

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

CARLOS RAMIREZ-MONTOYA, :	No. 3:25-cv-2411
Petitioner :	
	:
v. :	(MEHALCHICK, J.)
	:
MICHAEL T. ROSE ¹ , et al., :	
Respondents :	(Electronically Filed)

RESPONSE TO THE PETITION FOR WRIT OF HABEAS CORPUS

I. Introduction

This is a habeas action filed by Petitioner Carlos Ramirez-Montoya, an undocumented alien, who is currently in separate removal proceedings before the Executive Office of Immigration Review Immigration Court and is challenging his detention. (Doc. 1, Pet.) As relief, Ramirez-Montoya is requesting, among other things, his release from custody or, in the alternative, a bond hearing. (*Id.* at 10.)

This Court should deny Ramirez-Montoya’s petition because there is no declaratory relief, let alone relief with preclusive effect regarding the proper

¹ Although Ramirez-Montoya named several other government officials, the only proper respondent in this case is Craig Lowe, the Warden of Pike 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.”). Ramirez-Montoya requests release from confinement. *See* Doc. 1.

interpretation of 8 U.S.C. § 1225(b)(2)(A) and § 1225(b)(2) mandates detention of aliens, like Ramirez-Montoya.

II. Statutory Framework

1. *Maldonado Bautista v. Santacruz.*

On November 25, 2025, the U.S. District Court for the Central District of California (District Court) certified a nationwide class of aliens, currently detained pursuant to INA § 235(b)(2), finding these aliens are eligible for bond hearings under INA § 236(a). *Maldonado Bautista v. Santacruz*, -- F.R.D. --, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025); Dkt. No.: 82. This order follows the district court's grant of partial summary judgment in Plaintiffs' favor on November 20, 2025, which found the "DHS Policy" of interpreting detention authority for certain aliens to be pursuant to INA § 235(b)(2) unlawful. (*Id.*, Dkt. No. 81.)

Its class certification purports to include: "All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c) [criminal aliens], § 1225(b)(1) [arriving alien], or § 1231 [post-final order or removal] at the time the Department of Homeland Security makes an initial custody determination." *Bautista v. Santacruz* at *9.

However, because the *Bautista* court has not issued a final judgment, such as vacatur of the policy or declaratory/injunctive relief, there are no immediate operational ramifications to the Department of Homeland Security's (DHS) position reiterated in *Matter of Hurtado*. (See generally, Docket of *Bautista Santacruz*, -- F.R.D. --, 2025 WL 3288403.) Read together, the *Bautista* orders purport to limit Immigration and Customs Enforcement's (ICE) ability to detain aliens under INA § 235(b)(2), but as the court has not issued final judgment in this case, there is no change in the legality of Petitioner's detention pursuant to INA § 235(b)(2). (*Id.*)

2. 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. older*, 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 hearing 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”).

3. 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 v. Holder*, 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) (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

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

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 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

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

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 (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).

4. 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”).

III. Factual and Procedural Background

Ramirez-Montoya is a native and citizen of Honduras who entered the United States without inspection at some point in 1999. (Doc. 1 at 3-4 ¶ 6.) The Notice to

Appear charged Petitioner as inadmissible pursuant to 212(a)(6)(A)(i) because he entered the United States without inspection. (*Id.* at 4; Ex. 2, Notice to Appear.)

At about 9:18 a.m. on February 11, 2025, officers observed Carlos Roberto Ramirez Montoya and spouse arrive at the Pike County Central Court on John Ave in Milford, PA. (Ex. 1, Record of Deportable/Inadmissible Alien, at 2.) Ramirez-Montoyo and his spouse entered the court. (*Id.*) An ICE officer entered to confirm with the sheriff if proceedings were ongoing or complete. (*Id.*) A deputy ushered the ICE officer to the printing area where officer identified himself to Ramirez-Montoya as an immigration officer. (*Id.*) The ICE officer served Ramirez-Montoya with a warrant and explained the current issue and answered any questions. (*Id.*) Additionally, Ramirez-Montoya asked if the ICE officer could speak to his spouse, which he obliged, and spoke with Ramirez-Montoya, his spouse, and attorney where he explained the reason that ICE was taking Ramirez-Montoya into custody upon conclusion of the hearing. (*Id.*) After the parties were called into court the Magistrate Judge asked the ICE officer to approach the bench where the Magistrate Judge explained to the officer, that Ramirez-Montoya was being remanded with a \$1,000 Bond. (*Id.*) The ICE officer advised the court that ICE would place a detainer with the Pike County jail at which time the Magistrate Judge advised the sheriff's office deputy that Ramirez-Montoya would be transported to Pike County Correctional Facility due to remand and bond. (*Id.*) At no time did the ICE officer

restrain Ramirez-Montoya, as he was still in the care and custody of the court and the Pike County Sherriff's Office. (*Id.*)

ICE then placed a detainer with the Pike County Correctional Facility. (*Id.*) That same day, ICE assumed custody of Ramirez-Montoya within the Pike County Correctional Facility. (*Id.*)

On December 15, 2025, Petitioner filed the instant habeas action challenging his detention. (Doc. 1 (Pet.)) On December 15, 2025, this Court directed Respondent to file a response to the habeas Petition by December 17, 2025. (Doc. 2 (Order).) This response is timely filed to the Habeas Petition.

IV. Arguments

A. This Court should dismiss the Petition because there is no declaratory relief, let alone relief with preclusive effect regarding the proper interpretation of 8 U.S.C. § 1225 (b)(2)(A).

To the extent that Petitioner (or anyone similar situated) relies upon the recent class certification and partial summary judgment rulings issued in *Maldonado Bautista, et al. v. Santacruz Jr., et al.*, -- F.R.D. --, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025), that court's decision does not have preclusive effect in this matter. The *Maldonado* court did not enter a final judgment with respect to the class. Although the court stated it was extending "the same declaratory relief" to the class, a court cannot grant declaratory relief prior to the entry of a final judgment. *See Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975) ("prior to final judgment there

is no established declaratory remedy comparable to a preliminary injunction”). A pre-final judgment declaration is, by its nature, not a declaratory judgment “[b]ecause a preliminary declaration—unlike a final declaration—does not specifically bind anyone, it is more akin to an advisory opinion, which the Court is precluded from issuing by history and the implicit policies embodied in Article III.” *Vazquez Perez v. Decker*, No. 18-CV-10683 (AJN), 2019 WL 4784950, at *10 (S.D.N.Y. Sept. 30, 2019). *See also* Fed. R. Civ. P. 54(a), (b). As such, there is no declaratory relief (let alone relief with preclusive effect) regarding the proper interpretation of 8 U.S.C. § 1225(b)(2)(A).

The Court’s orders in *Baustista* did not enter any declaratory judgment as to the nationwide class. *Bautista v. Santacruz* -- F.R.D. --, 2025 WL 3288403; Dkt. No. 81 at 17 (granting motion for partial summary judgment but expressly not ordering any relief); *see also* Dkt. No. 82 at 15 (granting motion for class certification but ordering only that class be certified, Petitioners be appointed class representatives, Petitioners’ counsel be appointed class counsel, ordering a joint status report and setting status conference); Proposed Order (proposing specific declaratory relief that the Court did not enter). (*Id.*) The Court also expressly declined to enter final judgment as to the claims at issue in the motion for partial summary judgment under Federal Rule of Civil Procedure 54(b). *Bautista v. Santacruz* -- F.R.D. --, 2025 WL 3288403; Dkt. No. 81 at 17. Rather, the Court set

a January 9, 2026, joint status report deadline and January 16, 2026, status conference indicating that the Court intends to address the question of final relief at a later date. *Bautista v. Santacruz* -- F.R.D. --, 2025 WL 3288403; Dkt. No. 82 at 15.

Absent an entry of final judgment on the entire case, or a certification of partial final judgment under Rule 54(b), there is no declaratory judgment. The partial summary judgment ruling does not operate as a “judgment” because it is not an appealable order and “does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.” Fed. R. Civ. P. 54(a), (b). Thus, there is no class-wide judgment, let alone any final judgment that could have preclusive effect as to putative class members.

To be proper, a declaratory judgment must have preclusive effect: “Without preclusive effect, a declaratory judgment is little more than an advisory opinion.” *Haaland v. Brackeen*, 599 U.S. 255, 293 (2023); *see also Wells v. Johnson*, 150 F.4th 289, 301 (4th Cir. 2025) (stating that the only reason a proper declaratory judgment does not violate Article III’s requirements is because it has preclusive effect between the parties). *Headwaters Inc. v. U.S. Forest Serv.*, 399 F.3d 1047, 1051 (9th Cir. 2005). And preclusive effect cannot be obtained without sufficient finality. *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 148 (2015) (citing Restatement

(Second) of Judgments § 27, p. 250 (1980), for the general rule that an issue must be determined by a “valid and final judgment” for preclusion to apply); *Luben Indus., Inc. v. United States*, 707 F.2d 1037, 1040 (9th Cir. 1983) (affirming district court decision not to apply preclusive effect to an interlocutory decision that “could not have been the subject of an appeal at the time”); Restatement (Second) of Judgments § 28, p. 273 (1980) Restatement (Second) of Judgments § 27, p. 250 (1980) (issue preclusion does not apply when the “party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action”); *id.* at cmt. a (“[T]he availability of review for the correction of errors has become critical to the application of preclusion doctrine.”).

In short, the Court has expressly declined to enter a class-wide judgment. *Bautista v. Santacruz* -- F.R.D. --, 2025 WL 3288403; Dkt. No. 82 at 15. As such, there is currently no declaratory relief, let alone relief with preclusive effect on putative *Maldonado Bautista* class members’ claims concerning the proper interpretation of 8 U.S.C. § 1225(b)(2)(A)’s mandatory detention provision.

B. Section 1225(b)(2) Mandates Detention of Aliens, Like Mr. Patel, 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 Mr. Patel, 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.

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). An alien who enters the country without permission is and remains an applicant for admission, regardless of the duration of the alien’s presence in the United States or the alien’s distance from the border. *See id.*

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 he 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.

Ramirez-Montoya falls within the statutory definition because DHS found him “present in the United States,” and he had “not been admitted.” 8 U.S.C. § 1225(a). Moreover, Ramirez-Montoya cannot—and did not—establish that he is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Therefore, Ramirez-Montoya “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.

Ramirez-Montoya relies on the portion of the statute that refers to aliens who are “seeking admission” to support his 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 Ramirez-Montoya, who illegally entered the United States and have been residing here. (Doc. 1 at 1.) The statute, however, provides that an alien who is an “applicant for admission” *is* necessarily “seeking admission.” Moreover, an alien like Ramirez-Montoya, 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 he 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 WL 3131942, 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.

And 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 drafter 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 Mr. Patel, his 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, 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, Ramirez-Montoya is a noncitizen unlawfully present in the United States. (Doc. 1 at 1.) Ramirez-Montoya does not dispute he is removeable for violations of sections 212(a)(6)(A)(i) of the INA. Because Ramirez-Montoya 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 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.

V. Conclusion

This Court should deny Ramirez-Montoya’s petition because there is no declaratory relief, let alone relief with preclusive effect regarding the proper interpretation of 8 U.S.C. § 1225(b)(2)(A) and § 1225(b)(2) mandates detention of aliens, like Ramirez-Montoya.

Respectfully submitted,

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Date: December 17, 2025

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

CARLOS RAMIREZ-MONTOYA,	:	No. 3:25-cv-2411
Petitioner	:	
	:	
v.	:	(MEHALCHICK, J.)
	:	
MICHAEL T. ROSE, et al.,	:	
Respondents	:	(Electronically Filed)

CERTIFICATE OF SERVICE VIA ELECTRONIC CASE FILING

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 December 17, 2025, 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].

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