

1 TIMOTHY COURCHAIINE

United States Attorney

2 District of Arizona

3 KATHERINE R. BRANCH

Assistant United States Attorney

4 Arizona State Bar No. 025128

5 Two Renaissance Square

40 North Central Avenue, Suite 1800

6 Phoenix, Arizona 85004-4449

7 Telephone: (602) 514-7500

8 Facsimile: (602) 514-7760

E-Mail: Katherine.Branch@usdoj.gov

9 *Attorneys for Respondents*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

11 Rufino Salazar Cardenas,

12
13 Petitioner,

14 v.

15 Pamela Bondi, et al.,

16 Respondents.

No. 2:25-cv-4660-DWL-CDB

**RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS**

17 Respondents Pamela Bondi, Attorney General of the United States; Kristi Noem,
18 Secretary of Homeland Security (“DHS”); Daren K. Margolin, Acting Director, Executive
19 Office for Immigration Review; and Christopher McGregor, , Acting Director of; Christoph
20 Howard, Assistant Warden, Eloy Detention Center; Christopher McGregor, U.S.
21 Immigration and Customs Enforcement (“ICE”), Phoenix Field Office Director,
22 Enforcement and Removal Operations (“ERO”) (“Respondents”), by and through
23 undersigned counsel, hereby respond in opposition to the Petition for Writ of Habeas Corpus
24 (Doc. 1).

25 **I. INTRODUCTION**

26 Before 1996, the federal immigration laws required the detention of aliens who
27 presented at a port of entry but allowed aliens who were already unlawfully present in the
28 United States to obtain release pending removal proceedings. Congress passed the Illegal

1 Immigration Reform and Immigration Responsibility Act (“IIRIRA”) specifically to stop
2 conferring greater privileges and benefits on aliens who enter the United States unlawfully
3 as compared to those who lawfully present themselves for inspection at a port of entry.

4 As relevant here, Congress enacted what is now 8 U.S.C. § 1225, which requires the
5 detention of any alien “who is an applicant for admission” and defines that term to
6 encompass any “alien present in the United States who has not been admitted” following
7 inspection by immigration authorities. 8 U.S.C. § 1225(a), (b)(2)(A). The statute makes no
8 exception for how far into the country the alien traveled or how long the alien managed to
9 evade detection. Unless the Secretary exercises the narrow and discretionary parole
10 authority, mandatory detention is the rule for aliens who have never been lawfully admitted.

11 **II. STATUTORY FRAMEWORK**

12 **A. The pre-IIRIRA framework gave preferential treatment to aliens 13 unlawfully present in the United States.**

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

18 Prior to 1996, the INA treated aliens differently based on whether the alien had
19 physically “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-
20 223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); see *Hing Sum v. Holder*, 602
21 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). “Entry” referred to “any coming of an alien
22 into the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically
23 entered the United States (or not) “dictated what type of [removal] proceeding applied” and
24 whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at
25 1099.

26 At the time, the INA “provided for two types of removal proceedings: deportation
27 hearing and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc).
28 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.”

1 *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In
2 contrast, an alien who physically entered the United States unlawfully would be placed in
3 deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens in deportation
4 proceedings, unlike those in exclusion proceedings, “were entitled to request release on
5 bond.” *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

6 Thus, the INA’s prior framework distinguishing between aliens based on physical
7 “entry” had

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

14 *Hurtado*, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y Gen. of U.S.*,
15 693 F.3d 408, 413 n.5 (3d Cir. 2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R.
16 Rep. No. 104-469, pt. 1, at 225 (1996) (“House Rep.”) (“illegal aliens who have entered the
17 United States without inspection gain equities and privileges in immigration proceedings
18 that are not available to aliens who present themselves for inspection”).

19 **B. IIRIRA eliminated the preferential treatment of aliens unlawfully present
20 in the United States and mandated detention of all “applicants for
21 admission.”**

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

27 To that end, IIRIRA replaced the prior focus on physical “entry” and instead made
28 lawful “admission” the governing touchstone. IIRIRA defined “admission” to mean “the
lawful entry of the alien into the United States after inspection and authorization by an
immigration officer.” 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the
immigration laws would no longer distinguish aliens based on whether they had managed

1 to evade detection and enter the country without permission. Instead, the “pivotal factor in
2 determining an alien’s status” would be “whether or not the alien has been *lawfully*
3 admitted.” House Rep., *supra*, at 226 (emphasis added); *Hing Sum*, 602 F.3d at 1100
4 (similar). IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated
5 both sets of proceedings into “removal proceedings.” *Hurtado*, 29 I. & N. Dec. at 223.

6 IIRIRA effected these changes through several provisions codified in Section 1225
7 of Title 8:

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

12 An alien present in the United States who has not been admitted or who arrives
13 in the United States (whether or not at a designated port of arrival and
14 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.

15 8 U.S.C. § 1225(a)(1) (emphasis added). “All aliens ... who are applicants for admission or
16 otherwise seeking admission or readmission to or transit through the United States” are
17 required to “be inspected by [an] immigration officer[.]” *Id.* § 1225(a)(3). The inspection by
18 the immigration officer is designed to determine whether the alien may be lawfully
19 “admitted” to the country or, instead, must be referred to removal proceedings.

20 **Section 1225(b):** IIRIRA also divided removal proceedings into two tracks—
21 expedited removal and non-expedited “Section 240” proceedings—and mandated that
22 applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-
23 (2).

24 Section 1225(b)(1) provides for so-called “expedited removal proceedings,” *Dep’t of*
25 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be
26 applied to a subset of aliens—those who (1) are “arriving in the United States,” or who (2)
27 have “not been admitted or paroled into the United States” and have “not affirmatively
28 shown, to the satisfaction of an immigration officer, that the alien has been physically

1 present in the United States continuously for the 2-year period immediately prior to the date
2 of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens,
3 the immigration officer shall “order the alien removed from the United States without further
4 hearing or review unless the alien indicates either an intention to apply for asylum ... or a
5 fear of persecution.” *Id.* § 1225(b)(1)(A)(i). In that event, the alien “shall be detained
6 pending a final determination of credible fear or persecution and, if found not to have such
7 fear, until removed.” *Id.* § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). An
8 alien processed for expedited removal who does not indicate an intent to apply for a form
9 of relief from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i),
10 (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

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

14 Subject to subparagraphs (B) and (C), in the case of an alien who is an
15 applicant for admission, if the examining immigration officer determines that
16 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].

17 8 U.S.C. § 1225(b)(2)(A) (emphasis added).¹ *See* 8 C.F.R. § 235.3(b)(1)(ii) (mirroring
18 Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section
19 1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable
20 proceedings and not just at the moment those proceedings begin”).

21 While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA
22 grants DHS discretion to exercise its parole authority to temporarily release an applicant for
23 admission, but “only on a case-by-case basis for urgent humanitarian reasons or significant
24 public benefit.” 8 U.S.C. § 1182(d)(5)(A). Parole, however, “shall not be regarded as
25 admission of the alien.” *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority).

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

1 Moreover, when the Secretary determines that “the purposes of such parole ... been served,”
2 the “alien shall ... be returned to the custody from which he was paroled” and be “dealt with
3 in the same manner as that of any other applicant for admission to the United States.” 8
4 U.S.C. § 1182(d)(5)(A).

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

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

24 Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L.
25 No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for)
26 aliens who (1) are inadmissible because they are physically present in the United States
27 without admission or parole, have committed a material misrepresentation or fraud, or lack

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

1 required documentation; and (2) are “charged with, arrested for, [] convicted of, admit[]
2 having committed, or admit[] committing acts which constitute the essential elements of”
3 certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

4 **III. FACTUAL BACKGROUND**

5 Petitioner is a citizen of Mexico. Doc. 1 at ¶ 14. In July 2008, Petitioner unlawfully
6 entered the United States, was apprehended by immigration officials, and voluntarily
7 returned to Mexico. Ex. 1, Declaration of David Michie III, at ¶ 4. On an unknown date and
8 time, Petitioner unlawfully re-entered the United States. Ex. 1 at ¶ 5. Petitioner was
9 encountered by ICE on October 29, 2025, and was arrested after ICE determined that he was
10 not lawfully present in the United States. Ex. 1 at ¶ 6. On November 3, 2025, Petitioner was
11 served with a Notice to Appear charging him with being inadmissible for being present in
12 the United States without having been admitted or paroled and not having a visa at the time
13 of his application for admission to the United States. Ex. 1 at ¶ 9. On November 14, 2025,
14 Petitioner conceded that he was present in the United States without having been admitted
15 or paroled, but denied the documents charge. Ex. 1 at ¶ 10. Petitioner has appealed the
16 Immigration Judge’s denial of bond to the Board of Immigration Appeals. Ex. 1 at ¶ 11.

17 **IV. ARGUMENT**

18 **A. Under the plain text of § 1225, Petitioner must be detained pending the 19 outcome of his removal proceedings.**

20 The Court should reject Petitioner’s argument that § 1226(a) governs his detention
21 instead of § 1225. When there is “an irreconcilable conflict in two legal provisions,” then
22 “the specific governs over the general.” *Karczewski v. DCH Mission Valley LLC*, 862 F.3d
23 1006, 1015 (9th Cir. 2017). Section 1226(a) applies to aliens “arrested and detained pending
24 a decision” on removal. 8 U.S.C. § 1226(a). In contrast, § 1225 is narrower. *See* 8 U.S.C.
25 § 1225. It applies only to “applicants for admission”; that is, as relevant here, aliens present
26 in the United States who have not be admitted. *Id.*; *see also Fla. v. United States*, 660 F.
27 Supp. 3d 1239, 1275 (N.D. Fla. 2023), *appeal dismissed*, No. 23-11528, 2023 WL 5212561
28 (11th Cir. July 11, 2023). Because Petitioner falls within that category, the specific detention
authority under § 1225 governs over the general authority found at § 1226(a).

1 Under 8 U.S.C. § 1225(a), an “applicant for admission” is defined as an “alien present
2 in the United States who has not been admitted or who arrives in the United States.”
3 Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and
4 those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section 1225(b)(2)—the
5 provision relevant here—is the “broader” of the two. *Id.* It “serves as a catchall provision
6 that applies to all applicants for admission not covered by § 1225(b)(1) (with specific
7 exceptions not relevant here).” *Id.* And section 1225(b)(2) mandates detention. *Id.* at 297;
8 *see also* 8 U.S.C. § 1225(b)(2); *Matter of Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) (“[A]n
9 applicant for admission who is arrested and detained without a warrant while arriving in the
10 United States, whether or not at a port of entry, and subsequently placed in removal
11 proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible
12 for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).”).
13 Section 1225(b) therefore applies because Petitioner is present in the United States without
14 being admitted.

15 The BIA has long recognized that “many people who are not *actually* requesting
16 permission to enter the United States in the ordinary sense are nevertheless deemed to be
17 ‘seeking admission’ under the immigration laws.” *Matter of Lemus-Losa*, 25 I. & N. Dec.
18 734, 743 (BIA 2012). Statutory language “is known by the company it keeps.” *Marquez-*
19 *Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*,
20 579 U.S. 550, 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) must be read
21 in the context of the definition of “applicant for admission” in § 1225(a)(1). Applicants for
22 admission are both those individuals present without admission and those who arrive in the
23 United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be “seeking admission”
24 under §1225(a)(1). *See Lemus-Losa*, 25 I. & N. Dec. at 743. Congress made that clear in
25 § 1225(a)(3), which requires all aliens “who are applicants for admission or otherwise
26 seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word
27 “or” here “introduce[s] an appositive—a word or phrase that is synonymous with what
28 precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*,
571 U.S. 31, 45 (2013).

1 One of the most basic interpretative canons instructs that a “statute should be
2 construed so that effect is given to all its provisions.” *See Corley v. United States*, 556 U.S.
3 303, 314 (2009) (cleaned up). The court’s decision in *Florida v. United States* is instructive
4 here. The district court held that 8 U.S.C. § 1225(b) mandates detention of applicants for
5 admission throughout removal proceedings, rejecting the assertion that DHS has discretion
6 to choose to detain an applicant for admission under either section 1225(b) or 1226(a). 660
7 F. Supp. 3d at 1275. The court held that such discretion “would render mandatory detention
8 under § 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to include illegal
9 border crossers would make little sense if DHS retained discretion to apply § 1225(a) and
10 release illegal border crossers whenever the agency saw fit.” *Id.* The court pointed to *Demore*
11 *v. Kim*, 538 U.S. 510, 518 (2003), in which the Supreme Court explained that “wholesale
12 failure” by the federal government motivated the 1996 amendments to the INA. *Florida*, 660
13 F. Supp. 3d at 1275. The court also relied on, *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G.
14 2019), in which the Attorney General explained “section [1225] (under which detention is
15 mandatory) and section [1226(a)] (under which detention is permissive) can be reconciled
16 only if they apply to different classes of aliens.” *Florida*, 660 F. Supp. 3d at 1275. Petitioner,
17 present in the United States without being admitted, is an applicant for admission and is
18 therefore subject to mandatory detention without bond under 8 U.S.C. § 1225(b).

19 **B. Congress did not intend to treat individuals who unlawfully enter the
20 United States better than those who appear at a port of entry.**

21 When the plain text of a statute is clear, “that meaning is controlling” and courts “need
22 not examine legislative history.” *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848
23 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing “refutes the
24 plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th
25 Cir. 2011). Congress passed IIRIRA to correct “an anomaly whereby immigrants who were
26 attempting to lawfully enter the United States were in a worse position than persons who had
27 crossed the border unlawfully.” *Torres*, 976 F.3d at 928. The Court should reject the
28 Petitioner’s interpretation because it would put aliens who “crossed the border unlawfully”
in a better position than those “who present themselves for inspection at a port of entry.” *Id.*

1 Aliens who presented at port of entry would be subject to mandatory detention under § 1225,
2 but those who crossed illegally would be eligible for a bond under § 1226(a).

3 The Board of Immigration Appeals recognized this issue in *Matter of Yajure Hurtado*.
4 In its decision, the BIA affirmed “the Immigration Judge’s determination that he did not have
5 authority over [a] bond request because aliens who are present in the United States without
6 admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8
7 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”
8 29 I. & N. Dec. at 220. The BIA concluded that aliens “who surreptitiously cross into the
9 United States remain applicants for admission until and unless they are lawfully inspected
10 and admitted by an immigration officer. Remaining in the United States for a lengthy period
11 of time following entry without inspection, by itself, does not constitute an ‘admission.’” *Id.*
12 at 228. To hold otherwise would lead to an “incongruous result” that rewards aliens who
13 unlawfully enter the United States without inspection and subsequently evade apprehension
14 for number of years. *Id.*

15 In so concluding, the BIA rejected the alien’s argument that “because he has been
16 residing in the interior of the United States for almost 3 years . . . he cannot be considered as
17 ‘seeking admission.’” *Id.* at 221. The BIA determined that this argument “is not supported
18 by the plain language of the INA” and creates a “legal conundrum.” *Id.* If the alien “is not
19 admitted to the United States (as he admits) but he is not ‘seeking admission’ (as he
20 contends), then what is his legal status?” *Id.* (parentheticals in original). The BIA’s decision
21 in *Matter of Yajure Hurtado* is consistent not only with the plain language of 8 U.S.C.
22 § 1225(b)(2), but also with the Supreme Court’s 2018 decision in *Jennings* and other caselaw
23 issued subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that
24 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8
25 U.S.C. § 1225(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. 583 U.S. at
26 300, 303 (explaining that “the word ‘shall’ usually connotes a requirement” (quoting
Kingdomware Technologies, Inc. v. United States, 579 U.S. 162, 171 (2016))).

27 Similarly, relying on *Jennings* and the plain language of 8 U.S.C. §§ 1225 and
28 1226(a), the Attorney General, in *Matter of M-S-*, unequivocally recognized that 8 U.S.C.

1 §§ 1225 and 1226(a) do not overlap but describe “different classes of aliens.” 27 I. & N. Dec.
2 at 516. The Attorney General also held—in an analogous context—that aliens present
3 without admission and placed into expedited removal proceedings are detained under 8
4 U.S.C. § 1225 even if later placed in 8 U.S.C. § 1229a removal proceedings. *Id.* at 518-19.
5 In *Matter of Li*, the BIA held that an alien who illegally crossed into the United States and
6 was apprehended without a warrant while arriving is detained under 8 U.S.C. § 1225(b). 29
7 I. & N. Dec. at 71. This ongoing evolution of the law makes clear that all applicants for
8 admission are subject to detention under 8 U.S.C. § 1225(b). *Cf. Niz-Chavez v. Garland*, 593
9 U.S. 155, 171 (2021) (providing that “no amount of policy-talk can overcome a plain
10 statutory command”); *see generally Florida*, 660 F. Supp. 3d at 1275 (explaining that “the
11 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if
12 DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the
13 agency saw fit”). *Florida’s* conclusion “that § 1225(b)’s ‘shall be detained’ means what it
14 says and . . . is a mandatory requirement . . . flows directly from *Jennings*.” *Florida*, 660 F.
15 Supp. 3d at 1273.

16 **C. The Court should not follow the decision in *Echevarria*.**

17 Respondents are aware of this Court’s prior decision rejecting Respondents’ position,
18 *see Echevarria v. Bondi*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct.
19 3, 2025), but respectfully maintain that Petitioner falls within the definition of an “arriving
20 alien” warranting mandatory detention as the removal process unfolds. Respondents also
21 respectfully maintain that an alien is an “applicant for admission” until an immigration
22 official has inspected that person and determined that he or she is admissible into the United
23 States.³

24 In *Echevarria*, this Court determined that the phrase “alien seeking admission” in 8
25 U.S.C. § 1225(b)(2)(A) implies a present-tense nature to the desire for admission, such that
26 an alien who is already present in the United States cannot be “seeking admission”:

27 ³ Respondents notify the Court of the Government’s affirmative appeal in *Rodriguez*
28 *Vazquez v. Bostock*, No. 25-6842 (9th Cir. Oct. 29, 2025), which addresses this issue. The
Government’s opening brief in that case is due on December 21, 2025.

1 The word “seeking” is the present participle of the verb “seek.” It thus has a
2 temporal element—Petitioner must have been in the process of seeking
admission at the time of the inspection.

3 It is hard to see how Petitioner could be deemed to have been “seeking”
4 admission at the time of the encounter on July 2, 2025. By that point,
5 Petitioner had already been present in the United States for 24 years, having
6 arrived and entered in 2001. Moreover, under Respondents’ interpretation of
7 § 1225(a)(1), Petitioner became an “applicant for admission” in 2001, upon
8 his arrival and entry. Implicit in Respondents’ position, then, is that
9 Petitioner somehow existed in a perpetual state of “seeking” admission
during the 24-year period between when he first became an “applicant for
admission” in 2001, by virtue of his entry into the country, and when he was
encountered and inspected by an immigration officer in 2025.

10 *Echevarria*, 2025 WL 2821282, at *6 (internal citations omitted).

11 However, this analysis fails to consider other pieces of statutory context. Respondents
12 respectfully argue that the phrase “applicants for admission” carves out a subset of those who
13 are “seeking admission.” For example, elsewhere in section 1225, the statute says that “[a]ll
14 aliens who are applicants for admission *or otherwise seeking admission* or readmission to or
15 transit through the United States shall be inspected by immigration officers.” 8 U.S.C.
16 § 1225(a)(3) (emphasis added). In other words, 8 U.S.C. § 1225(a)(3) shows that an alien
17 may be “seeking admission” either by being an “applicant for admission,” or in some
18 different way. As discussed earlier, the phrase “applicant for admission” unambiguously
19 includes aliens who have already entered the United States. “In all but the most unusual
20 situations, a single use of a statutory phrase must have a fixed meaning.” *See Cochise*
21 *Consultancy, Inc. v. United States ex rel. Hunt*, 587 U.S. 262, 268 (2019) (referring to *Ratzlaf*
22 *v. United States*, 510 U.S. 135, 143 (1994)). “We therefore avoid interpretations that would
23 ‘attribute different meanings to the same phrase.’” *Id.* (quoting *Reno v. Bossier Par. Sch.*
24 *Bd.*, 528 U. S. 320, 329 (2000)). Thus, the *Echevarria* decision is not supported by the text
25 of the statute, and Respondents respectfully request the Court reach a different result in this
case.

26 Furthermore, Respondents direct the Court’s attention to a decision issued on
27 September 30, 2025, in the United States District Court for the District of Nebraska: *Vargas*

1 *Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). In that case,
2 the court denied a similar habeas petition brought by an alien who entered the United States
3 in 2013, and held that the petitioner was properly detained under § 1225(b)(2) as an alien
4 within the “catchall” scope of § 1225(b)(2) subject to detention without possibility of release
5 on bond through § 1229a removal proceedings. 2025 WL 2780351, at *6-9. The court noted
6 that illegally remaining in the country for years did not mean the petitioner, who “wish[ed]
7 to stay in this country,” was suddenly not an “applicant for admission.” *Id.* at *9.
8 Additionally, “even if Vargas Lopez might fall within the scope of § 1226(a), he certainly
9 fits within the language of § 1225(b)(2) as well.” *Id.*

10 The *Vargas Lopez* decision also noted the “overlapping relationship between
11 § 1225(b) and § 1226(a) is not only consistent with the plain language of the two provisions
12 but consistent with the interpretation of the two provisions under *Jennings*.” *Id.* The court
13 determined that § 1226 does not contain language limiting its application “to aliens already
14 present in the United States.” *Id.* (comparing *Jennings*’ statements that United States
15 immigration law “authorizes the Government to detain certain aliens already in the country
16 pending the outcome of removal proceedings under §§ 1226(a) and (c)[,]” and that “§ 1226
17 applies to aliens already present in the United States[.]” 583 U.S. at 289 (first quote) and 303
18 (second quote), with 8 U.S.C. § 1226(a) (containing no reference to aliens “present” or
19 “already present” in the United States) and 8 U.S.C. § 1226(c) (containing no reference to
20 “criminal aliens” “present” or “already present” in the United States). The court determined
21 that “references to ‘aliens’ in § 1226 must be read to mean ‘alien[s] present in the United
22 States who ha[ve] not been admitted’ within the meaning of § 1225(a)(1) and within at least
23 the ‘catchall’ provision that applies to all applicants for admission not covered by
24 § 1225(b)(1) in § 1225(b)(2).” 2025 WL2780351, at * 9 (citing *Jennings*, 583 U.S. at 287).

25 The Southern District of California also denied a temporary restraining order sought
26 by an alien who was detained under § 1225(b)(2) despite having been surreptitiously present
27 in the United States for years. See *Chavez v. Noem*, --F. Supp. 3d --, No. 3:25-cv-02325-
28 CAB, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), appeal docketed sub nom. *Sixtos Chavez*
v. Noem, No. 25-7077 (9th Cir. Nov. 7, 2025). The court noted, among other arguments, that

1 “Section 1225(a)(1) expressly defines that ‘[a]n alien present in the United States who has
 2 not been admitted . . . shall be deemed for purposes of this Act *an applicant for admission.*”
 3 *Id.* at *4 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). The court reasoned that,
 4 “Petitioners do not contest that they are ‘alien[s] present in the United States who ha[ve]not
 5 been admitted.’ By the plain language of § 1225(a)(1), then, Petitioners are ‘applicants for
 6 admission’ and thus subject to the mandatory detention provisions of ‘applicants for
 7 admission’ under § 1225(b)(2).” *Id.* (cleaned up). *See also Rojas v. Olson*, No. 25-CV-1437-
 8 BHL, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Sandoval v. Acuna*, No. 6:25-CV-01467,
 9 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Oliveira v. Patterson*, No. 6:25-CV-01463,
 10 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 1:25-CV-00168-
 11 JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, 1:25-cv-
 12 00177 (N.D. Tex. 2025); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D.
 13 Tex. Nov. 13, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL
 14 3199872 (C.D. Cal. Nov. 12, 2025); *Alonzo v. Noem*, No. 1:25-CV-01519 WBS SCR, 2025
 15 WL 3208284 (E.D. Cal. Nov. 17, 2025); *Valencia v. Chestnut*, -- F. Supp. 3d --, No. 1:25-
 16 cv-01550 WBS JDP, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025); *Hernandez Cruz v.*
 17 *Noem*, No. 8:25-cv-02566-SB-MAA, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025).

18 V. CONCLUSION

19 In light of the above, Respondents respectfully request the Court deny Petitioner’s
 20 Petition for Writ of Habeas Corpus. If the Court grants the Petition, the Court should order
 21 that Petitioner be given a bond hearing by the Immigration Court, not direct Petitioner’s
 22 immediate release from immigration detention.

23 Respectfully submitted this 18th day of December, 2025.

24 TIMOTHY COURCHINE
 25 United States Attorney
 26 District of Arizona

27 s/ Katherine R. Branch
 28 KATHERINE R. BRANCH
 Assistant United States Attorney
 Attorneys for Respondents