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

11 DEIBY DANIEL ORIAS BRACHO,

12 Petitioner,

13 v.

14 Brian HENKE, Las Vegas/Salt Lake City
15 Field Office Director, Enforcement and
Removal Operations, United States
16 Immigration and Customs Enforcement
(ICE); John MATTOS, Warden, Nevada
17 Southern Detention Center; Kristi NOEM,
Secretary, United States Department of
18 Homeland Security; Pamela BONDI,
Attorney General of the United States;
19 Executive Office for Immigration Review,

20 Respondents.
21

Case No. 2:25-cv-02531-RFB-NJK

**Federal Respondents' Response to
Petitioner's Petition for Writ of Habeas
Corpus (ECF No. 1)**

22 Federal Respondents hereby file their response to Petitioner Roberto Juarez
23 Fernandez' Petition for Writ of Habeas Corpus (ECF No. 1). Petitioner is subject to
24 mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). This response is supported by the
25 following memorandum of points and authorities. In his Petition, the Petitioner, who does
26 not have a legal status in the United States, is asking the Court to grant his release from
27 Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) or
28 order Respondents to conduct a bond hearing under § 1226(a). ECF No. 1 at 26. Petitioner is

1 charged with having entered the United States without admission or inspection. ECF No. 1,
2 ¶ 83. Petitioner is claiming that he is unlawfully detained by DHS because the mandatory
3 detention § 1225(b)(2)(A) does not apply to him since he previously entered and is now
4 residing in the United States and such individuals are subject to a different statute, § 1226(a),
5 that allows for release on conditional parole or bond. ECF No. 1, ¶¶ 7-9. The Petition
6 should be denied because Petitioner is lawfully detained in mandatory detention under 8
7 U.S.C. § 1225(b)(2)(A). Federal Respondents' position is supported by the I-213 Record of
8 Deportable/Inadmissible Alien and DHS Form I-862 Notice to Appear attached hereto as
9 Exhibit A.

10 I. Factual Background

11 Petitioner is detained in Immigration and Customs Enforcement (ICE) custody at the
12 Nevada Southern Detention Center, in Pahrump, Nevada pending removal proceedings.
13 ECF No. 1, ¶ 3. Petitioner has been detained since December 5, 2025. ECF No. 1, ¶ 6.
14 Petitioner is seeking to challenge the policy adopted by the Board of Immigration Appeals
15 (“BIA”) in the *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). ECF No. 3, ¶ 5. It
16 does not appear that Petitioner has requested a bond redetermination hearing. Petitioner is
17 claiming that he is unlawfully detained by DHS because the mandatory detention §
18 1225(b)(2)(A) does not apply to him since he previously entered and is now residing in the
19 United States and such individuals are subject to a different statute, § 1226(a), that allows for
20 release on conditional parole or bond. ECF No. 1, ¶ 10. Petitioner requests that this Court
21 order that Petitioner be either released or provided a bond redetermination hearing to be
22 held by the Immigration Court immediately. ECF No. 1 at 26.

23 II. Legal Background

24 The plain language of the Immigration and Nationality Act (“INA”) mandates that
25 the Petitioner—who is present in the United States without being admitted—is correctly
26 considered “applicant for admission” and therefore subject to detention under 8 U.S.C. §
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1 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (“Read most naturally, §§
2 1225(b)(1) and (b)(2) thus mandate detention of applicants of admission until certain
3 proceedings have concluded.”) The best reading of the statutes is that, Congress insured that
4 all aliens would be inspected by immigration authorities, by treating aliens, who are present
5 in the United States without having been inspected and admitted, as applicants for admission.
6 Aliens who are present without having been inspected and admitted have the benefit of full
7 removal proceedings and are not subject to expedited removal. But they are subject to
8 detention during their removal proceedings. The Court should deny Petitioners’ Petition for
9 Writ of Habeas Corpus.

10 **A. Applicants for Admission**

11 “The phrase ‘applicant for admission’ is a term of art denoting a particular legal
12 status.” *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Section 1225(a)(1) states:

13 (1) Aliens treated as applicants for admission.— An alien present in the
14 United States who has not been admitted or who arrives in the United States
15 (whether or not at a designated port of arrival ...) shall be deemed for the
16 purposes of this Act an applicant for admission.

17 8 U.S.C. § 1225(a)(1).¹ Section 1225(a)(1) was added to the INA as part of the Illegal
18 Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”). Pub. L. No.
19 104-208, § 302, 110 Stat. 3009-546. “The distinction between an alien who has effected an
20 entry into the United States and one who has never entered runs throughout immigration
21 law.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

22 Before IIRIRA, “immigration law provided for two types of removal proceedings:
23 deportation hearings and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir.
24 1999) (en banc). A deportation hearing was a proceeding against an alien already physically
25 present in the United States, whereas an exclusion hearing was against an alien outside of

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27 ¹ Admission is the “lawful entry of an alien into the United States after inspection and authorization by an immigration
28 officer.” 8 U.S.C. § 1101(a)(13).

1 the United States seeking admission *Id.* (quoting *Landon v. Plasencia*, 459 U.S. 21, 25 (1982)).
2 Whether an applicant was eligible for “admission” was determined only in exclusion
3 proceedings, and exclusion proceedings were limited to “entering” aliens—those aliens
4 “coming ... into the United States, from a foreign port or place or from an outlying
5 possession.” *Plasencia*, 459 U.S. at 24 n.3 (quoting 8 U.S.C. § 1101(a)(13) (1982)). “[N]on-
6 citizens who had entered without inspection could take advantage of greater procedural and
7 substantive rights afforded in deportation proceedings, while non-citizens who presented
8 themselves at a port of entry for inspection were subjected to more summary exclusion
9 proceedings.” *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010); *see also Plasencia*, 459
10 U.S. at 25-26. Prior to IIRIRA, aliens who attempted to lawfully enter the United States were
11 in a worse position than aliens who crossed the border unlawfully. *See Hing Sum*, 602 F.3d
12 at 1100; *see also* H.R. Rep. No. 104-469, pt. 1, at 225-229 (1996). IIRIRA “replaced
13 deportation and exclusion proceedings with a general removal proceeding.” *Hing Sum*, 602
14 F.3d at 1100.

15 IIRIRA added Section 1225(a)(1) to “ensure[] that all immigrants who have not been
16 lawfully admitted, regardless of their physical presence in the country, are placed on equal
17 footing in removal proceedings under the INA.” *Torres*, 976 F.3d at 928; *see also* H.R. Rep.
18 104-469, pt. 1, at 225 (explaining that § 1225(a)(1) replaced “certain aspects of the current
19 ‘entry doctrine,’” under which illegal aliens who entered the United States without inspection
20 gained equities and privileges in immigration proceedings unavailable to aliens who
21 presented themselves for inspection at a port of entry). The provision “places some
22 physically-but not-lawfully present noncitizens into a fictive legal status for purposes of
23 removal proceedings.” *Torres*, 976 F.3d at 928.

24 **B. Expedited Removal Under 8 U.S.C. § 1225**

25 IIRIRA established distinct types of removal proceedings. Pub. L. 104-208, 110 Stat.
26 3009, 3009-546 (1996). Removal proceedings under § 1225 are known as “expedited removal
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1 proceedings.” See *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109–113 (2020) (citing
2 provisions). Only two categories of aliens are eligible for expedited removal, rather than full
3 removal proceedings, (1) “arriving aliens” and (2) aliens who “ha[ve] not been admitted or
4 paroled into the United States” and have not been “physically present in the United States”
5 for two years. 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). “Arriving aliens” are defined by regulation as
6 “an applicant for admission coming or attempting to come into the United States at a port-of-
7 entry ...” 8 C.F.R. § 1.2.

8 Expedited removal proceedings are conducted by an immigration officer, not an
9 Immigration Judge (“IJ”). The immigration officer asks the applicant for admission questions
10 to determine (a) “identity, alienage, and inadmissibility,” and (b) whether the alien intends to
11 apply for asylum. 8 C.F.R. § 235.3(b)(2)(i), (b)(4). Aliens are not entitled to counsel and no
12 recording or transcript is made. *Id.* § 235.3(b)(2)(i). If the alien is inadmissible and does not
13 intend to apply for asylum, the immigration officer, after supervisory review, issues a Notice
14 and Order of Expedited Removal. *Id.* § 235.3(b)(2)(i). The alien has no right to appeal to an
15 IJ, the Board of Immigration Appeals (“BIA”) or any other court. *Id.* § 235.3(b)(2)(ii); 8
16 U.S.C. § 1252(a)(2)(A)(i). Unlike section 240 proceedings, which often take place over the
17 course of several months, the expedited removal process is “conducted on a very compressed
18 schedule and can result in deportation in hours or days.” *Coal. for Humane Immigrant Rts. v.*
19 *Noem*, No. 25-CV-872 (JMC), 2025 WL 2192986, at *4 (D.D.C. Aug. 1, 2025).

20 **C. Removal Proceedings under 8 U.S.C. § 1229(a)**

21 Removal proceedings under § 1229a are commonly referred to as “full removal
22 proceedings” or “240 removal proceedings” due to the statutory section of the INA in which
23 they appear. 8 U.S.C. § 1229a; INA § 240. The proceedings take place before an IJ, an
24 employee of the Department of Justice. 8 U.S.C. § 1229a(a)(1), (b)(1). Aliens in 1229a
25 proceedings have an opportunity to apply for relief from removal. See, e.g., 8 U.S.C. § 1158
26 (asylum); 8 U.S.C. § 1229b(b) (cancellation of removal for nonpermanent residents); 8 U.S.C.

1 § 1255 (adjustment of status). These are adversarial proceedings in which the alien has the
2 right to hire counsel, examine and present evidence, and cross-examine witnesses. 8 U.S.C. §
3 1229a(b)(4). Either party may appeal the IJ decision to the BIA. 8 U.S.C. § 1229a(b)(4)(C);
4 *see also* 8 C.F.R. § 1240.15. If the BIA issues a final order of removal, the alien may also seek
5 judicial review at a U.S. court of appeals through a petition for review. 8 U.S.C. § 1252.

6 **D. Detention under the INA**

7 The INA authorizes civil detention of aliens during removal proceedings and
8 “[d]etention is necessarily part of this deportation procedure.” *Carlson v. Landon*, 342 U.S.
9 524, 538 (1952); *see also* 8 U.S.C. § 1225(b), 1226(a), and 1231(a). “Where an alien falls within
10 this statutory scheme can affect whether his detention is mandatory or discretionary, as well
11 as the kind of review process available to him if he wishes to contest the necessity of his
12 detention.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).

13 **i. Detention under Section 1225**

14 The INA mandates the detention of applicants for admission. 8 U.S.C. § 1225(b)(1)
15 and (2); *see also Jennings*, 583 U.S. at 287 (Applicants for admission “fall into one of two
16 categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).”).²

17 As explained above, arriving aliens and aliens present less than two years are subject
18 to expedited removal. 8 U.S.C. § 1225(b)(1). If an alien “indicates an intention to apply for
19 asylum,” the alien proceeds through the credible fear process and is subject to mandatory
20 detention. 8 U.S.C. § 1225(b)(1)(B)(ii); *see also* 8 U.S.C. § 1225(B)(1)(B)(iii)(IV).

21 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S.
22 at 287. The Supreme Court recognized that 1225(b)(2) “applies to all applicants for admission

23 ² Petitioners cite *Jennings* for the proposition that “8 U.S.C. § 1225(b)(2), applies only ‘at the Nation’s borders and
24 ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is
admissible.’” Dkt. 42 at 10. This is a misreading of *Jennings*. The full text is:

25 To implement its immigration policy, the Government must be able to decide (1) who may enter the country
26 and (2) who may stay here after entering. That process of decision generally begins at the Nation’s borders
and ports of entry, where the Government must determine whether an alien seeking to enter the country is
27 admissible. Under § 302, 110 Stat. 3009-579, 8 U.S.C. § 1225, an alien who “arrives in the United States,” or
“is present” in this country but “has not been admitted,” is treated as “an applicant for admission.” §
1225(a)(1). *Jennings*, 583 U.S. at 286–87.

1 not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for
2 admission” shall be detained for a removal proceeding “if the examining immigration officer
3 determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be
4 admitted.” 8 U.S.C. § 1225(b)(2)(A). While section 1225 does not provide for aliens to be
5 released on bond, DHS has the sole discretionary to release any applicant for admission on a
6 “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. §
7 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

8 ii. Detention under Section 1226

9 Section 1226 provides that “an alien may be arrested and detained pending a decision
10 on whether the alien is to be removed. 8 U.S.C. § 1226(a). Under § 1226(a), the government
11 may detain an alien during his removal proceedings, release him on bond, or release him on
12 conditional parole.³ By regulation, immigration officers can release an alien if the alien
13 demonstrates that he “would not pose a danger to property or persons” and “is likely to appear
14 for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request custody
15 redetermination (i.e., a bond hearing) by an IJ at any time before a final order of removal is
16 issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

17 III. Argument

18 The INA, 8 U.S.C. § 1101 *et seq.*, entrusts the Executive branch to remove inadmissible
19 and deportable aliens and to ensure that aliens who are removable are in fact removed from
20 the United States. “[D]etention necessarily serves the purpose of preventing deportable []
21 aliens from fleeing prior to or during their removal proceedings, thus increasing the chance
22 that if ordered removed, the aliens will be successfully removed.” *Demore v. Kim*, 538 U.S.
23 510, 528 (2003). The Supreme Court has long held that deportation proceedings “would be
24 in vain if those accused could not be held in custody pending the inquiry” of their immigration
25 status. *Wong Wing v. United States*, 163 U.S. 228, 235 (1896). Congress intended for all

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27 ³ Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United States
28 under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007).

1 applicants for admission to be detained during the course of their removal proceedings. *See*
2 *Jennings*, 583 U.S. at 299 (interpreting the “plain meaning” of sections 1225(b)(1) and (2) to
3 mean that applicants for admission be mandatorily detained for the duration of their
4 immigration proceedings).

5 **A. The Bond Denial Claims Should Be Dismissed for Lack of Jurisdiction**

6 “Federal courts are courts of limited jurisdiction, possessing only that power
7 authorized by Constitution and statute.” *Gunn v. Minton*, 568 U.S. 251, 256 (2013); *see also*
8 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). “Subject matter jurisdiction
9 is fundamental; [t]he defense of lack of subject matter jurisdiction cannot be waived, and the
10 court is under a continuing duty to dismiss an action whenever it appears that the court lacks
11 jurisdiction.” *Billingsley v. Comm’r*, 868 F.2d 1081, 1085 (9th Cir. 1989) (alteration in original)
12 (quotations omitted); *see also* Fed. R. Civ. P. 12(h)(3).

13 In this case, the Court lacks subject matter jurisdiction over the Petition for Writ of
14 Habeas Corpus because federal law limits—and in this case, forecloses—district court review
15 of the Executive Branch’s decisions and actions taken regarding the removal of aliens. *See,*
16 *e.g.*, 8 U.S.C. § 1252(b)(9), (f)(1).

17 **i. 8 U.S.C. § 1252(b)(9) bars review of the denial of bond.**

18 Under § 1252(b)(9), “judicial review of all questions of law . . . including interpretation
19 and application of statutory provisions . . . arising from any action taken . . . to remove an
20 alien from the United States” is only proper before the appropriate court of appeals in the
21 form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. Am.-*
22 *Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an
23 “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from
24 deportation proceedings]” to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No.
25 CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah*
26 *v. Barr*, 590 U.S. 573, 579–80 (2020)).

1 Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for
2 judicial review of immigration proceedings. 8 U.S.C. § 1252(a)(5). “Taken together,
3 § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any*
4 removal-related activity can be reviewed *only* through the [petition-for-review] process.”
5 *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035
6 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices
7 challenges . . . whenever they ‘arise from’ removal proceedings”); *accord Ruiz v. Mukasey*, 552
8 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or
9 proceeding” is it within the district court’s jurisdiction).

10 Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.”
11 *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that
12 “[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding
13 review of constitutional claims or questions of law raised upon a petition for review filed with
14 an appropriate court of appeals.” *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008).
15 The petition-for-review process before the courts of appeals ensures that aliens have a forum
16 for claims arising from their immigration proceedings and “receive their day in court.”
17 *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d
18 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to
19 obviate . . . Suspension Clause concerns” by permitting judicial review of “nondiscretionary”
20 BIA determinations and “all constitutional claims or questions of law.”).

21 Sections (a)(5) and (b)(9) divest district courts of jurisdiction to review both direct and
22 indirect challenges to removal orders, including decisions to detain for purposes of removal
23 or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to
24 the “decision to detain [an alien] in the first place or to seek removal[.]”).

25 Here, the Petition challenges the decision and action to detain Petitioner, which arises
26 from DHS’s decision to commence removal proceedings, and is thus an “action . . . to remove
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1 [him] from the United States.” See 8 U.S.C. § 1252(b)(9); see also, e.g., *Jennings*, 583 U.S. at
2 294–95; *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar.
3 12, 2024) (recognizing that there is no judicial review of the threshold detention decision). As
4 such, the Court lacks jurisdiction over this action. Petitioner must present his claims before
5 the appropriate court of appeals because he challenges the government’s decision or action to
6 detain him, which must be raised before a court of appeals, not this Court. See 8 U.S.C. §
7 1252(b)(9).

8 **ii. 8 U.S.C. § 1252(e)(3)(A) bars review in this Court.**

9 Challenges to 8 U.S.C. § 1225(b) are limited to the United States District Court for the
10 District of Columbia (“D.D.C.”). 8 U.S.C. § 1252(e)(3)(A). Petitioner’s Petitioner is clearly
11 challenging § 1225(b). The DC Circuit has held that challenges to implementation and policies
12 related to § 1225(b) must be brought in the D.D.C. See *Make The Rd. New York v. Wolf*, 962
13 F.3d 612, 625 (D.C. Cir. 2020). The Ninth Circuit recognized that the limitation of challenges
14 to policies under 1225(b) must be filed in the D.D.C. See *Singh v. Barr*, 982 F.3d 778, 783 (9th
15 Cir. 2020).

16 The statute indicates that only the D.D.C. can hear challenges to “a regulation, or
17 written policy directive, written policy guideline, or written procedure” to § 1225(b). 8 U.S.C.
18 § 1252(e)(3).

19 Any argument that § 1252(e)(3)’s restriction on review is limited to policies relating to
20 expedited removal orders under 1225(b)(1) and not to policies relating to detention under
21 1225(b)(2) is meritless. Section 1252(e) has five paragraphs numbered 1 through 5. 8 U.S.C. §
22 1252(e). Paragraphs (1), (2), (4), and (5) specifically reference § 1225(b)(1), while paragraph
23 (3) references all of § 1225(b). *Id.* The inclusion of “(b)(1)” in some paragraphs, but using just
24 “(b)” in paragraph (3) shows that Congress wanted review of the three subsections of § 1225(b)
25 to be limited to the D.D.C.

26 Thus, Petitioner’s Petitioner fails at the outset; the Court lacks subject matter
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1 jurisdiction. *See Billingsley*, 868 F.2d at 1085.

2 **B. Under the Statutory Text, Applicants for Admission Must Be Detained Pending**
3 **the Outcome of Removal Proceedings**

4 **i. The plain text of the Statute means that aliens present in the country**
5 **without having been admitted are applicants for admission.**

6 The plain language of the statute is clear: Petitioner is subject to detention under §
7 1225(b)(2) because he is an applicant for admission. *Matter of Yajure-Hurtado*, 29 I. & N. Dec.
8 216, 220 (BIA 2025). The INA specifies that “an alien present in the United States who has
9 not been admitted” “shall be deemed . . . an applicant for admission.” 8 U.S.C. § 1225(a).
10 Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and
11 those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. As the Supreme Court indicated in
12 *Jennings*, “[r]ead most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants
13 of admission until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297. Despite
14 the clear direction from the Supreme Court, Petitioners argue that there is some third category
15 of applicants for admission that are not subject to mandatory detention. *Jennings*, 583 U.S. at
16 287. Section 1225(b)(1) covers which applicants for admission, including arriving aliens or
17 aliens who have not been admitted and have been present for less than two years, and directs
18 that both of those classes of applicants for admission are subject to expedited removal. 8
19 U.S.C. § 1225(b)(1). Section 1225(b)(2) “serves as a catchall provision that applies to all
20 applicants not covered by 1225(b)(1) (with specific exceptions not relevant here).”⁴ *Jennings*,
21 583 U.S. at 287. *Jennings* recognized that 1225(b)(2) mandates detention. *Id.* at 297; *see also*
22 *Matter of Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) (“[A]n applicant for admission . . . whether or
23 not at a port of entry, and subsequently placed in removal proceedings is detained under . . . 8
24 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond.”). The IJs in these
25 cases were correct in holding that § 1225(b) applied because Petitioners, present in the United
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27 ⁴ The two exceptions are crewmen and stowaways. *See* 8 U.S.C. §§ 1225(a)(2), 1281, and 1282(b).

1 States without being admitted, are applicants for admission. *See Yajure*, 29 I. & N. Dec. at
2 221.

3 Petitioner’s argument that the BIA inaccurately assessed the statute by focusing too
4 narrowly on the “applicant for admission” language, and the BIA failed to contend with the
5 narrowing clause in § 1225(b)(2) is unpersuasive. ECF No. 1, ¶ 57. Courts “interpret the
6 relevant words not in a vacuum, but with reference to the statutory context, ‘structure, history
7 and purpose’.” *Abramski v. United States*, 573 U.S. 169, 179 (2014) (quoting *Maracich v. Spears*,
8 570 U.S. 48, 76 (2013)). The BIA has long recognized that “many people who are not actually
9 requesting permission to enter the United States in the ordinary sense are nevertheless deemed
10 to be ‘seeking admission’ under immigration laws.” *Matter of Lemus-Losa*, 25 I. & N. Dec. 734,
11 743 (BIA 2012). Statutory language “is known by the company it keeps.” *Marquez-Reyes v.*
12 *Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550,
13 569 (2016)). The phrase “seeking admission” in § 1225(b)(2)(A) must be read in the context
14 of “applicant for admission” in § 1225(a)(1). Applicants for admission includes arriving aliens
15 and aliens present without admission. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be
16 “seeking admission” under §1225(a)(1). *See Lemus*, 25 I. & N. at 743. Congress made clear
17 that all aliens “who are applicants for admission or otherwise seeking admission” to be
18 inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s]
19 an appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or Wien,’
20 ‘Batman or the Caped Crusader’).” *See United States v. Woods*, 571 U.S. 31, 45 (2013).

21 Petitioner’s interpretation reads “applicant for admission” out of 1225(b)(2)(A).
22 “[O]ne of the most basic interpretive canons” instructs that a “statute should be construed so
23 that effect is given to all its provisions.” *Corley v. United States*, 556 U.S. 303, 314 (2009).
24 “Applicant” is defined as “[s]omeone who requests something; a petitioner, such as a person
25 who applies for letters of administration.” Black’s Law Dictionary (12th ed. 2024). Applying
26 the definition of “applicant” to “applicant for admission,” an applicant for admission is an
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1 alien “requesting” admission, defined by statute as “the lawful entry of the alien into the
2 United States after inspection.” 8 U.S.C. § 1101(a)(13)(A). “Seeking admission” does not
3 have a different meaning from applicant for admission (“requesting admission”); the terms
4 are synonymous.

5 “The canon against surplusage is not an absolute rule.” *Marx v. Gen. Revenue Corp.*, 568
6 U.S. 371, 385 (2013); *see also Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 299
7 n.1 (2006) (“While it is generally presumed that statutes do not contain surplusage, instances
8 of surplusage are not unknown”). “Sometimes drafters *do* repeat themselves and *do* include
9 words that add nothing of substance, either out of a flawed sense of style or to engage in the
10 ill-conceived but lamentably common belt-and-suspenders approach.” *United States v.*
11 *Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017) (quoting Antonin Scalia & Bryan A. Garner,
12 *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 176–77 (2012)
13 (emphasis in original)). “This is why the surplusage canon of statutory interpretation must be
14 applied with statutory context in mind.” *Id.* (citing Scalia & Garner, *READING LAW* 179);
15 *see also Doe v. Boland*, 698 F.3d 877, 881 (6th Cir. 2012) (recognizing that the U.S. Code is
16 “replete with meaning-reinforcing redundancies” including “null and void;,” “arbitrary and
17 capricious,” “cease and desist,” and “free and clear”). “[A]n alien who is an applicant for
18 admission” and “an alien seeking admission” are functional synonyms. *See Heyman v. Cooper*,
19 31 F.4th 1315, 1322 (11th Cir. 2022) (“That principle [that drafters do repeat themselves]
20 carries extra weight where, as already explained, the arguably redundant words that the
21 drafters employed—‘rental’ and ‘lease’—are functional synonyms.”) In *Doe v. Boland*, the
22 Sixth Circuit determined that “any person who, while a minor, was a *victim* of a variety of sex
23 crimes and *who suffers personal injury* as a result” in 18 U.S.C. § 2255 a “victim by definition is
24 someone who suffers an injury” and Congress did not intend for those phrases to have
25 separate meanings. *Doe*, 698 F.3d at 882. “If one possible interpretation of a statute would
26 cause some redundancy and another interpretation would avoid redundancy, that difference
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1 in the two interpretations can supply a clue as to the better interpretation of a statute. But only
2 a clue. Sometimes the better overall reading of the statute contains some redundancy.” *Rimini*
3 *St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334 (2019). In Section 1225(b)(2), “an alien who is an
4 applicant for admission” is by definition “an alien seeking admission.”

5 Presumably once in removal proceedings, petitioner will seek relief from removal and
6 therefore will be seeking admission. *See, e.g., Ocampo-Duran v. Ashcroft*, 254 F.3d 1133, 1134–
7 35 (9th Cir. 2001) (concluding that a post-entry adjustment of status is an admission).
8 Petitioner’s reading would create an absurd result where an alien in removal proceedings, not
9 subject to mandatory detention, would then be “seeking admission” and subject to mandatory
10 detention when they filed for relief in immigration court, but not before seeking relief from
11 removal. If Petitioner contest this reading, then there would be no category of alien section
12 1225(b)(2) would apply to. Interpreting the statute as congress drafting a detention section
13 that applies to no one is an absurd result. Under the plain language of the statute, Petitioner
14 is subject to detention under § 1225(b)(2). *Yajure*, 21 I. & N. Dec. at 220–21.

15 **ii. Congress did not intend to place aliens who enter without inspection in a**
16 **more favorable position than aliens who appear at ports of entry.**

17 The Ninth Circuit disfavors construction of the INA that would provide “aliens who
18 entered this country illegally [with] greater rights . . . than those who entered lawfully.”
19 *Gonzalez-Gonzalez v. Ashcroft*, 390 F.3d 649, 652 (9th Cir. 2004) (holding that Congress did not
20 intend to make aliens convicted of domestic violence who entered illegally eligible for
21 cancellation of removal while specifically excluding aliens who had entered lawfully). The
22 “IIRIRA amendments sought to ensure sensibly enough, that those who enter the country
23 illegally, without proper inspection, are not treated more favorably under the INA than those
24 who seek admission through proper channels, but are denied access.” *Wilson v. Zeithern*, 265
25 F. Supp. 2d 628, 631 (E.D. Va. 2003). Petitioner’s reading of the statute ignores the context
26 and purpose of IIRIRA in the treatment of aliens present without inspection. *See Norfolk & W.*
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1 *Ry. Co. v. Am. Train Dispatchers Ass'n*, 499 U.S. 117, 129 (1991) (noting that interpretive canons
2 must yield “when the whole context dictates a different conclusion); *see also U.S. Nat. Bank of*
3 *Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993) (“In expounding a statute, we
4 must not be guided by a single sentence or member of a sentence, but look to the provisions
5 of the whole law, and to its object and policy.”).

6 The Supreme Court has long held that “the due process rights of an alien seeking initial
7 entry” are no greater than “[w]hatever the procedures authorized by Congress.”
8 *Thuraissigiam*, 591 U.S. at 139 (citation omitted). For unadmitted aliens, like the Petitioner
9 here, “the decisions of executive or administrative officers, acting within powers expressly
10 conferred by Congress, are due process of law.” *Nishimura Ekiu v. United States*, 142 U.S. 651,
11 660 (1892); *accord Thuraissigiam*, 591 U.S. at 138–140.⁵

12 To this end, the Supreme Court has also long applied the so-called “entry fiction” that
13 all “aliens who arrive at ports of entry . . . are treated for due process purposes as if stopped
14 at the border.” *Thuraissigiam*, 591 U.S. at 139. Indeed, that is so “even [for] those paroled
15 elsewhere in the country for years pending removal.” *Id.* The Supreme Court has applied the
16 entry fiction to aliens with highly sympathetic claims to having “entered” and developed
17 significant ties to this country. *See, e.g., Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (holding that
18 a mentally disabled girl paroled into the care of relatives for nine years must be “regarded as
19 stopped at the boundary line” and “had gained no foothold in the United States”); *Shaughnessy*
20 *v. United States ex rel. Mezei*, 345 U.S. 206, 214–215 (1953) (holding that an alien with 25 years’
21 of lawful presence who sought to reenter enjoyed “no additional rights” beyond those granted
22 by “legislative grace”). With the backdrop of these cases, it follows that Congress intended
23 for an unlawful entrant who violates immigration laws and evades detection must, once
24 found, be “treated as if stopped at the border.” *See Mezei*, 345 U.S. at 215.

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27 ⁵ Congress has chosen to provide aliens present without inspection, despite being applicants for admission, with the
28 due process of full removal proceedings. *See* 8 U.S.C. § 1229a(a)(4). But with those full removal proceedings,
Congress indicated that aliens present without inspection “shall be detained.” 8 U.S.C. § 1225(b)(2)(A).

1 Supreme Court precedents indicate that aliens who entered illegally by evading
2 detection while crossing the border should be treated the same as those who were stopped at
3 the border in the first place. *See Thuraissigiam*, 591 U.S. at 138–140. While aliens who have
4 been admitted may claim due-process protections beyond what Congress has provided even
5 when their legal status changes (*e.g.*, an alien who overstays a visa, or is later determined to
6 have been admitted in error), *see Wong Yang Sung v. McGrath*, 339 U.S. 33, 49–50 (1950), the
7 Supreme Court has never held that aliens who have “entered the country clandestinely” are
8 entitled to such additional rights. *The Yamataya v. Fisher*, 189 U.S. 86, 1000 (1903). Congress
9 has codified that distinction by treating all aliens who have not been admitted—including
10 unlawful entrants who evade detection for years—as “applicants for admission.” 8 U.S.C. §
11 1225(a)(1). In line with these cases and the statute, Congress created a detention system where
12 applicants for admission, including those who entered the country unlawfully, are detained
13 for removal proceedings under § 1225 and aliens who have been admitted to the country are
14 detained under § 1226. It does not matter whether an alien was apprehended “25 yards into
15 U.S. territory” or 25 miles, nor does it matter if he was here unlawfully and evades detection
16 for 25 minutes or 25 years; when an alien has never been admitted to the country by
17 immigration officers, his detention is no different from an alien stopped at the border. *See*
18 *Thuraissigiam*, 591 U.S. at 139.

19 **iii. Under *Loper Bright*, the statute controls, not prior agency practices.**

20 Any argument that prior agency practice applying § 1226(a) to Petitioner is unavailing
21 because under *Loper Bright*, the plain language of the statute and not prior practice controls.
22 *Yajure-Hurtado*, 29 I. & N. Dec. at 225–26. In overturning *Chevron*, the Supreme Court
23 recognized that courts often change precedents and “correct[] our own mistakes” *Loper Bright*
24 *Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def.*
25 *Council, Inc.*, 467 U.S. 837 (1984)). *Loper Bright* overturned a decades old agency interpretation
26 of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated
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1 IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380. Thus, longstanding agency
2 practice carries little, if any, weight under *Loper Bright*. The weight given to agency
3 interpretations “must always ‘depend upon their thoroughness, the validity of their reasoning,
4 the consistency with earlier and later pronouncements, and all those factors which give them
5 power to persuade.’” *Loper Bright Enterprises*, 603 U.S. at 432–33 (quoting *Skidmore v. Swift &*
6 *Co.*, 323 U.S. 134, 140 (1944) (cleaned up)).

7 The BIA’s recent precedent decision in *Matter of Yajure-Hurtado* includes thorough
8 reasoning. 29 I. & N. Dec. at 221–22. In *Yajure*, the BIA analyzed the statutory text and
9 legislative history. *Id.* at 223–225. It highlighted congressional intent that aliens present
10 without inspection be considered “seeking admission.” *Id.* at 224. The BIA concluded that
11 rewarding aliens who entered unlawfully with bond hearings while subjecting those
12 presenting themselves at the border to mandatory detention would be an “incongruous result”
13 unsupported by the plain language “or any reasonable interpretation of the INA.” *Id.* at 228.

14 To be sure, “when the best reading of the statute is that it delegates discretionary
15 authority to an agency,” the Court must “independently interpret the statute and effectuate
16 the will of Congress.” *Loper Bright Enterprises*, 603 U.S. at 395. But “read most naturally, §§
17 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings
18 have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does not support
19 Petitioner’s position that the plain language mandates detention under § 1226(a).

20 **C. Petitioner’s Request for EAJA Fees Should be Denied**

21 Petitioner seeks attorney’s fees and costs pursuant to § 2412 of the Equal Access for
22 Justice Act (“EAJA”), which allows fee-shifting in civil actions by or against the United
23 States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504, and
24 fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioner cannot obtain fees
25 in this case under 5 U.S.C. § 504 since that provision excludes administrative immigration
26 proceedings. *Ardestani v. Immigration and Naturalization Service*, 502 U.S. 129 (1991). His only
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1 recourse for fees is pursuant to § 2412(d)(1)(A), which provides, subject to exceptions not
2 relevant here, that in an action brought by or against the United States, a court must award
3 fees and expenses to a prevailing non-government party “unless the court finds that the
4 position of the United States was substantially justified or that special circumstances make
5 an award unjust.” 28 U.S.C. § 2412(d)(1)(A).

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

12 The United States District Court for the District of Nebraska and the United States
13 District Court for the Southern District of California have both issued decisions holding that,
14 under the plain language of § 1225(a)(1), aliens present in the United States who have not
15 been admitted are “applicants for admission” and are thus subject to the mandatory
16 detention provisions of “applicants for admission” under § 1225(b)(2). *See Vargas Lopez*, 2025
17 WL 2780351; *Chavez*, 2025 WL 2730228. Because other federal judges have found persuasive
18 the positions advanced by the Federal Respondents in this case, the Federal Respondents’
19 position is substantially justified. *See Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1091 (9th Cir.
20 2022) (finding that the district court did not abuse its discretion, in finding that the United
21 States’ position was substantially justified for purposes of EAJA, where different judges
22 disagreed about the proper reading of the statute and the case involved an issue of first
23 impression).

24 Because the United States’ position in this case is substantially justified, Petitioner’s
25 request for attorney’s fees under EAJA cannot prevail.

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1 **IV. Conclusion**

2 Congress intended for aliens present without inspection to be treated as applicants for
3 admission. These aliens are subject to inspection like all other aliens are inspected. Aliens
4 who have been present without inspection for more than two years, like Petitioner, is entitled
5 to full removal proceedings. But Congress directed that these aliens are subject to detention,
6 without bond eligibility, for the course of proceedings. The court should deny Petitioner's
7 Petition for Writ of Habeas Corpus.

8 Respectfully submitted this 26th day of December 2025.

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13 /s/ Summer A. Johnson
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