shall be detained
3 pending a final determination of credible fear or persecution and, if found not to have such
4 fear, until removed.” *Id.* § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). An alien
5 processed for expedited removal who does not indicate an intent to apply for a form of relief
6 from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see*
7 8 C.F.R. § 235.3(b)(2)(iii).

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

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

19 While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA
20 grants DHS discretion to temporarily release an applicant for admission “only on a case-by-
21 case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C.
22 § 1182(d)(5)(A). Parole, however, “shall not be regarded as admission of the alien.” *Id.*;
23 *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary
24 determines that “the purposes of such parole ... been served,” the “alien shall ... be returned
25 to the custody from which he was paroled” and be “dealt with in the same manner as that of
26 any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A).

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

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

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

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

27 / / /

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

1 III. STANDARD OF REVIEW

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

7 Judicial review of immigration matters, including of detention issues, is limited.
8 *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. Am.-Arab Anti-Discrimination*
9 *Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo*
10 *v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow*
11 *Sun Wong*, 426 U.S. 88, 101 n.21 (1976) (“the power over aliens is of a political character
12 and therefore subject only to narrow judicial review”). The Supreme Court has thus
13 “underscore[d] the limited scope of inquiry into immigration legislation,” and “has
14 repeatedly emphasized that over no conceivable subject is the legislative power of Congress
15 more complete than it is over the admission of aliens.” *Fiallo*, 430 U.S. at 792 (internal
16 quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S.
17 522, 531 (1954).

18 The plenary power of Congress and the Executive Branch over immigration
19 necessarily encompasses immigration detention, because the authority to detain is elemental
20 to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United*
21 *States ex rel. Mezei*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to
22 expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's
23 political departments largely immune from judicial control.”); *Carlson v. Landon*, 342 U.S.
24 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong*
25 *Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be
26 vain if those accused could not be held in custody pending the inquiry into their true
27 character, and while arrangements were being made for their deportation.”); *Demore v. Kim*,

1 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally
2 permissible part of that process.”).

3 **IV. FACTUAL AND PROCEDURAL BACKGROUND**

4 Petitioner Jesus Perez-Regalado is an illegal alien from Mexico, who entered the
5 United States without inspection in 2006 at an unknown location. ECF No.7, ¶ 2, Exhibit
6 A. Petitioner was arrested for domestic violence in Salt Lake City on November 5, 2025.
7 *See* I-213, attached as Exhibit B. He has a pending criminal charge of domestic violence in
8 2025. ECF No. 7, ¶ 88. Subsequently, petitioner was detained by DHS on November 6,
9 2025. *Id.*, ¶ 3. After his detention by DHS, petitioner was issued an NTA for having
10 entered without inspection and for not having a valid entry document under INA
11 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). Exhibit A. Petitioner had a bond hearing on
12 November 17, 2025, and his bond was denied after an Immigration Judge Found that he is
13 subject to mandatory detention. *See* Immigration Judge’s Order, attached as Exhibit C.
14 Petitioner is an applicant for admission, and is in removal proceedings pursuant to 8
15 U.S.C. § 1229a. Petitioner is inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as a noncitizen
16 who entered the United States without being admitted or paroled, and under 8 U.S.C. §
17 1182(a)(7)(A)(i)(I) as an immigrant not in possession of a valid unexpired immigrant visa
18 or other valid entry document at the time of application for admission.

19 **V. ARGUMENT**

20 a. **Section 1225(b)(2) Mandates Detention of Aliens, Like Petitioner, Who Are** 21 **Present in the United States Without Having Been Lawfully Admitted.**

22 Under the plain language of Section 1225(b)(2), DHS is required to detain all aliens,
23 like Petitioner, who are present in the United States without admission and are subject to
24 removal proceedings — regardless of how long the alien has been in the United States or
25 how far from the border they ventured. That unambiguous language resolves this case. *See*
26 *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020)
27 (“Our analysis begins and ends with the text.”).
28

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

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

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

18 Petitioner falls squarely within the statute. He was “present in the United States,”
19 and there is no dispute that he has “not been admitted.” 8 U.S.C. § 1225(a). Petitioner
20 admitted that he has entered without an inspection the United States. ECF No. 7, ¶ 2.
21 Moreover, Petitioner cannot — and did not — establish that he is “clearly and beyond a
22 doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Therefore, Petitioner is
23 appropriately detained and “shall be detained for a proceeding under [8 U.S.C. § 1229a].”

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

26 There is no denial that Petitioner (and others like him) are “applicants for
27 admission” under Section 1225(b)(2). Petitioner has neither referenced nor pointed out, that
28 he is anything else but an applicant for admission under Section 1225(b)(2). Petitioner
claims that he is detained and “is placed in removal proceedings.” ECF No. 7, ¶ 62. The

1 statute itself makes clear that an alien who is an “applicant for admission” *is* necessarily
2 “seeking admission.” Moreover, an alien like Petitioner, who is identified by immigration
3 authorities as unlawfully present, and who does not choose to depart from the United States
4 voluntarily, is “seeking admission” under any interpretation of that phrase. Here, the
5 Petitioner entered the United States without an inspection.

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

13 Section 1225(a) provides that “[a]ll aliens ... who are applicants for admission *or*
14 *otherwise* seeking admission or readmission ... shall be inspected.” 8 U.S.C. § 1225(a)(3)
15 (emphasis added). The word “[o]therwise’ means ‘in a different way or manner[.]’” *Texas*
16 *Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015)
17 (quoting Webster’s Third New International Dictionary 1598 (1971)); *see also Att’y Gen. of*
18 *United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds*
19 *Tobacco Co.*, 839 F.3d 958, 963–64 (11th Cir. 2016) (en banc) (“or otherwise” means “the
20 first action is a subset of the second action”); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482–
21 83 (7th Cir. 2019). Being an “applicant for admission” is thus a particular “way or manner”
22 of seeking admission, such that an alien who is an “applicant for admission” *is* “seeking
23 admission” for purposes of Section 1252(b)(2)(A). No separate affirmative act is necessary.
24 *See Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) (“[M]any people who are not
25 *actually* requesting permission to enter the United States in the ordinary sense are
26 nevertheless deemed to be ‘seeking admission’ under the immigration laws”).

27 This reading is consistent with the everyday meaning of the statutory terms. One
28 may “seek” something without “applying” for it — for example, one who is “seeking”

1 happiness is not “applying” for it. But one *applying* for something is necessarily *seeking* it.

2 *Compare* Webster’s New World College Dictionary 69 (4th ed.) (“apply” means “To make a
3 formal request (*to someone for something*)”), *with id.* at 1299 (“seek” means “to request, ask
4 for”). For example, a person who is “applying” for admission to a college or club is
5 “seeking” admission to the college or club. *See* The American Heritage Dictionary of the
6 English Language 63 (1980) (“American Heritage Dictionary”) (“apply” means “[t]o
7 request or *seek* employment, acceptance, or *admission*”) (emphasis added). Likewise, an alien
8 who is “applying” for admission to the United States (*i.e.*, an “applicant for admission”) is
9 “seeking admission” to the United States.

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

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

25 That is the case here with this Petitioner. Under a straightforward reading of the
26 statute, being an “applicant for admission” is “seeking admission.” Although that reading
27 may lead to some redundancy in Section 1225(b)(2)(A), that is “not a license to rewrite”
28 Section 1225 “contrary to its text.” *Barton*, 590 U.S. at 223; *see Heyman v. Cooper*, 31 F.4th

1 1315, 1322 (11th Cir. 2022) (“The principle [that drafter do repeat themselves carries extra
2 weight where ... the arguably redundant words that the drafters employed ... are functional
3 synonyms”). And that is especially true, where that re-writing would be so clearly contrary
4 to Congress’s objective in passing the law.

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

24 Here, Petitioner entered the United States without inspection and is in removal
25 proceedings, subject to mandatory detention. A contrary view would make mandatory
26 detention turn on the fortuity happenstance of when an alien attempts to prove
27 admissibility. *See United States v. Wilson*, 503 U.S. 329, 334 (1992) (courts must not “presume
28 lightly” that statute’s application will turn on “arbitrary” issue of timing). Aliens subject to

1 Section 1225(b)(2) must prove admissibility at two stages — first, at the time of inspection, 8
2 U.S.C. § 1225(b)(2)(A); and second, during Section 240 removal proceedings if the alien
3 cannot show admissibility “clearly and beyond a doubt” at the time of inspection, *id.*
4 § 1229a(c)(2)(A) (alien has “burden of establishing that [he] is clearly and beyond a doubt
5 entitled to be admitted”). Petitioner has failed to meet these two stages. There is “no reason
6 why Congress would desire” the applicability of something so significant as mandatory
7 detention “to depend on the timing” of when an alien attempts to show admissibility,
8 *Wilson*, 503 U.S. at 334 — particularly given how susceptible that rule is to manipulation by
9 the alien.

10 To be sure, the Laken Riley Act’s application to aliens who are inadmissible under
11 §1182(a)(6)(A) — for being “present ... without being admitted or paroled” — overlaps with
12 Section 1225(b)(2)(A). Both statutes mandate detention of “applicants for admission” who
13 fall within the specified grounds of inadmissibility. But again, “[r]edundancies are common
14 in statutory drafting,” and are “not a license to rewrite or eviscerate another portion of the
15 statute contrary to its text.” *Barton*, 590 U.S. at 223. That is particularly true here, where this
16 portion of the Laken Riley Act overlaps with Section 1225(b)(2)(A) even under *Petitioner’s*
17 reading, which recognizes that applicants for admission who are “seeking admission” must
18 be detained under Section 1225(b)(2)(A). *See Microsoft Corp. v. I4I Ltd. P’ship*, 564 U.S. 91,
19 106 (2011) (“the canon against superfluity assists only where a competing interpretation
20 gives effect to every clause and word of a statute”).

21 **b. The Recent *Vargas Lopez v. Trump* Decision Is Highly Instructive and Supports**
22 **Petitioner’s Detention Under 8 U.S.C. § 1225.**

23 The United States District Court for the District of Nebraska’s decision denying the
24 habeas corpus petition in *Vargas Lopez v. Trump* is particularly relevant here. In *Vargas Lopez*,
25 the petitioner, an undocumented alien who had been residing in the United States since
26 2013, sought immediate release from detention. *Vargas Lopez v. Trump*, No. 8:25CV526,
27 2025 WL 2780351, at *1 (D. Neb. Sept. 30, 2025). Prior to filing his petition, Vargas Lopez
28 had received a bond hearing, and the immigration judge ordered that he be released from

1 custody under bond of \$10,000. *Id.* at *3. DHS however appealed the bond determination,
2 which automatically stayed Vargas Lopez’s release on bond. *Id.* Vargas Lopez then filed a
3 petition for habeas corpus alleging that the automatic stay was *ultra vires* and violated his
4 due process rights. *Id.* He also alleged that application of 8 U.S.C. § 1225 in his case was
5 unlawful because 8 U.S.C. § 1226 should control his detention. *Id.*

6 First, the court denied the petition because Vargas Lopez failed to carry his burden of
7 demonstrating by a preponderance of the evidence that his detention was unlawful. *Id.* at *6.
8 Vargas Lopez argued that he fell under § 1226, not 1225, but his petition and filings failed to
9 provide proof of the “warrant for Vargas Lopez’s arrest” that § 1226 requires.

10 Second, the court concluded that Vargas Lopez was subject to detention without
11 possibility of bond under § 1225(b)(2). To do so, the court analyzed the Supreme Court’s
12 decision in *Jennings* to reject the notion that § 1225(b)(2) and § 1226(a) apply to two distinct
13 groups of aliens; the two sections are not mutually exclusive. *Id.* at *6–8. The court then
14 concluded that Vargas Lopez is an alien within the “catchall” scope of § 1225(b)(2), subject
15 to detention without possibility of release on bond through a proceeding on removal under §
16 1229a. *Id.* at *9. The court found that Vargas Lopez was an “applicant for admission”
17 because his counsel admitted that Vargas Lopez “wische[d] to stay in this country.” *Id.* That
18 finding, according to the court, was consistent with the conclusions of the BIA
19 in *Hurtado* and *Jennings*.

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

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28 / / /

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

2 The United States District Court for the Southern District of California’s decision in
3 *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228, at *1 (S.D. Cal. Sept. 24,
4 2025), is also instructive. In *Chavez*, the court denied a motion for a temporary restraining
5 order (“TRO”) filed by the petitioners who were detained under 8 U.S.C. § 1225(b)(2).
6 *Chavez*, 2025 WL 2730228, at *1. The *Chavez* petitioners argued they should not have been
7 mandatorily detained and instead they should have received bond redetermination hearings
8 under § 1226(a). *Id.* The *Chavez* petitioners filed a motion for TRO, seeking to “enjoin[]
9 Respondents from continuing to detain them unless [they received] an individualized bond
10 hearing . . . pursuant to 8 U.S.C. § 1226(a) within fourteen days of the TRO.” *Id.*

11 In denying the TRO, the *Chavez* court went no further than the plain language of §
12 1225(a)(1). *Id.* at *4. Beginning and ending with the statutory text, the *Chavez* court correctly
13 found that because petitioners did not contest that they are “alien[s] present in the United
14 States who ha[ve] not been admitted,” then the *Chavez* petitioners are “applicants for
15 admission” and thus subject to the mandatory detention provisions of “applicants for
16 admission” under § 1225(b)(2). *Id.*; see also *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221–
17 222 (finding that an alien who entered without inspection is an “applicant for admission”
18 and his argument that he cannot be considered as “seeking admission” is unsupported by
19 the plain language of the INA, and further stating, “[i]f he is not admitted to the United
20 States . . . but he is not ‘seeking admission’ . . . then what is his legal status?”).

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

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

1 First, the BIA applied its specialized expertise in immigration detention law, the very
2 subject Congress charged it with administering. Its decision addressed the interplay between
3 §§ 1225 and 1226 in detail, relying on statutory text, legislative history, and decades of
4 experience resolving custody questions. Second, the BIA’s reasoning is thorough and well
5 supported. It carefully explained why noncitizens who entered without inspection remain
6 “applicants for admission” under § 1225(a)(1) and why reclassifying them under § 1226(a)
7 would create statutory issues and undermine congressional intent. Third, the BIA’s
8 interpretation is consistent with Supreme Court precedent, including *Jennings*, which
9 recognized that detention under § 1225(b) is mandatory. Finally, adopting *Hurtado* promotes
10 uniformity and coherence in federal immigration law by preventing detention outcomes
11 from turning on the happenstance of when and where a noncitizen is apprehended.

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

13 Any argument that prior agency practice supports applying § 1226(a) to Petitioner is
14 unavailing because under *Loper Bright*, the plain language of the statute and not prior
15 practice controls. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 225–26. In overturning
16 *Chevron*, the Supreme Court recognized that courts often change precedents and “correct[]
17 our own mistakes” *Loper Bright Enterprises*, 603 U.S. at 411 (overturning *Chevron, U.S.A.,*
18 *Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). *Loper Bright* overturned a decades
19 old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management
20 Act that itself predated IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380.
21 Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*. The
22 weight given to agency interpretations “must always ‘depend upon their thoroughness, the
23 validity of their reasoning, the consistency with earlier and later pronouncements, and all
24 those factors which give them power to persuade.’” *Loper Bright Enterprises*, 603 U.S. at
25 432–33 (quoting *Skidmore*, 323 U.S. at 140 (cleaned up)).

26 The BIA’s recent precedent decision in *Hurtado* includes thorough reasoning. *Matter*
27 *of Yajure Hurtado*, 29 I. & N. Dec. at 221–22. In *Hurtado*, the BIA analyzed the statutory
28 text and legislative history. *Id.* at 223–225. It highlighted congressional intent that aliens

1 present without inspection be considered “seeking admission.” *Id.* at 224. The BIA
2 concluded that rewarding aliens who entered unlawfully with bond hearings while
3 subjecting those presenting themselves at the border to mandatory detention would be an
4 “incongruous result” unsupported by the plain language “or any reasonable interpretation
5 of the INA.” *Id.* at 228.

6 To be sure, “when the best reading of the statute is that it delegates discretionary
7 authority to an agency,” the Court must “independently interpret the statute and effectuate
8 the will of Congress.” *Loper Bright Enterprises*, 603 U.S. at 395. But “read most naturally, §§
9 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain
10 proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does
11 not support Petitioner’s position that the plain language mandates detention under
12 § 1226(a).

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

14 As mentioned above, Congress broadly crafted “applicants for admission” to include
15 undocumented aliens present within the United States like Petitioner. *See* 8 U.S.C. §
16 1225(a)(1). And Congress directed aliens like the Petitioner to be detained during their
17 removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 (“Read most
18 naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until
19 certain proceedings have concluded.”). In so doing, Congress made a legislative judgment to
20 detain undocumented aliens during removal proceedings, as they — by definition — have
21 crossed borders and traveled in violation of United States law. As explained above, that is
22 the prerogative of the legislative branch serving the interest of the government and the
23 United States.

24 The Supreme Court has recognized this profound interest. *See Shaughnessy*, 345 U.S.
25 at 210 (“Courts have long recognized the power to expel or exclude aliens as a fundamental
26 sovereign attribute exercised by the Government’s political departments largely immune
27 from judicial control.”). And with this power to remove aliens, the Supreme Court has
28 recognized the United States’ longtime Constitutional ability to detain those in removal

1 proceedings. *Carlson*, 342 U.S. at 538 (“Detention is necessarily a part of this deportation
2 procedure.”); *Wong Wing*, 163 U.S. at 235 (“Proceedings to exclude or expel would be vain
3 if those accused could not be held in custody pending the inquiry into their true character,
4 and while arrangements were being made for their deportation.”); *Demore*, 538 U.S. at 531
5 (“Detention during removal proceedings is a constitutionally permissible part of that
6 process.”); *Jennings*, 583 U.S. at 286 (“Congress has authorized immigration officials to
7 detain some classes of aliens during the course of certain immigration proceedings.
8 Detention during those proceedings gives immigration officials time to determine an alien's
9 status without running the risk of the alien's either absconding or engaging in criminal
10 activity before a final decision can be made.”).

11 In another immigration context (aliens already ordered removed awaiting their
12 removal), the Supreme Court has explained that detaining these aliens less than six months
13 is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this
14 presumptive constitutional limit has been subsequently distinguished as perhaps
15 unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court
16 explained Congress was justified in detaining aliens during the entire course of their removal
17 proceedings who were convicted of certain crimes. *Demore*, 538 U.S. at 513. In that case,
18 similar to undocumented aliens like Petitioner, Congress provided for the detention of
19 certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court
20 emphasized the constitutionality of the “definite termination point” of the detention, which
21 was the length of the removal proceedings.³ *Id.* at 512.⁴ In light of Congress’s interest in
22 dealing with illegal immigration by keeping specified aliens in detention pending the
23
24

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

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

1 removal period, the Supreme Court dispensed of any Due Process concerns without
2 engaging in the “*Mathews v. Eldridge* test” *See id. generally*.

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

13 The temporary, automatic, and discretionary stays permit the United States an
14 opportunity to appeal an IJ bond decision to correct any errors by the Immigration Judge
15 while providing “an appropriate and less restrictive means whereby the government’s
16 interest in seeking a stay of the custody redetermination may be protected without unduly
17 infringing upon Petitioner’s liberty interest.” *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1077
18 (N.D. Cal. 2004); *El-Dessouki v. Cangemi*, No. CIV 063536 DSD/JSM, 2006 WL 2727191, at
19 *3 (D. Minn. Sept. 22, 2006); *Altayar v. Lynch*, No. CV-16-02479-PHX-GMS (JZB), 2016
20 WL 7383340, at *10–11 (D. Ariz. Nov. 23, 2016).

21 As explained in *Altayar*, purpose of the automatic stay is to “avoid the necessity of
22 having to decide whether to order a stay on extremely short notice with only the most
23 summary presentation of the issues.” *Review of Custody Determinations*, 71 FR 57873-01,
24 2006 WL 2811410; *Altayar*, 2016 WL 7383340 at *12-13. An automatic stay of up to 90
25 days does not violate due process because it is narrowly tailored to serve a compelling
26 United States interest. *Id.* In *Altayar*, the Court found there is no procedural due process
27 violation from § 1003.19(i)(2).

1 In this case, Petitioner, who is present in the United States without admission or
2 parole, is an applicant for admission in INA § 240 removal proceedings and is therefore
3 detained pursuant to 8 U.S.C. § 1225. As discussed above, his detention is mandatory and
4 the IJ does not have jurisdiction to issue a bond. As history has revealed, the BIA issued its
5 precedential decision in *Hurtado*, in which it ruled that Immigration Judges lacked
6 jurisdiction to grant bonds to illegal aliens like the Petitioner. The United States is aware of
7 prior rulings in this District and others rejecting these arguments, but the United States
8 respectfully maintains Petitioner has not been deprived of Due Process in light of the
9 aforementioned precedent.

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

11 Petitioner seeks attorney's fees and costs pursuant to § 2412 of the Equal Access for
12 Justice Act ("EAJA"), which allows fee-shifting in civil actions by or against the United
13 States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504,
14 and fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioner cannot obtain
15 fees in this case under 5 U.S.C. § 504 since that provision excludes administrative
16 immigration proceedings. *Ardestani v. I.N.S.*, 502 U.S. 129 (1991). His only recourse for fees
17 is pursuant to § 2412(d)(1)(A), which provides, subject to exceptions not relevant here, that
18 in an action brought by or against the United States, a court must award fees and expenses
19 to a prevailing non-government party "unless the court finds that the position of the United
20 States was substantially justified or that special circumstances make an award unjust." 28
21 U.S.C. § 2412(d)(1)(A).

22 Here, Petitioner's request is premature because he is not a prevailing party. Second,
23 even if Petitioner were to prevail in this case, the Federal Respondents' position asserted in
24 this Response is substantially justified because other courts have found the arguments
25 presented herein to be persuasive and that DHS can lawfully detain, under the mandatory
26 detention provisions of 8 U.S.C. § 1225, other petitioners who are similarly situated to this
27 Petitioner.
28

1 As described above, the United States District Court for the District of Nebraska
2 and the United States District Court for the Southern District of California have both
3 issued decisions holding that, under the plain language of § 1225(a)(1), aliens present in the
4 United States who have not been admitted are “applicants for admission” and are thus
5 subject to the mandatory detention provisions of “applicants for admission” under §
6 1225(b)(2). See *Vargas Lopez*, 2025 WL 2780351; *Chavez*, 2025 WL 2730228. Because other
7 federal judges have found persuasive the positions advanced by the Federal Respondents in
8 this case, the Federal Respondents’ position is substantially justified. See *Medina Tovar v.*
9 *Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that the district court did not abuse
10 its discretion, in finding that the United States’ position was substantially justified for
11 purposes of EAJA, where different judges disagreed about the proper reading of the statute
12 and the case involved an issue of first impression). Because the United States’ position in
13 this case is substantially justified, Petitioner’s request for attorney’s fees under EAJA
14 cannot prevail.

15 VI. CONCLUSION

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

18 Respectfully submitted this 31st day of December 2025.

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