UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

YENIFER ANDREA ESQUIVEL LEON,	:	**No. 1:25-CV-02408**
Petitioner	:	
	:	**(Neary, J.)**
v.	:	
	:	**(Schwab. M.J.)**
ANGELA HOOVER, *et al.*,	:	
Respondents[1]	:	**Filed Electronically**

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Respondent Angela Hoover[1] hereby files this Brief in response to Petitioner Yenifer Andrea Esquivel Leon's (Leon) Petition for Writ of Habeas Corpus. Leon is an immigration detainee in the custody of the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), at the Clinton County Correctional Facility in McElhattan, Pennsylvania. (Pet. (Doc. 1), at 3, ¶ 6.) Specifically, Leon requests that the Court grant her Petition and order her release or, in the alternative, order a bond hearing pursuant to 8 U.S.C. §

[1] Although Petitioner named several other government officials, the only proper respondent in this case is Angela Hoover, the Warden of Clinton County Correctional Facility. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) ("In habeas challenges to present physical confinement – 'core challenges' – the default rule is that the proper respondent is the warden of the facility where the prisoner is being held."). Petitioner requests release from confinement. *See* Doc. 1, Verified Petition for Writ of Habeas Corpus.

1226(a). (*Id.* at 4-5, 29-30.) Leon further requests that the Court order that she not be transferred outside the Commonwealth of Pennsylvania while the Petition is pending and award fees and costs under the Equal Access to Justice Act (EAJA). (*Id.*)

This Petition addresses the interpretation of the Government's immigration detention authority under the Immigration and Nationality Act (INA), namely 8 U.S.C. § 1225(b)(2)—a recurring issue that has arisen in many dozens (if not hundreds) of cases filed within this Circuit over the last several months. The Government maintains that Leon, is, by law, an applicant for admission who "*shall* be detained[.]" 8 U.S.C. §§ 1225(a)(1), (b)(2)(A) (emphasis added). Despite the plain language of these provisions, Leon effectively contends that she is subject to discretionary detention under 8 U.S.C. § 1226(a) and its recent amendments, including § 1226(c)(1)(E). (Pet. (Doc. 1.)) For the reasons noted below, Leon's Petition fails, and this Court should deny it.

I. Introduction

Before the passage of the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA") in 1996, the federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who had entered and were already unlawfully present in the United States to obtain

release pending removal proceedings. Congress overhauled the immigration system in 1996, which had amongst its goals the specific objective of ending the preferential treatment of aliens who evade inspection and enter the United States unlawfully.

Congress enacted what is now codified at 8 U.S.C. § 1225, which "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). The provision also mandates the detention of any "applicant for admission" who cannot show that he or she is "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 the alien traveled or how long the alien managed to evade detection. Unless the Secretary exercises the narrow and discretionary parole authority, mandatory detention is the rule for aliens who have never been lawfully admitted.

Here, Leon, a citizen of Guatemala, is an "applicant for admission" under Section 1225(a), and she cannot (and has not) shown that she is "clearly and beyond a doubt" entitled to be admitted. Leon entered the country without inspection, was never "admitted," and thus remains an "applicant for admission." Leon does not contest that she was never admitted into the United States.

Leon relies on "legislative context" to justify a cramped reading that limits Section 1225(b)(2) to aliens who are "arriving" at the border. The statute contradicts that reading. Section 1225 of Title 8 deems all aliens who are "present in the United States" without admission to be "applicants for admission," and it mandates that all such applicants for admission—except for those subject to expedited removal or otherwise exempted— "shall be detained" during their removal proceedings. 8 U.S.C. § 1225(a)(1), (b)(2)(A). Detention is mandatory, regardless of the duration of the alien's presence in the United States or the alien's distance from the border.

As for Leon's constitutional claims that due process afforded to applicants for admission is that which is provided by the INA, no additional process is due to Leon; DHS's detention of her does not violate her due process rights, even if she had lived in the U.S. illegally for years.

Respondent recognizes that this Court, *see Santana-Rivas v. Warden of Clinton County Correctional Facility*, No. 3:25-cv-01896, 2025 WL 3522932 (M.D. Pa. Nov. 13, 2025) (Camoni, M.J.), *adopted in part, rejected in part*, 2025 WL 3513152 (M.D. Pa. Dec. 8, 2025) (Wilson, J.), and other jurists of this Court have recently rejected Respondent's arguments on the issues presented below. *See, e.g.*, *Darshan H. Patel v. David O'Neill, et al.*, 3:25-cv-2185, 2025 WL 3516865 (M.D. Pa. Dec. 8, 2025) (Mariani, J.); *Luis Alberto*

Paredes Quispe v. Michael T. Rose, et al., No. 3:25-cv-02276, 2025 WL 3537279 (M.D. Pa. Dec. 10, 2025) (Mehalchick, J.); *Juan Maria Chimborazo Cunin v. Brian McShane, et al.*, No. 3:25-cv-1887, 2025 WL 3542999 (M.D. Pa. Dec. 10, 2025) (Neary, J.); *Tahirou Samassa v. Craig Lowe, et al.*, No. 1:25-CV-02197, 2025 WL 3653751 (M.D. Pa. Dec. 17, 2025) (Brann, C.J.) (while this decision was not dispositive on the underlying petition, Chief Judge Brann granted a request for a temporary restraining order finding that the petitioner was likely to succeed on the merits). However, neither the United States Court of Appeals for the Third Circuit, nor any of its sister circuits, have addressed the issue. Respondent respectfully remains of the view that his position is correct and therefore presents these arguments to those jurists who have ruled against the position in order to preserve them for appeal (if ultimately authorized by the Solicitor General). As such, Respondent respectfully requests that the Court deny the Petition.

Background

A. Statutory Framework

1. The Pre-IIRIRA Framework Gave Preferential Treatment to Aliens Unlawfully Present in the United States.

The INA contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens

unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal.

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

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). An alien 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); *id.* § 1226(a) (1995). In contrast, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens 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 physical "entry" had

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

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") (noting "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").

2. IIRIRA Eliminated the Preferential Treatment of Aliens Unlawfully Present in the United States and Mandated Detention of all "Applicants for Admission."

Congress discarded that regime through enactment of IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in

removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the governing touchstone. IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). Hence, IIRIRA no longer distinguishes aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep., *supra*, at 226 (emphasis added); *Hing Sum*, 602 F.3d at 1100 (similar). 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:

Section 1225(a): Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. That provision states that an 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) (emphasis added). "All aliens . . . who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States" are required to "be inspected by [an] immigration officer." *Id.* § 1225(a)(3). The inspection by the immigration officer is designed to determine whether the alien may be lawfully "admitted" to the country or, instead, must be referred to removal proceedings.

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

Section 1225(b)(1) provides for so-called "expedited removal proceedings," *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of aliens—those who (1) are "arriving in the United States," or who (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 aliens, 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 also* 8 C.F.R. § 235.5(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for a form of relief from removal 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 v. Rodriguez*, 583 U.S. 281, 287 (2018). It requires that those aliens 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).[2] *See* 8 C.F.R. § 253.3(b)(1)(ii)

[2] Subsection (b)(2) does not apply to (1) aliens subject to expedited removal, (2)

(mirroring Section 1225(b)(2) 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 at the moment those proceedings begin").

While Section 1225(b)(2) does not allow for aliens 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 case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Parole, however, "shall not be regarded as 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 . . . 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). **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 is the only provision that governs the detention of aliens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their

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crewmen, (3) stowaways, or (4) aliens who "arriv[e] on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States." 8 U.S.C. § 1225(b)(2)(B)-(C).

visas or are later determined to have been improperly admitted. 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." *Id.* § 1226(a). Detention under this provision is generally discretionary: The Attorney General "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2)[3]. That "default rule," however, does not apply to certain criminal aliens who are being released from detention by 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 detain these aliens "when 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.*

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

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

(and prohibits parole for) aliens who (1) are inadmissible because they are physically present in the United States without admission or parole, have committed a material misrepresentation or fraud, or lack required documentation; 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).

3. DHS Concluded That Section 1225(b)(2) Requires Detention of All Applicants for Admission.

Immigration judges previously treated aliens who entered the United States without admission and were later detained away from the border 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.

Recently, after reviewing the exact language of the statute and Congressional intent, DHS concluded that all aliens who enter the country without being admitted or who otherwise arrive in the United States without proper documentation 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. Thus, 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]. The Board of Immigration Appeals soon adopted this interpretation in *Hurtado*.

The Board concluded that Section 1225(b)(2)'s mandatory detention regime applies to *all* aliens 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; *see also id.* at 225 ("Immigration Judges lack authority to hear bond requests or to grant bond to aliens … who are present in the United States without admission").

B. Leon's Immigration and Criminal History

Leon, a native of Guatemala, is an alien present in the United States without being admitted or paroled, entering on an unknown date and at an unknown place. (Ex. 1, DHS Record – Record of Deportable/Inadmissible Alien, at 2-3.)

On April 24, 2022, Leon was encountered by United States Border Patrol in the Rio Grande Valley, Texas Border Patrol Sector. (*Id.* at 3.) The subject was processed for Warrant of Arrest/Notice to Appear as per section 212(a)(6)(A)(i) of the Immigration and Nationality Act. (*Id.*) Leon was not served the Notice to

Appear. (*Id.*) She was 15 years old at the time (now 19). Leon did not have any Visa or other immigration documents. (*Id.*)

Leon has an approved I-765 and I-360. (*Id.*)

On November 12, 2025, Leon was arrested by the Philadelphia Police Department and charged with Retail Theft and Conspiracy. (*Id.*) The charges were later dropped. (ujsportal.pacourts.us/casesearch last accessed January 7, 2026.)

On December 1, 2025, ICE Enforcement and Removal Operations Philadelphia, Pennsylvania (ERO-PHI) officers encountered Leon at 901 Filbert Street, Philadelphia, PA 19107, as she was departing from her Criminal Court Hearing. (*Id.*) The officers established positive identification through an interview and prior immigration encounter photos. (*Id.*) Officers identified themselves both verbally and physically with agency-issued badges and credentials and advised the subject that ICE/ERO had an Administrative Warrant (I-200) for her arrest. (*Id.*) Leon was arrested without incident and was taken into the Philadelphia Field Office for further processing. (*Id.*)

On December 1, 2025, a Notice to Appear was personally served on Leon, scheduling a video hearing for December 12, 2025. (Ex. 2, Notice to Appear.) The Notice charged her as an alien present in the United States who was not admitted or paroled, pursuant to the INA 212(a)(6)(A)(i). (*Id.*, at 4.) The NTA identified Leon as a native and citizen of Guatemala, and she has no

immigration documents, pursuant to the INA, 212 (a)(7)(A)(i)(I). (*Id.*, at 1, 4.)

On December 3, 2025, the Elizabeth Immigration Court was served with an I-830 for Leon. (Ex. 3, I-830.)

On December 23, 2025, the Elizabeth Immigration Court issued a Notice of Internet-Based Hearing for January 13, 2026. (Ex. 4, Notice of Hearing.)

Leon was ultimately transferred to Clinton County Correctional Facility where she has been detained since December 2025.

II. Questions Presented

Whether this Court should deny the Petition because:

A. Section 1225(b)(2) Mandates Detention of Aliens, Like Leon, Who Are Present in the United States Without Having Been Lawfully Admitted?

B. Leon's Detention Does Not Violate Due Process or Federal Regulations?

Suggested Answers: Affirmative.

III. Argument

Leon's argument that she is subject to discretionary detention under Section 1226, rather than mandatory detention under Section 1225(b)(2), because she illegally entered the United States and resided here for some time without apprehension, contradicts the plain text of the statute and the Court should dismiss the Petition on its merits.

A. Section 1225(b)(2) Mandates Detention of Aliens Who Are Present in the United States Without Having Been Lawfully Admitted.

Under the plain language of Section 1225(b)(2), DHS must detain all aliens, like Leon, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the alien has resided in the United States or how far from the border they ventured. *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.").

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

Petitioner's argument is based on *Matter of Hurtado,* 29 I&N Dec. 216 (BIA 2025), and she claims that noncitizens who are apprehended in the United States but have never been admitted and are subject to mandatory detention without a bond hearing violates 8 U.S.C. § 1225(b)(2), and that 8 U.S.C. § 1226(a) instead applies and authorizes release on bond following a hearing before an immigration judge. (Doc. 1 (Pet.) at 4.)

Section 1225(a) defines "applicant for admission" to encompass an alien who either "arrives in the United States" or who is "present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). 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. § 1125(b)(2)(A) (emphasis added). The statute's use of the term "shall" makes clear that detention is mandatory, *see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998), and the statute makes no exception for the duration of the alien's presence in the country or where in the country she is located. Therefore, the statute's plain text mandates that DHS detain all "applicants for admission" who do not fall within one of its exceptions.

Leon falls within the statutory definition because DHS found her "present in the United States," and she had "not been admitted." 8 U.S.C. § 1225(a). Moreover, Leon cannot—and did not—establish that she is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Therefore, Leon "shall be detained for a proceeding under [8 U.S.C. § 1229a]."

2. Section 1225(b)(2)'s Reference to Aliens "Seeking Admission" Does Not Narrow Its Scope to "Arriving Aliens" at Ports of Entry.

Leon relies on the portion of the statute that refers to aliens who are "seeking admission" to support her argument that Section 1225(b) applies to people arriving at United States points of entry or recent arrivals, while Section 1226 applies to people like Leon, who illegally entered the United States and have been residing here. (Doc. 1 at 25-26.) The statute, however, provides that an alien who is an "applicant for admission" *is* necessarily "seeking

admission." Moreover, an alien like Leon, who is identified by immigration authorities as unlawfully present, and who does not choose to depart from the United States voluntarily, is "seeking admission" under any interpretation of that phrase particularly since she could only remain in the United States by gaining admission. 8 U.S.C. § 1225(b)(2)(A).

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

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 an alien who is an "applicant for admission" *is* "seeking admission" for purposes of Section 1252(b)(2)(A). No separate affirmative act is necessary. *See Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 (BIA 2012) ("[M]any people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws").

This reading is consistent with the everyday meaning of the statutory terms. One may "seek" something without "applying" for it—for example, one who is "seeking" happiness is not "applying" for it. But one *applying* for something is necessarily *seeking* it. *Compare* Webster's New World College Dictionary 69 (4th ed.) ("apply" means "To make a formal request (*to* someone *for* something)"), *with id.* at 1299 ("seek" means "to request, ask for"). For example, a person who is "applying" for admission to a college or club is "seeking" admission to the college or club. *See* The American Heritage Dictionary of the English Language 63 (1980) ("American Heritage Dictionary") ("apply" means "[t]o request or *seek* employment, acceptance, or

admission") (emphasis added). Likewise, an alien who is "applying" for admission to the United States (*i.e.*, an "applicant for admission") is "seeking admission" to the United States. And that's true even when the alien has been physically present in the country for many years, as that alien can "still be an applicant for *lawful* entry, seeking legal 'admission.'" *Mejia Olalde*, 2025 WL3131942, at *3. As the geographic and temporal limits in the neighboring provision, Section 1225(b)(1), demonstrate, "[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." *Id.* at *4.

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" because they are already admitted, but they still may be "seeking admission." *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 lawful admission.

Although the Government previously operated under a narrower

understanding 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), past practice does not justify disregard of clear statutory language. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015). Indeed, in the context of this very statute the Supreme Court has rejected longstanding government interpretations that it deemed incompatible with statutory text. *See Pereira v. Sessions*, 585 U.S. 198, 204-05, 208-09 (2018). A court, therefore, 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. A "nontextual" practice cannot upend that plain statutory meaning. *Mejia Olalde*, 2025 WL 3131942, at *5 (rejecting the Government's prior understanding as "nontextual" and unsupported by any "thorough, reasoned analysis").

Moreover, an "applicant for admission" covers a subset of aliens "seeking admission." The phrase "in the case of an alien who is an applicant for admission," offset at the beginning of Section 1225(b)(2)(A), therefore modifies and narrows the scope of the remaining language— "if the examining immigration officer determines that an alien seeking admission is not . . . entitled to be admitted, the alien shall be detained." The structure of the

provision indicates that any such redundancy simply serves to make the provision more readable. This is not a case where the additional language serves to limit the provision's scope.

In any event, "[t]he canon against surplusage is not an absolute rule." *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 v. Barr*, 590 U.S. 222, 223 (2020). Thus, "[t]he Court has often recognized that sometimes the better overall reading of a statute contains some redundancy." *Id.* 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 223.

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 223; *see Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) ("The 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.

Even if "seeking admission" required some separate affirmative conduct by Leon, her very act of not departing, is by any definition "seeking admission." Section 1225(b)(2)(A) applies to an alien who is present in the United States unlawfully, even for years. Although the alien may not have been affirmatively seeking admission during those years of illegal presence, Section 1225(b)(2) is not concerned with the alien's pre-inspection conduct. Rather, the statute's use of present tense language ("seeking" and "determines") shows that its focus is a specific point in time—when "the examining immigration officer" is making a "determin[ation]" regarding the alien's admissibility. 8 U.S.C. § 1225(b)(2)(A). At *that* point, the alien is "seeking"—*i.e.*, presently "endeavor[ing] to obtain," American Heritage Dictionary, *supra*, at 1174—admission into the United States; if it were otherwise, the applicant would not attempt to show that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). That inference is confirmed by Section 1225(a)(4), which authorizes an alien to voluntarily "depart immediately from the United States." An applicant who forgoes that statutory option and instead endeavors to

prove admissibility and opts for Section 240 removal proceedings—proceedings in which the alien has the "burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted," *id.* § 1229a(c)(2)(A)—is plainly "endeavor[ing] to obtain" admission to the United States. American Heritage Dictionary, *supra*, at 1174.

Other statutory provisions discussed *supra* provide even further support. Congress made clear that any "alien present in the United States who has not been admitted" is "deemed . . . an applicant for admission." 8 U.S.C. § 1225(a)(1). And the statute's use of "otherwise" when referring to aliens "who are applicants for admission or *otherwise* seeking admission," *Id.* § 1225(a)(3), makes clear that all applicants for admission are seeking admission. Accordingly, an alien's presence in the United States without lawful admission is *itself* an act of seeking admission, whether that alien is present in southern Texas or western Nebraska.

Here, Leon is a noncitizen unlawfully present in the United States. (Ex. 1, Record of Deportable/Inadmissible Alien at 3.) Leon does not dispute that she is removeable for violations of sections 212(a)(6)(A)(i) and 212(a)(7)(a)(i)(I) of the INA. Because Leon falls within the definition of individuals deemed to be "applicants for admission," the specific detention authority under § 1225(b) governs over the general authority found at § 1226(a).

A contrary view would make mandatory detention turn on the fortuity of happenstance of when an alien attempts to prove admissibility. *See United States v. Wilson*, 503 U.S. 329, 334 (1992) (courts must not "presume lightly" that statute's application will turn on "arbitrary" issue of timing). Aliens subject to Section 1225(b)(2) must prove admissibility at one of two stages—first, at the time of inspection, 8 U.S.C. § 1225(b)(2)(A); and second, during Section 240 removal proceedings if the alien cannot show admissibility "clearly and beyond a doubt" at the time of inspection. *Id.* § 1229a(c)(2)(A) (alien has "burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted"). The required showing is the same. But on the lower court's reading, because attempting to show admissibility is the sort of act that demonstrates an alien is "seeking admission," detention is required only of aliens who attempt to show admissibility at the time of inspection, but not of those who wait until removal proceedings are commenced. There is "no reason why Congress would desire" the applicability of something so significant as mandatory detention "to depend on the timing" of when an alien attempts to show admissibility, *Wilson*, 503 U.S. at 334, particularly given how susceptible that rule is to manipulation by the alien.

3. Section 1226(c) Does Not Support Leon's Argument.

Leon cites the text of Section 1226(c)(1)(E) to support his argument that

people charged as inadmissible, including those like him who are present without admission or parole, are entitled to a bond hearing. (Doc. 1 at 10.) Although Section 1226(c) and Section 1225(b)(2) overlap for some aliens, each provision has independent effect. Section 1226(c) has substantial independent effect beyond aliens who entered without admission, and Section 1225(b)(2) covers circumstances beyond release from another entity's custody. Moreover, mere overlap is no basis for re-writing clear statutory text.

First, 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). Section 1226(a) provides the detention authority for the significant group of aliens who are *not* "applicants for admission" subject to Section 1225(b)(2)(A)—specifically, aliens who have been admitted to the United States but are now removable. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("the specific governs the general"). For example, the detention of any of the millions of aliens who have overstayed their visas will be governed by Section 1226(a), because those aliens (unlike Petitioner) *were* lawfully admitted to the United States.

Second, section 1226(c) is the exception to Section 1226(a)'s discretionary detention regime. It requires the Executive to detain "any alien"

who is deportable or inadmissible for having committed specified offenses or engaged in terrorism-related actions "when the alien is released" from another entity's custody. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Like Section 1226(a), subsection (c) applies to significant groups of aliens *not* encompassed by Section 1225(b)(2), such as visa overstayers or aliens who are lawfully present but have committed certain crimes.

Third, 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)-(C). By contrast, Section 1225(b)(2) has no application to admitted aliens. 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). Those provisions, too, sweep more broadly than Section 1225(b)(2), because they 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)). In this respect, Section 1226(c)(1) applies to admitted aliens, who are not covered by Section 1225(b)(2).

Finally, as noted above, Section 1225(b)(2)(A) does "not apply to an alien

... who is a crewman," "a stowaway," or "is arriving on land ... from a foreign territory contiguous to the United States." 8 U.S.C. 1225(b)(2)(B)-(C). Section 1226(c) would apply to those aliens, too, if they were inadmissible or deportable on one of the specified grounds.

Nor does the Government's reading 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) apply to inadmissible aliens who were admitted in error, as well as those never admitted. That means there is no surplusage, as Section 1225(b)(2) has no application to aliens who were 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). Both statutes mandate detention of "applicants for admission" who fall within the specified grounds of inadmissibility. 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 223. And "even assuming there were surplusage, that cannot trump the plain meaning of [Section] 1225(b)(2)."

Mejia Olalde, 2025 WL 3131942, at *4. That is particularly true here, where this portion of the Laken Riley Act overlaps with Section 1225(b)(2)(A) even under Leon's reading, which recognizes that applicants for admission who are "seeking admission" must be detained under Section 1225(b)(2)(A). *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").

Besides, Sections 1225(b)(2) and 1226(c) use different language that reflects the distinct obligations each section imposes. Section 1226(c), which applies "when [a criminal] alien is released" from another entity's custody, specifies that the "Attorney General shall take into custody" the alien. That provision therefore directs the Executive to take affirmative steps to apprehend covered aliens when they are released from state or federal custody. *Id.*; *see Nielson v. Preap*, 586 U.S. 392, 414 (2019) (explaining that "the duty to arrest is triggered[] upon release from criminal custody"). Section 1225(b)(2), by contrast, applies "if an examining officer determines" that the alien "is not clearly and beyond a doubt entitled to be admitted," and directs that the alien "shall be detained." That distinct language does not itself impose an obligation on the Executive to apprehend such an alien; it applies once an examining officer has encountered an applicant for admission. *Id.* Each provision thus has

independent application—one states that the Executive "shall take into custody" certain aliens in specified circumstances, insisting that the Executive prioritize certain criminal aliens for apprehension; the other states that an alien "shall be detained" once encountered by immigration officials. Because "Section 1226(c) regulates not only *what* the Attorney General must do (take aliens into custody), but also *when* the Attorney General must do so," while Section 1225 "does not specify a timeline," the Government's reading of Section 1225 "does not render the Laken Riley Act superfluous." *Mejia Olalde*, 2025 WL 3131942, at *4.

Moreover, Section 1226(c) does additional independent work, despite any overlap, by narrowing the circumstances under which aliens may be *released* from mandatory detention. Recall that, for aliens subject to mandatory detention under Section 1225(b)(2), IIRIRA allows the Executive to "temporarily" parole them "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(b)(5). Section 1226(c)(1) takes that option off the table for aliens who have also 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 parole and authorizes their release only 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). So, even as to aliens who are already subject to mandatory detention under Section 1225(b)(2), Section 1226(c) is not superfluous. It significantly narrows the Executive's parole power with respect to those aliens. In fact, Congress's desire to further limit the parole power with respect to criminal aliens was one of the principal reasons that it enacted the Laken Riley Act. The Act was adopted in the wake of a heinous murder committed by an inadmissible alien who was "paroled into this country through a shocking abuse of that power," 171 Cong. Rec. at H278 (daily ed. Jan. 22, 2025) (Rep. McClintock), and an abdication of the Executive's "fundamental duty under the Constitution to defend its citizens," 171 Cong. Rec. at H269 (Rep. Roy). The Act thus reflects a "congressional effort to be double sure," *Barton*, 590 U.S. at 239, that unadmitted criminal aliens are not paroled into the country through an abuse of the Secretary's exceptionally narrow parole authority. It does not suggest congressional uncertainty about Section 1225(b)(2)(A)'s detention mandate, but rather congressional desire to shut down a parole loophole that allowed the Government to circumvent that mandate.

4. Leon's Narrow Interpretation Subverts Congressional Intent.

Leon's reading also subverts 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."); "As the U.S. Supreme Court instructed . . . , 'interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.' " *Vooys v. Bently*, 901 F.3d 172, 192 (3d Cir. 2018).

One of IIRIRA's express objectives was to dispense with giving aliens "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., *supra*, at 225. Leon's interpretation would restore the regime Congress sought to discard; it would require detention for those who present themselves for inspection at the border in compliance with law yet grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years or even decades until an involuntary encounter with immigration authorities. That is *exactly* the "perverse incentive to enter" unlawfully, *Thuraissigiam*, 591 U.S. at 140, that IIRIRA sought to eradicate. This Court should reject any interpretation that is 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 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 a port of entry . . . are treated for due process purposes as if stopped at the border," and that also includes 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; Leon's reading subverts it.

5. The Supreme Court's Decision in *Jennings* Does Not Undermine the Government's Interpretation.

The Government's interpretation is consistent with the Supreme Court's decision in *Jennings*, 583 U.S. 281 (2018). The *Jennings* Court 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.

The *Jennings* Court described the detention authorities in Section 1225(b) and Section 1226, and in that context, summarized Section 1226 as applying to aliens "already in the country." The Court stated:

> 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"). The Government's interpretation equates with that language: it allows that Section 1226 is the exclusive source of detention authority for the substantial category of aliens who are were admitted into the United States (and so are "in the country") but are now removable.

Indeed, in context, the best reading of that language in *Jennings* is that the discussion refers to aliens who are "in and admitted to the United States." 8 U.S.C. § 1227(a). The opinion's reference to aliens "present in the country" specifically cites Section 1227(a), which covers only admitted aliens. *See* 583 U.S. at 288. Moreover, nothing in the quoted language from *Jennings* suggests that Section 1226 is the *sole* detention authority that applies to "aliens already in the country." Indeed, 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. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74 (2023) (explaining that "the language of an opinion is not always to be parsed as though we were dealing with language of a statute," and instead "must be read with a careful eye to context" (citation omitted)). That is especially so as no part of the holding in *Jennings* required it to decide the precise scope of Sections 1225(b) and 1226.

B. Leon's Detention Does Not Violate Due Process Nor Violate Federal Regulations.

Congress directed aliens like Leon to be detained during their removal proceedings. 8 U.S.C. § 1225(b)(2)(A); Jennings, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded."). In so doing,

Congress made a legislative judgment to detain undocumented aliens during removal proceedings, as they—by definition—have crossed borders and traveled in violation of United States law. And as explained above, that is the prerogative of the legislative branch serving the interest of the Government and the United States.

The Supreme Court has recognized this profound interest. *See* Shaughnessy v. United States, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."). And with this power to remove aliens, the Supreme Court has recognized the United States' longtime Constitutional ability to detain those in removal proceedings. *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) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."); *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."); *Jennings*, 583 U.S. at 286 ("Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration

proceedings. Detention during those proceedings gives immigration officials time to determine an alien's status without running the risk of the alien's either absconding or engaging in criminal activity before a final decision can be made.").

In another immigration context (aliens already ordered removed awaiting their removal), the Supreme Court has explained that detaining these aliens fewer than six months is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this presumptive constitutional limit has been subsequently distinguished as perhaps unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court explained Congress was justified in detaining aliens during the entire course of their removal proceedings who were convicted of certain crimes. 538 U.S. at 513. In that case, similar to undocumented aliens like Petitioner, Congress provided for the detention of certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court emphasized the constitutionality of the "definite termination point" of the detention, which was the length of the removal proceedings. *Id.* at 512 ("In contrast, because the statutory provision at issue in this case governs detention of deportable criminal aliens *pending their removal proceedings,* the detention necessarily serves the purpose of preventing the aliens from fleeing prior to or during such proceedings. Second, while the period of detention at issue in

Zadvydas was "indefinite" and "potentially permanent," *id.*, at 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 light of Congress's interest in dealing with illegal immigration by keeping specified aliens in detention pending the removal period, the Supreme Court dispensed of any Due Process concerns without engaging in the "*Mathews v. Eldridge* test." *See id. generally.*

Following this precedent, the United States District Court for the District of Massachusetts (case mentioned above) dismissed a habeas action, finding that it was not a violation of due process to detain an undocumented alien during the course of his removal proceedings. *See Webert Alvarenga Pena, Petitioner, v. Patricia Hyde, et al., Respondents.*, No. CV 25-11983-NMG, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025) (highlighting the petitioner had been detained for 17 days leading up to the court's decision, far less than other detention times found constitutional in other cases). Likewise, Leon's temporary detention pending her removal proceedings does not violate Due Process.

Although not controlling authority on this Court, in *Hurtado*, the BIA

[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.

affirmed "the Immigration Judge's determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." 29 I. & N. Dec. 216, 220 (BIA 2025).

Indeed, Leon's arguments that the automatic stay violates Due Process weakens because Section 1225 calls for mandatory detention. Moreover, the Government has an enormous interest in its use of detention, particularly in the context of immigration proceedings, and Congress and the Supreme Court have historically agreed. *See, e.g.*, *Demore*, 538 U.S. at 531 ("Detention during removal proceedings is a constitutionally permissible part of that process.").

Further, Leon's ample available process in her current removal proceedings demonstrate no lack of procedural due process—nor any deprivation of liberty "sufficiently outrageous" required to establish a substantive due process claim. *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001). Congress simply made the decision to detain him pending removal which is a "constitutionally permissible part of that process." *See Demore v. Kim*, 538 U.S. 510, 531 (2003).

The United States is aware of prior district court rulings in which the courts held that the automatic stay provision violates due process. *See, e.g.*, *Mohammed H. v. Trump*, No. CV 25-1576 (JWB/DTS), 2025 WL 1692739, at *5 (D. Minn. June 17, 2025), *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411, at *9-14 (D. Minn Aug. 15, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271(D. Neb. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:24-cv-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025). In light of *Hurtado* and the BIA's finding that the immigration court does not have the authority over a bond request because aliens present in the United States without admission are applicants for admission and subject to detention during their removal proceedings in accordance with Section 1225(b)(2)(A), the automatic stay provision is irrelevant. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025). Thus, Leon must be detained until she is removed. It is how the statute is written.

Finally, because Leon is subject to mandatory detention, no federal regulations are violated. Accordingly, Leon's detention does not violate due process.

C. Respondent requests that this Court order a bond hearing if it is inclined to grant Petitioner's Petition.

In the alternative, if this Court is inclined to grant Leon's Petition, the Respondent respectfully requests that this Court order a bond hearing, rather than

outright release. In Chimborazo Cunin, another Court within this district granted a similar petition related to detention under 8 U.S.C. § 1225, but found the relief necessary was limited to a bond hearing. 2025 WL 3542999 at *1-4. Other courts have also followed this rationale. See, e.g., Gomez, v. Unknown Party, No. 25-CV-03255, 2025 WL 3269055 (D. Ariz. Nov. 24, 2025); Roman v. Olson, No. 25-CV-169, 2025 WL 3268403 (E.D. Ky. Nov. 24, 2025) Cantu-Cortes v. O'Neill, No. 25-CV-6338, 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025). In the event this Court is inclined to grant the Petition, the Respondent respectfully requests that the Court order a bond hearing to determine whether the Petitioner is a flight risk or a danger to the community. *See* Chimborazo Cunin, 2025 WL 3542999 at *1.

D. Petitioner's request for costs and fees associated with the Equal Access to Justice Act is premature.

In the Petitioner's Prayer for Relief, she requests costs and reasonable attorneys' fees as provided for by the Equal Access to Justice Act (EAJA). At the outset, whether EAJA fees can be obtained at all in immigration habeas petitions is presently before the Third Circuit in *Adewumi Abioye v. Warden Moshannon Valley Correctional Center, et al*, Appeal No. 24-3198 (3d Cir.). Even assuming the applicability of EAJA to habeas cases, 28 U.S.C. 2412(d)(1)(B) sets forth the timing and process to consider an award of fees under the statute. That provision states:

> A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

28 U.S.C. § 2412(d)(1)(B). *See also Johnson v. Gonzalez*, 416 F.3d 205, 208 (3d Cir. 2005) ("Under the EAJA, a motion for attorneys' fees must be filed within thirty days of final judgment in the action. In this context, final judgment means a judgment that is final and not appealable. We have held that the thirty-day cut-off for EAJA petitions begins when the government's right to appeal the order has lapsed.") (internal quotations and citations omitted). Thus, the statute requires the Court to consider total record of the case after a final judgment and the filing of an application by the prevailing party. If EAJA applies to immigration habeas petitions, it is likely that the entire record would include the underlying immigration proceedings as well. *See Santana-Rivas*, 2025 WL 3513152 at *4 ("to the extent that EAJA fees are appropriate in this context, the court finds that it would be more appropriate to raise this issue at the conclusion of Petitioner's immigration proceedings, rather than just at the conclusion of this habeas

matter."). Therefore, the determination of the merits of any EAJA award requires a motion or application to be filed 30 days after final judgment, likely inclusive of concluded immigration proceedings as well, which has not occurred here.

IV. Conclusion

The Government respectfully requests that the Court deny the Habeas Petition.

Respectfully submitted,

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Date: January 7, 2026

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

YENIFER ANDREA ESQUIVEL LEON,	:	**No. 1:25-CV-02408**
Petitioner	:	
	:	**(Neary, J.)**
v.	:	
	:	**(Schwab. M.J.)**
ANGELA HOOVER, *et al.*,	:	
Respondents	:	**Filed Electronically**

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on January 7, 2026, she served a copy of the attached

RESPONSE TO THE PETITION FOR WRIT OF HABEAS CORPUS

by electronic service pursuant to Local Rule 5.7 and Standing Order 05-6, & 12.2 to the following individual(s):

Matthew J. Archambeault, Esquire
E-mail: mja@archambeaultlaw.com

s/ Maureen Yeager
Maureen Yeager
Paralegal Specialist