UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

Jesus Saucedo Portillo,

Petitioner,

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department of Homeland Security,

Department of Homeland Security,

Todd M. Lyons, Acting Director of Immigration and Customs Enforcement,

Immigration and Customs Enforcement,

Miguel Vergara, Director, Harlingen Field Office Immigration and Customs Enforcement,

and,

Warden of Port Isabel Service Detention Center.

Respondents.

4:25-cv-6042

REPLY MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS AND IN OPPOSITION TO SUMMARY JUDGEMENT

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STATEMENT OF FACTS AND STAGE OF THE PROCEEDING

Petitioner Saucedo Portillo is a native and citizen of Mexico. Petitioner Saucedo Portillo entered the United States in 2016 at the age of 11 with his mother and siblings. *See* ECF-7, Exhibits A and B. Respondents released Petitioner and his family members on November 9, 2016, under an Order of Supervision, Form I-220A. This is reflected in Respondent's Form I-830E. *See* ECF-7, Exhibit D. Respondents did not parole Petitioner into the United States under 8 U.S.C. § 1182(d)(5) when releasing him from custody on November 9, 2016. Respondents records reflect a release through Form I-200A, which is release subject to an order of supervision. This form of release is a release under § 1226(a)(2)(B). Respondents have considered Petitioner subject to § 1226 since 2016.

Respondent commenced proceedings under 8 U.S.C. § 1229a and filed its Notice to Appear with the Ft. Snelling, Minnesota Immigration Court.

Respondents subsequently transferred supervision to the ISAP program. *See* ECF-7, Exhibit C. Petitioner Saucedo Portillo holds deferred action since December 04, 2021, following the approval of form I-360 for Special Immigrant Juvenile Status. Petitioner has no criminal history that subjects him to 8 U.S.C. § 1226(c). Petitioner has not sought a bond hearing because it is futile after in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Petitioner remains in custody. Petitioner petitioned the Court for a Writ of Habeas Corpus. Respondents answered and simultaneously motioned for summary judgment, alleging incorrectly that Petitioner is subject to 8 U.S.C. § 1225(b)(1). Petitioner submits a combined response to Respondents' Answer and Motion.

SUMMARY OF THE REPLY ARGUMENT

Petitioner Jesus Saucedo Portillo respectfully requests that the Court grant this Petition. Petitioner is not an arriving alien subject to 8 U.S.C. § 1225(b)(1). The record reflects that Respondents release Petitioner as a child under an order of supervision, I-200A. At the time of his 2025 apprehension, he was still subject to this order. Respondents incorrectly assert that Respondents paroled Petitioner into the United States under 8 U.S.C. § 1182(d)(5). This is incorrect. Petitioner's continued detention without the opportunity to be heard in a bond hearing is inconsistent with the Immigration & Nationality act. Courts have repeatedly held that individuals similarly situated to Petitioner were detained under 8 U.S.C. § 1226,

and the plain text, legislative history, and longstanding administrative practice reinforce the conclusion that Respondents cannot detain him under 8 U.S.C. § 1225(b)(2)(A) now. For these reasons, Petitioner asks this Court to order his immediate release or any conditions this Court sees appropriate.

STATEMENT OF THE ISSUES

1. Is Petitioner eligible to seek a discretionary monetary bond under 8 U.S.C. § 1226(a) considering Respondent's previous release from custody under an Order of Supervision?

REPLY ARGUMENT

I. EXHAUSTION IS FUTILE WHEN RESPONDENTS COLLABORATE IN DEVELOPING A NATIONWIDE CHANGE OF POLICY

The Supreme Court has noted that prudential exhaustion is not required when to do so would be futile or "the administrative body . . . has . . . predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). Here, the government's evolving position on the application of 8 U.S.C. § 1225(b)(2)(A) was issued "in coordination with the Department of Justice." *See* Ex. B. The Board's published decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), held that 8 U.S.C. § 1225(b)(2)(A) governs custody of aliens like Petitioner.

"A party also may escape the exhaustion requirement if it is able to show that the agency clearly exceeded its statutory authority." *Trinity Indus., Inc. v. Reich*, 901

F. Supp. 282, 286 (E.D. Ark. 1993), *aff'd,* 33 F.3d 942 (8th Cir. 1994) (citing *Philip Morris, Inc. v. Block*, 755 F.2d 368, 370 (4th Cir. 1985)). This issue is a matter of law related to agency conduct in excess of the statute. Exhaustion is not required. *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950096, at *6 (S.D. Tex. Oct. 3, 2025).

Further administrative efforts are pointless. *AMELIA C. P., Petitioner, v. KRISTI NOEM, et al., Respondents.*, No. 3:25-CV-2872-K-BK, 2025 WL 3653872 (N.D. Tex. Dec. 17, 2025).

II. A PERSON RELEASED ON SUPERVISION AND LATER APPREHENDED YEARS LATER IS SUBJECT TO 8 U.S.C. § 1226(A).

Courts have already issued favorable ruling on materially similar facts. *See, e.g., SANDY ACOSTA de PEREZ, Petitioner, v. MARTIN FRINK, et al., Respondents. Additional Party Names: Frick*, No. CV H-25-5357, 2025 WL 3626347 (S.D. Tex. Dec. 12, 2025); *Espinoza Andres v. Noem*, No. CV H-25-5128, 2025 WL 3458893 (S.D. Tex. Dec. 2, 2025); *Gutierrez v. Thompson*, No. 4:25-4695, 2025 WL 3187521 (S.D. Tex. Nov. 14, 2025) (summarizing multiple positive rulings within the district). There are hundreds of positive rulings and less than twenty rulings reaching the opposite conclusion. *See, e.g., Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025); *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025).

The vast majority of courts agree that Petitioner's "statutory construction better aligns with the text of Sections 1225(b) and 1226 and better harmonizes the two statutes" and because "[t]he government's interpretation contravenes the plain text of Section 1226(a) and would render superfluous § 1226(c), which mandates the detention of certain noncitizens and is the sole exception to Section 1226(a)'s discretionary framework." *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *1 (D. Mass. July 7, 2025). Longstanding practice and legislative history were also instructive. *See Maldonado v. Olson, 795 F. Supp. 3d (D. MN. Aug. 15, 2025)*. 8 U.S.C. § 1225(b)(1) or (2)(A) does not apply to him.

More importantly, other courts have considered the dynamics presented here - apprehension near the border with a release under an order of supervision or own recognizance. Courts have resoundingly identified that § 1226 applies rather than § 1225. *See*, e.g., *A.A.H. v. Chestnut*, No. 1:25-CV-01758-DJC-EFB, 2025 WL 3640677 (E.D. Cal. Dec. 16, 2025) (released order of supervision); *AHMET CAN TOPUZ, Petitioner, v. LUIS SOTO, et al., Respondents.*, No. CV 25-17593 (ZNQ), 2025 WL 3640953 (D.N.J. Dec. 16, 2025); *Bethancourt Soto v. Soto*, No. 25-CV-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025) (discussing child apprehended with mother and then release on own recognizance and listing of cases finding 1226 applies); *ANSELMO FLORES PEREZ, Petitioner, v. KRISTI NOEM, in her official capacity as Sec'y of the Dep't of Homeland Sec., ET AL., Respondents.*, No. 3:25-

CV-2920-K-BN, 2025 WL 3532430, at *4 (N.D. Tex. Nov. 14, 2025), *report and recommendation adopted sub nom. Perez v. Noem*, No. 3:25-CV-2920-K, 2025 WL 3530951 (N.D. Tex. Dec. 9, 2025); *Parada-Hernandez v. Johnson*, No. 3:25-CV-2729-K-BN, 2025 WL 3465958, at *4 (N.D. Tex. Oct. 29, 2025), *report and recommendation adopted,* No. 3:25-CV-2729-K-BN, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025) (confirming that *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 104 (2020) does not apply to individuals released and apprehended years later); *Lopez-Arevelo v. Pena,* -- F. Supp. 3d --, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025)(noting that Due Process and the right to seek release arises after a person has been released under his own recognizance for three years despite initial apprehension at the border).

Furthermore, courts have considered and rejected Respondents' attempt to reframe a release under § 1226 into a § 1182(d)(5) parole. The release record specifies a release inconsistent with Respondents' narrative regardless of what is listed on the Notice to Appear. *See Quispe-Ardiles v. Noem*, No. 1:25-CV-01382-MSN-WEF, 2025 WL 2783800, at *6 (E.D. Va. Sept. 30, 2025); *Martinez v. Hyde*, 792 F.Supp.3d 211 (D .Mass. Jul. 24, 2025). The Court should disregard Respondents' suggestion that Petitioner is subject to § 1225(b)(1) or (2).

a. The Plain Text Illustrates that 8 U.S.C. § 1225(b)(2)(A) Cannot Apply as Petitioner Was Not "Seeking Admission" When He Was Detained in 2025.

The text and structure of the statute illustrate that 8 U.S.C. § 1225(b)(2) is totally inapplicable now, years after Petitioner first arrived and entered the United States. As the Supreme Court has held, while "Section 1225(b) 'authorizes the Government to detain certain aliens *seeking admission into the country*,' Section 1226 'authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings.'" *Gomes*, 2025 WL 1869299, at *2 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)). Petitioner was apprehended in hundreds of miles from the nearest border and nowhere near a port of entry. He was not "seeking admission into the country." The statutory text makes it clear that, at the time of his 2025 detention, Petitioner was not "seeking admission" as contemplated at 8 U.S.C. § 1225(b)(2)(A). In reading a statute, "'we must 'give effect, if possible, to every clause and word of [the] statute.'" *Fischer v. United States*, 603 U.S. 480, 486 (2024) (citing *Williams v. Taylor*, 529 U.S. 362, 404 (2000)). A comprehensive reading of 8 U.S.C. § 1225 illustrates that both 8 U.S.C. § 1225(b)(1) and 8 U.S.C. § 1225(b)(2) apply only to those arriving at the border or those who have recently arrived.

"[W]e start where we always do: with the text of the statute." *Van Buren v. United States*, 593 U.S. 374 (2021). In interpreting 8 U.S.C. § 1225(b)(2), it is

critical to note how the qualifier "seeking admission" limits the class of aliens to which 8 U.S.C. § 1225(b)(2) applies to those seeking entry into the United States from outside the country, either at the border or a port of entry. In this way, an "alien present in the United States who has not been admitted" is only subjected to 8 U.S.C. § 1225(b)(2) if he is "seeking admission."

As the Supreme Court has held:

> It is important to note at the outset that our immigration laws have long made a distinction between those aliens who have come to our shores **seeking admission** … and **those who are within the United States after an entry**, **irrespective of its legality**. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely "on the threshold of initial entry."

Leng May Ma v. Barber, 357 U.S. 185, 187 (1958) (citing *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)) (emphasis added).

This is particularly notable given that the term "admission" is statutorily defined as "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). As always, "we start … with the text of the statute," *Van Buren*, 593 U.S. 374, so to be "seeking admission," a person must be seeking "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13). This is augmented by long-held interpretations of "[t]he word 'entry'

[which] by its own force implies a coming from outside." *U.S. ex rel. Claussen v. Day*, 279 U.S. 398, 401 (1929).

Petitioner is not seeking admission into the country at this time, nor was he at the time of his 2025 detention. As such, 8 U.S.C. § 1225(b)(2) cannot apply to him. The remainder of the definition of "admission" reinforces the conclusion that "admission" contemplates entry from outside. The provisions related to when a lawful permanent resident ("LPR") will be treated as "seeking an admission" bear this out.

> An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission … unless the alien-
>
> (i) has abandoned or relinquished that status,
>
> (ii) has been absent from the United States for a continuous period in excess of 180 days,
>
> (iii) has engaged in illegal activity after having departed the United States,
>
> (iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,
>
> (v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or
>
> (vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been

> admitted to the United States after inspection and authorization by an immigration officer.

8 U.S.C. § 1101(a)(13)(C). Once again, an "admission" necessarily contemplates entry from outside the territorial boundaries of the United States. To be "seeking admission" as contemplated under 8 U.S.C. § 1225(b)(2), an alien must be entering from abroad. The provision clearly applies at and immediately around the border.

If that were not enough, the "[a]dmission of immigrants into the United States" is governed under INA § 211, which requires "a valid unexpired immigrant visa … and [ ] a valid unexpired passport or other suitable travel document." 8 U.S.C. § 1181(a). Moreover, those seeking admission are "admitted into the United States." Id. This also necessarily contemplates an alien "seeking entry" from outside the United States. This is also consistent with how the pre-IIRAIRA INA distinguished between aliens present in the United States and those seeking to enter. Prior to 1997, "[t]he deportation hearing [was] the usual means of proceeding against an alien already physically in the United States, and the exclusion hearing [was] the usual means of proceeding against an alien outside the United States seeking admission." *Landon v. Plasencia*, 459 U.S. 21, 25 (1982).

In fact, the term "seeking admission" was plucked from former 8 U.S.C. § 1225, which governed "exclusion proceedings" and the "[t]he inspection ... of aliens (including alien crewmen) seeking admission or readmission to ... the United States"

who, then as now, were "examined by one or more immigration officers at the discretion of the Attorney General and under such regulations as he may prescribe...." 8 U.S.C. § 1225(a) (1994). Under the prior regime, those who were "seeking admission" were those "outside the United States seeking admission." *Landon v. Plasencia*, 459 U.S. 21, 25 (1982).

Given that this language, now codified at 8 U.S.C. § 1225, came from the former 8 U.S.C. § 1225, which also governed the "inspection of aliens," the well-established legal principal applies: "[w]hen a statutory term is 'obviously transplanted from another legal source,' it 'brings the old soil with it.'" *Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019). Then as now, those "seeking admission" are those at the border or a port of entry, not those simply present in the United States without admission.

By contrast, long-tenured aliens like Petitioner are not "seeking admission" when they are detained by ICE. While they may be "applicants for admission" under 8 U.S.C. § 1225(a)(1), to "seek admission" they would need to present at a border or port of entry and request "admission into the United States." 8 U.S.C. § 1181.

This is also consistent with how all Circuits have "construe[d] the meaning of the phrase 'at the time of application for admission'" in the context of 8 U.S.C. § 1182(a)(7), which "refers to the particular point in time when a noncitizen submits an application to physically enter into the United States." *Torres v. Barr*, 976 F.3d

918, 924 (9th Cir. 2020); *see also Marques v. Lynch*, 834 F.3d 549, 561 (5th Cir. 2016) (quoting *Ortiz-Bouchet v. U.S. Atty. Gen.*, 714 F.3d 1353, 1356 (11th Cir. 2013)) ("Section 1182(a)(7) 'only applies to applicants for admission and not to immigrants ... who sought post-entry adjustment of status while already in the United States.'"). Just as an "application for admission" occurs at the specific moment an application is applied for, seeking admission also occurs at the moment admission is sought.

The subsection title further reinforces this conclusion. While they do not supplant the statutory text, "statutory titles and section headings 'are tools available for the resolution of a doubt about the meaning of a statute.'" *Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008) (citing *Porter v. Nussle*, 534 U.S. 516, 528 (2002)). Section 1225 is titled "[i]nspection by immigration officers; expedited removal of inadmissible arriving aliens; [and] referral for hearing." 8 U.S.C. § 1225. All of this is squarely related to inspection at or near a point of entry, not interior enforcement against aliens who have been present for years.

The "catchall" nature of 8 U.S.C. § 1225(b)(2) is not limitless either. It has to reflect the general parameters of 8 U.S.C. § 1225(b)(1) and respond to the similarly situated individuals arriving to the country who are not arriving aliens. As the Supreme Court has noted, 8 U.S.C. § 1225(b)(2) is a "catchall" that "applies to most other applicants for admission not covered by § 1225(b)(1)." *Jennings v.*

Rodriguez, 583 U.S. 281, 281 (2018). "The ejusdem canon applies when 'a catchall phrase' follows 'an enumeration of specifics, as in dogs, cats, horses, cattle, and other animals.'" *Fischer v. United States*, 603 U.S. 480, 509 (2024) (quoting A. Scalia & B. Garner, READING LAW § 32, at 199 (2012)). "We often interpret the catchall phrase to 'embrace only objects similar in nature to those objects enumerated by the preceding specific words.'" *Id.*

8 U.S.C. § 1225(b)(2) follows in line with the specificity contained in 8 U.S.C. § 1225(b)(1). 8 U.S.C. § 1225(b)(2) is titled "inspection of other aliens." "Other aliens" has a proximity limitation—around the border and ports of entry. It is not a force multiplier. After all, this catchall provision would be an odd place to hide the most far-reaching and consequential detention authority in the INA. "Congress does not 'hide elephants in mouseholes.'" *Sackett v. Env't Prot. Agency*, 598 U.S. 651, 677 (2023). The Supreme Court recognized this limited reach of § 1225(b)(2) when it held, "An alien arriving in the United States must be inspected by an immigration official, 66 Stat. 198, as amended, 8 U.S.C. § 1225(a)(3), and, unless he is found 'clearly and beyond a doubt entitled to be admitted,' must generally undergo removal proceedings to determine admissibility, § 1225(b)(2)(A)." *Clark v. Martinez*, 543 U.S. 371, 373 (2005).

Section 1225(b)(2) addresses a person who presents some evidence he or she is entitled to entry, but the examining officer is not convinced clearly and beyond a

reasonable doubt. For example, Respondents invoke this provision frequently to permanent residents returning from travel abroad. Precedent has acknowledged this distinction in purpose within § 1225(b). Detention of non-arriving aliens attempting to enter from the outside is permissible because "§ 235(b)(2) requires the INS to detain aliens 'not clearly and beyond a doubt entitled to be admitted' … in practice, these provisions often result in the mandatory detention of returning lawful permanent residents at places of inspection." *Tineo v. Ashcroft*, 350 F.3d 382, 387 (3d Cir. 2003); *see also Kasneci v. Dir., Bureau of Immigr. & Customs Enf't*, No. 12-12349, 2012 WL 3639112, at *3 (E.D. Mich. Aug. 23, 2012); *Bautista v. Sabol*, No. 3:11CV1611, 2011 WL 5040894, at *4 (M.D. Pa. Oct. 24, 2011).

The Court must also consider that the government's regulation identifies the limited scope of § 1225(b)(2). It states, "Lawful permanent residents have verifiable entry documents ('green cards') which prevents them from being deemed clearly inadmissible. All aliens who are not clearly inadmissible, but are also not clearly admissible, are placed in regular removal proceedings. INA § 235(b)(2)." 8 C.F.R. § 235.3(b)(5)(ii). As identified in regulation, this group includes permanent residents who appear to have abandoned status, been absent from more than 180 days, departed during pendant removal or extradition hearings, committed certain crimes, or who are attempting to enter the United States at a place other than a designated port of entry. *See* 8 U.S.C. § 1101(a)(13)(C). This class of permanent

residents are definitionally "seeking admission" but are not necessarily inadmissible for fraud or a lack of travel documents under 8 U.S.C. § 1182(a)(6)(C); 1182(a)(7), so they do not fall within the provisions of 8 U.S.C. § 1225(b)(1)(A). Instead, they fall into 8 U.S.C. § 1225(b)(2)(A)'s catchall. Any case that suggests an overlap between §§ 1225(b)(2) and § 1226(a) fail consistently to engage with obvious application of § 1225(b)(2) to permanent residents and similarly situated individuals at the time of arrival. Even Respondents' regulation validates recognition of such a limitation.

Petitioner's reading does not create a surplusage issue in which the 8 U.S.C. § 1225(b)(2) catchall becomes redundant in light of 8 U.S.C. § 1225(b)(1). While 8 U.S.C. § 1225(b)(1) expressly applies to those who are "arriving," and 8 U.S.C. § 1225(b)(2)(A) expressly excludes those "to whom paragraph (1) applies," 8 U.S.C. § 1225(b)(2)(B)(ii), there is a universe of "applicants for admission" who are "seeking admission" from outside the United States that fall outside of 8 U.S.C. § 1225(b)(1), and therefore fall into the catchall at 8 U.S.C. § 1225(b)(2).

These include most obviously any "alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry." 8 U.S.C. § 1225(b)(1)(F). These individuals are expressly exempted from 8 U.S.C. § 1225(b)(1). They too fall under 8 U.S.C. § 1225(b)(2). It also includes lawful

permanent residents suspected of abandoning residence or criminality. *See* 8 U.S.C. § 1101(a)(13)(C); *Tineo*, 350 F.3d at 387. They too fall into 8 U.S.C. § 1225(b)(2).

The neighboring inadmissibility provision at 8 U.S.C. § 1182(a)(9)(A) reinforces § 1225's limited application to the borders and ports of entry. This provision lumps those who are "removed under 8 U.S.C. § 1225(b)(1) of this title" together with those removed "at the end of proceedings under section 1229a of this title initiated upon the alien's arrival in the United States." 8 U.S.C. § 1182(a)(9)(A)(i). Given that the only provision of law that appears to authorize full proceedings under 8 U.S.C. § 1229a for those arriving at the border is 8 U.S.C. § 1225(b)(2)(A), this inadmissibility provision reinforces Petitioner's interpretation that 8 U.S.C. § 1225(b)(2)(A), like 8 U.S.C. § 1225(b)(1), applies to those arriving at or near the border. That is why removals in 1229a proceedings initiated upon arrival at the border—that is, 8 U.S.C. § 1225(b)(2)(A) removals—are treated like removals under 8 U.S.C. § 1225(b)(1), triggering a five-year inadmissibility period, whereas those otherwise "ordered removed under section 1229a of this title" are subject to a ten-year bar. *See* 8 U.S.C. § 1182(a)(9)(A)(ii). This dichotomy between 1) border detention and removal, and 2) interior enforcement with more significant consequences, is clear in both provisions.

8 U.S.C. § 1225(a)(3) does not undercut this point. 8 U.S.C. § 1225(a)(3) defines who "shall be inspected by immigration officers." It does not define who

"shall be detained." Moreover, the notion that the word "or" somehow means that the subsequent phrase is necessarily synonymous with the preceding one is meritless. Instead:

> While that can sometimes introduce an appositive—a word or phrase that is synonymous with what precedes it ("Vienna or Wien," "Batman or the Caped Crusader")—its ordinary use is almost always disjunctive, that is, the words it connects are to "be given separate meanings."

United States v. Woods, 571 U.S. 31, 45–46 (2013) (citing *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979)). In other words, "or" is generally disjunctive, and here, some "applicants for admission" are "seeking admission," and some who are not "applicants for admission" may be "otherwise seeking admission," and all those people are subject to inspection. *Romero v. Hyde* recently illustrated this poignantly. *See Romero v. Hyde*, 795 F. Supp. 3d 271 (D. Mass. 2025). Ultimately, only those who are both an "applicant for admission" and "seeking admission … shall be detained." 8 U.S.C. § 1225(b)(2)(A). The provisions are different and address different things. The Court must ensure it gives each independent meaning. Petitioner was detained years later hundreds of miles from any border or port of entry after his release under § 1226. 8 U.S.C. § 1225(b) cannot apply.[1]

[1] *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) is owed no deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 369 (2024). It mimics the arguments that a multitude of courts have rejected.

b. Canons Against Surplusage Require Finding that Petitioner Is Not Subject to 8 U.S.C. § 1225(b)(2).

Courts do not "adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law." *Republic of Sudan v. Harrison*, 587 U.S. 1 (2019). In fact, this "canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *City of Chicago, Illinois v. Fulton*, 592 U.S. 154 (2021) (quoting *Yates v. United States*, 574 U.S. 528, 543 (2015)).

Interpreting 8 U.S.C. § 1225(b)(2) as Respondents do would have the Court render the entire Laken Riley Act (LRA) superfluous. In the LRA, Congress added language to 8 U.S.C. § 1226(c) that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act, PL 119-1, January 29, 2025, 139 Stat 3. Pursuant to these amendments, an alien who "is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 212(a) of this title; and is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person" is subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(E).

If everyone inadmissible under 8 U.S.C. § 1182(a)(6)(A) is already subject to mandatory detention under 8 U.S.C. § 1225(b)(2), then there was no need for the LRA at all. Those present without admission who commit crimes would not require a separate provision to mandate detention. That would render an entire provision of the INA surplusage and runs afoul of the maxim that "[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Pierce Cnty., Wash. v. Guillen*, 537 U.S. 129, 145 (2003). This cannot stand and definitively illustrates that 8 U.S.C. § 1225(b)(2) is confined to the borders and ports of entry. It does not apply to Petitioner.

c. Legislative History and Longstanding Practice Illustrate that Petitioner Is Not Subject to Mandatory Detention Under 8 U.S.C. § 1225(b)(2).

If the structure and language did not make 8 U.S.C. § 1225(b)(2)'s inapplicability to this case clear, Congress did so expressly. "Section 1226(a)'s predecessor statute, § 1252(a), included discretionary release on bond." *Maldonado v. Olson*, 795 F. Supp. 3d (D. MD. Aug. 15, 2025) (citing 8 U.S.C. § 1252(a) (1994)). In House reports accompanying the legislation that enacted 8 U.S.C. § 1225(b)(2), the legislators noted how the simultaneously enacted detention authority that now lives at 8 U.S.C. § 1226(a) merely "restates the [then] current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. Rep. No.

104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same).

Both provisions were created in the same Act. *See* Illegal Immigration Reform and Immigration Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 3009-585 ("IIRIRA"). It seems preposterous that Congress would enact one provision, at 8 U.S.C. § 1226(a)(2)(A), for the purpose of authorizing "the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States" just one section after enacting a provision that DHS now claims subjects those exact same people to mandatory detention. *See* 8 U.S.C. § 1225(b)(2).

Furthermore, from 1996 to 2025, Respondents contended that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10323, 62 FR 10312-01, 10323. "[T]he contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect," particularly "when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained

consistent over time." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024). This is long-held Agency practice, and it makes clear that, despite Respondents' newfound position, 8 U.S.C. § 1226 governs Petitioner's detention, and as such, he is eligible for bond.

CONCLUSION

The Court must grant this Petition and order Petitioner's release or for Respondents to conduct a bond hearing within seven days, excluding holidays.

DATED: December 21, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, David L. Wilson, hereby certify consistent with LR5.3 that I served this filing on the opposing party via ECF and to the US Attorney's Office Public Email at txspublicinquiry@usdoj.gov & USATXS-CivilNotice@usa.doj.gov.

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