UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Luis Marcelo Lopez Pantocin,

Petitioner,

v.

Joel Brott, Sheriff, *et al.*,

Respondents.

No. 0:25-cv-4741-NEB-DJF

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

TABLE OF CONTENTS

INTRODUCTION **1**

BACKGROUND **5**

I. STATUTORY FRAMEWORK 5

A. The Pre-IIRIRA Framework Gave Preferential Treatment To Aliens Who Unlawfully Entered The United States. 5

B. IIRIRA Eliminated The Preferential Treatment Of Aliens Who Unlawfully Entered In The United States And Mandated Detention Of "Applicants For Admission." 7

C. DHS Concluded That Section 1225(B)(2)(A) Requires Detention Of All Applicants For Admission. 12

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY 13

III. CASELAW BACKGROUND 14

ARGUMENT **16**

I. SECTION 1225(B)(2) MANDATES DETENTION OF ALIENS, LIKE PETITIONER, WHO ARE PRESENT IN THE UNITED STATES WITHOUT HAVING BEEN LAWFULLY ADMITTED. 18

A. The Plain Language Of Section 1225(B)(2) Mandates Detention Of Applicants For Admission. 19

B. The Majority Approach Disregards The Clear Text Of Section 1225(B)(2)(A). 20

1. Section 1225(B)(2)'S Reference To Aliens "Seeking Admission" Does Not Narrow The Statute's Scope. 21

2. The Statute's Headings Do Not Support The District Court's Interpretation. 29

C. Section 1226 Does Not Support The Majority Reading Of Section 1225. 32

D. The Majority Approach's Narrow Interpretation Subverts Congressional Intent. 37

E. The Supreme Court's Decision In *Jennings* Does Not Undermine The Government's Interpretation. 39

II. NO HEARING IS NECESSARY. 41

CONCLUSION 41

Federal Respondents[1] submit this response to the petition for writ of habeas corpus, ECF No. 1, pursuant to the Court's briefing order, ECF No. 3. Federal Respondents are mindful that Judge Brasel has ruled on the legal question underpinning the Petition in this case,[2] but respectfully submit this more complete brief to support reconsideration of this district's position. For all the reasons explained below, the Court should deny the petition. Petitioner's continued detention is authorized—indeed, mandated—by statute.[3]

INTRODUCTION

Before 1996, the federal immigration laws required the detention of aliens who presented at a port of entry but allowed those who had entered and were already unlawfully present in the United States to obtain release pending deportation proceedings. Congress overhauled the immigration system in 1996 with passage of the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), which sought to end the preferential treatment of aliens who evade inspection and enter the United States unlawfully.

---

[1] The Federal Respondents are Pamela Bondi, Attorney General; Kristi Noem, Secretary of the U.S. Department of Homeland Security; U.S. Immigration and Customs Enforcement ("ICE"); and David Easterwood, Acting Director, Saint Paul Field Office Immigration and Customs Enforcement. The response is not offered on behalf of any state authority,

[2] *See, e.g.*, *Andres R.E. v. Bondi*, 2025 WL 3146312 (D. Minn. Nov. 4, 2025).

[3] The Eighth Circuit is expected to weigh in soon on the central legal question in this case. *See Avila v. Bondi*, No. 25-3248 (8th Cir., docketed Nov. 10, 2025).

As relevant here, Congress enacted what is now codified at 8 U.S.C. § 1225. That provision "deem[s]" any "alien present in the United States who has not been admitted or who arrives in the United States" to be "an applicant for admission." 8 U.S.C. § 1225(a)(1). And it mandates the detention of any "applicant for admission" who cannot show that they are "clearly and beyond a doubt entitled to be admitted." *Id.* § 1225(b)(2)(A). The statute makes no exception for how far into the country the alien traveled or how long the alien managed to evade detection. Unless the Secretary exercises the narrow and discretionary parole authority, mandatory detention is the rule for aliens who have never been lawfully admitted. Although the Government has previously operated under a different (and erroneous) understanding of the law, this Court must apply the language of Section 1225(b)(2)(A) as written.

There is no dispute that Petitioner is an "applicant for admission" under Section 1225(a), and that he cannot show (and has not shown) that he is "clearly and beyond a doubt" entitled to be admitted. Petitioner entered the country without inspection, was never "admitted," and thus unambiguously remains an "applicant for admission." Nor does Petitioner contest that he was never admitted into the United States. Yet despite the clear statutory text, courts in this district[4] have repeatedly held that others similarly situated are

[4] The Government recognizes that the majority of district courts nationwide have taken the same view, and the Seventh Circuit recently held likewise in a preliminary ruling. *See Castanon-Nava v. DHS*, -- F.4th --, 2025 WL 3552514, *8 (7th Cir. Dec. 11, 2025) (finding government "likely to fail on the merits" and agreeing with plaintiffs' argument "on the current record"); *but see Torres v. Barr*, 976 F.3d 918, 927-29 (9th Cir. 2020) (en banc) (exploring text, structure, and history of Section 1225 and agreeing with government's current understanding of "applicant for admission").

entitled to a bond hearing and potential release despite Section 1225's prohibition. That is error.

These courts' reading of Section 1225(b)(2) cannot be justified out of a need to avoid rendering redundant the term "seeking admission" in Section 1225(b)(2)(A). There is no surplusage; the statutory text and context show that *each* term has independent meaning. But even if it were otherwise, "redundancies are common in statutory drafting" and are "not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Barton v. Barr*, 590 U.S. 222, 239 (2020). Besides, that canon has no relevance where, as here, there would be redundancy under *any* interpretation.

This district's atextual reading also is not necessary to give effect to the separate detention authority in Section 1226. On its face, that provision applies to numerous aliens *not* subject to Section 1225(b)(2)(A), including all *admitted* aliens who are now removable—such as the more than a million aliens in the United States who were lawfully admitted but overstayed visas. For those aliens, Section 1226 alone applies. The mere fact that Section 1226(c) may overlap in part with Section 1225(b)(2)(A) is insufficient to rewrite clear statutory text.

A steadily building minority of district courts has begun to agree, adopting the Government's understanding of the INA's detention provisions.[5] The Government is well

[5] *See, e.g.*, *Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025); *Urbina Zapata v. Chestnut*, No. 1:25-cv-01922-WBS-CKD, 2025 WL 3687643 (E.D. Cal. Dec. 19, 2025); *E.R.J.B. v. Wofford*, No. 1:25-cv-01843-WBS-SCR, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025); *Romero Rebolledo v. Chestnut*, No. 1:25-cv-01904-WS-CKD, 2025 WL 3683122 (E.D. Cal. Dec. 18, 2025); *Liang v. Almodovar*, No. 1:25-cv-09322-MKV, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025); *Pablo Coronado v.*

aware that taking a fresh look at this statutory scheme is no small task. "The complex provisions of the INA have provoked comparisons to a morass, a Gordian knot, and King Minos's labyrinth in ancient Crete. . . . Divining its meaning is ordinarily not for the faint of heart." *Torres v. Barr*, 976 F.3d 918, 923 (9th Cir. 2020) (en banc) (cleaned up). Given the importance of the question and recent developments in the caselaw, Federal

---

Secretary, DHS, No. 1:25-cv-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025); *P.B. v. Bergami*, No. 3:25-cv-02978-O, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025); *Yanyun Mo v. Chestnut*, No. 1:25-cv-01789 WBS CSK, 2025 WL 3539063 (E.D. Cal. Dec. 10, 2025); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025); *Melgar v. Bondi, et al.*, No. 8:25CV555, 2025 WL 3496721 (D. Neb. Dec. 5, 2025); *Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, No. 25-CV-867 (JLS), 2025 WL 7484932 (W.D.N.Y. Dec. 4, 2025); *Topal v. Bondi*, No. 1:25-CV-01612 (SEC P), 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Hernandez Cruz v. Noem*, No. 8:2-cv-02566-SB-MAA, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025); *Suarez v. Noem*, No. 1:25-cv-202-JMD, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025); *Maceda Jimenez v. Thompson*, No. 4:25-cv-05025, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025); *Alves De Andrade v. Patterson*, No. 6:25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025); *Valencia v. Chestnut*, No. 1:25-CV-01550 WBS JDP, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025); *Alonzo v. Noem*, No. 1:25-cv-01519 WBS SCR, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Ramos v. Lyons*, No. 2:25-cv-09785-SVW-AJR, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Oliveira v. Patterson*, No. 6:25-CV-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025);*Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Garibay-Robledo v. Noem*, No. 1:25-CV-177, 2025 WL 3264478 (N.D. Tex. Oct. 24, 2025); *Vargas Lopez v. Trump*, --- F.Supp.3d ---, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Pipa-Aquise v. Bondi*, No. 1:25-cv-01094-MSN-WBP, 2025 WL 2490657 (E.D. Va. Aug. 5, 2025); *see also Pena v. Hyde*, No. 25-11983-NMO, 2025 WL 2108913 (D. Mass. July 28, 2025) (applying Section 1225 without discussion); *Delgado v. Noem*, No. 9:25-cv-00329, 2025 WL 3639439 (E.D. Tex. Dec. 12, 2025) (concluding either Section 1225 and 1226, or both, may apply); *Gallegos Rodriguez v. Noem*, No. 9:25-cv-00320, 2025 WL 3639440 (E.D. Tex. Dec. 10, 2025) (same).

Respondents respectfully urge this Court to revisit the majority approach and give serious consideration to the Government's view of the law as set forth in this response.

BACKGROUND

I. Statutory Framework

A. The Pre-IIRIRA Framework Gave Preferential Treatment to Aliens Who Unlawfully Entered the United States.

The Immigration and Nationality Act ("INA"), as amended, contains a comprehensive framework governing the regulation of noncitizens, including the creation of proceedings for the removal of those who unlawfully enter the United States or are otherwise removable and requirements for when the Executive is obligated to detain aliens pending removal.

Prior to 1996, the INA treated noncitizens differently based on whether they presented at a port of entry or evaded inspection and entered the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-23 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) "dictated what type of [immigration] proceeding applied" and whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at 1099.[6]

[6] Noncitizens who arrive at a port of entry have physically "entered" the United States, but under the longstanding "entry fiction" doctrine, "aliens who arrive at ports of entry … are 'treated' for due process purposes as if stopped at the border." *DHS v. Thuraissigiam*, 591 U.S. 103, 139 (2020).

At the time, the INA "provided for two types of removal proceedings: deportation hearings and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (*en banc*). A noncitizen 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), 1226(a) (1995). In contrast, a noncitizen who evaded inspection and physically entered the United States would be placed in deportation proceedings. *Hurtado*, 29 I. & N. Dec. at 223; *Hing Sum*, 602 F.3d at 1100. Noncitizens 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 noncitizens based on "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 Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("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").

B. IIRIRA Eliminated the Preferential Treatment of Aliens Who Unlawfully Entered in the United States and Mandated Detention of "Applicants for Admission."

Congress discarded that prior regime through enactment of IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that law sought to "ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical 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); *see also Sandoval*, 2025 WL 3048926, at *6.

To that end, IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the touchstone. IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws no longer distinguish between noncitizens based on whether they manage to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" is "whether or not the alien has been *lawfully* admitted." House Rep., *supra*, at 225 (emphasis added); *see Hing Sum*, 602 F.3d at 1100 (similar). IIRIRA also eliminated the exclusion/deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Hurtado*, 29 I. & N. Dec. at 223.

IIRIRA effected these changes through several provisions codified in Section 1225 of Title 8.

Section 1225(a): Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. That provision states that an alien

"present in the United States who has not been admitted or who arrives in the United States" "shall be deemed ... an applicant for admission":

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1). "All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers." *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 provided for 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 may be applied to a subset of aliens—those inadmissible on certain grounds who (1) are "arriving in the United States," or (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 of persecution and, if found not to have such fear, until removed." *Id.* § 1225(b)(1)(B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for asylum or a fear of persecution or who is determined not to have a credible fear 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).[7] 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); *see* 8 C.F.R. § 235.3(b)(1)(ii) (mirroring Section 1225(b)(2)'s 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 until the moment those proceedings begin").

While Section 1225(b)(2) does not allow for noncitizens to be released on bond, the INA grants DHS discretion to exercise its parole authority to temporarily release an

---

[7] Section 1225(b)(2)(A) also does not apply to (1) crewmen or (2) stowaways. 8 U.S.C. § 1225(b)(2)(B). In addition, the Executive has discretion to return aliens who have arrived on land from a contiguous territory to that territory pending removal proceedings. *Id.* § 1225(b)(2)(C).

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 an 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 … have been served," the "alien shall … be returned to the custody from which he was paroled" and be "dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A).

Section 1226: IIRIRA also created a separate authority addressing the arrest, detention, and release of noncitizens generally (not "applicants for admission" specifically). *See* 8 U.S.C. § 1226. This provision governs the detention of aliens who were admitted to the country but later become removable—for example, admitted aliens who overstay or otherwise violate the terms of their visas, engage in conduct that renders them removable, 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." 8 U.S.C. § 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).[8] In practice, DHS makes the initial custody determination. 8 C.F.R. § 236.1(d)(1). The alien may seek custody redetermination (a bond hearing) before an immigration judge and can appeal an

[8] Conditional parole under Section 1226(a) is distinct from parole under Section 1182(d)(5)(A). *See Ortega-Cervantes v. Gonzalez*, 501 F.3d 1111, 1116 (9th Cir. 2007).

immigration judge's custody determination to the Board of Immigration Appeals. 8 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19.

That "default rule" of discretionary detention does not apply to certain criminal aliens. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c). Section 1226(c) provides that "[t]he Attorney General shall take into custody" certain classes of criminal aliens—those who are inadmissible or deportable because the alien (1) "committed" certain offenses delineated in 8 U.S.C. §§ 1182 and 1227; or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1); *see Nielsen v. Preap*, 586 U.S. 392, 398-99 (2019). The Executive must detain these aliens after "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." 8 U.S.C. § 1226(c)(1). Such aliens may be released only if DHS determines "that release of the alien from custody is necessary" to protect a witness to a "major criminal activity" or a similar person, and then only if the alien "will not pose a danger" to public safety and is not a flight risk. *Id.* § 1226(c)(4).

Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3 (2025), which additionally requires detention of (and prohibits parole for) criminal aliens who (1) are inadmissible because they are physically present in the United States without admission or parole (8 U.S.C. § 1182(a)(6)(A)), have committed a material misrepresentation or fraud, (*id.* § 1182(a)(6)(C)), or lack required documentation, (*id.* § 1182(a)(7)); 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. *Id.* § 1226(c)(1)(E).

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

For many years after IIRIRA, DHS and most immigration judges treated noncitizens who entered the United States without admission 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). *Hurtado*, 29 I. & N. Dec. at 225 n.6. Until this year, however, the Board of Immigration Appeals had not issued any precedential opinion on the appropriate detention authority for such individuals.

On July 8, 2025, DHS "revisited its legal position on detention and release authorities" and issued interim guidance that brought the Executive's practices in line with the statute's plain text. *See, e.g.,* Memorandum from Rodney S. Scott, U.S. Customs & Border Protection, *Detention of Applicants for Admission* (July 10, 2025).[9] Specifically, DHS concluded that "applicants for admission are subject to mandatory detention under INA § 235(b) [8 U.S.C. § 1225(b)] and may not be released from DHS custody except by INA § 212(d)(5) parole." *Id.* As a result, 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]." *Id.*

---

[9] https://www.cbp.gov/sites/default/files/2025-09/intc-46100_-_c1_signed_memo_-_07.10.2025.pdf

The Board of Immigration Appeals also 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. Thus, under Board precedent, "[i]mmigration Judges lack authority to hear bond requests or to grant bond to aliens ... who are present in the United States without admission." *Id.* at 225.

II. Factual Background and Procedural History

Petitioner Luis Marcelo Lopez-Pantocin is a citizen and national of Ecuador. Declaration of Angela Minner ("Minner Decl.") ¶ 4. Petitioner entered the United States without inspection on or about December 9, 2022, near Eagle Pass, Texas. *Id.* U.S. Border Patrol apprehended Petitioner shortly after his entry and processed him by release on parole pending issuance of a charging document, due to lack of detention bed space. *Id.* and Ex. A (Form I-213 Record of Deportable/Inadmissible Alien from Lopez's first encounter).

On or about December 4, 2023, Petitioner filed Form I-589, Application for Asylum and Withholding of Removal with U.S. Citizenship & Immigration Services (USCIS). Minner Decl. ¶ 5 and Ex. B. The application is currently pending.

Two years later, on December 5, 2025, officers with U.S. Immigration and Customs Enforcement's Enforcement and Removal Operations group ("ICE/ERO") conducting targeted enforcement operations arrested Petitioner in Roseville, Minnesota for furtherance

of removal proceedings. Minner Decl. ¶ 6 and Ex. C. ICE/ERO determined that Petitioner should be detained, and he is currently in custody at the Sherburne County Jail in Elk River, Minnesota. *Id.*

ICE/ERO then served Petitioner Form I-862, Notice to Appear, on December 24, 2025 at the Sherburne County Jail. Minner Decl. ¶ 7 and Ex. C (Notice to Appear and I-213 Record of Deportable/Inadmissible Alien from current encounter).[10] Petitioner's next immigration court hearing is scheduled for January 27, 2026. Minner Decl. ¶ 8.

Petitioner filed this habeas action on December 22, 2025, ECF No. 1, and the Court issued its briefing order the same day, ECF No. 3.

III. Caselaw Background

As recognized above, to date, courts in this district have rejected Respondents' interpretation of Section 1225(b)(2)(A) and granted immigration habeas petitions raising the legal issue presented here. In particular, these courts have held that the phrase "seeking admission" in Section 1225(b)(2)(A) "implies a current action" that limits the provision to aliens actively seeking "lawful immigration status." *Avila*, 2025 WL 2976539, at *5. The courts have thought this interpretation necessary to avoid rendering Section 1225(b)(2)(A) superfluous. *Id.* Respectfully, however, these decisions have not fully engaged with the structure of Section 1225(b)(2)(A) or reconciled their interpretation with statutory context. Instead, the courts simply hold that the petitioners were not "seeking admission" because they "ha[d] lived in the country for years without seeking any lawful immigration status."

[10] ICE/ERO was unable to complete service of the charging document at the time of Petitioner's arrest because of a processing backlog. Minner Decl. ¶ 7.

Id.

These decisions, and others around the country reaching similar results, also rely on a scattershot of other rationales to support their interpretation. They reject Respondents' reading of Section 1225(b)(2)(A) on the theory that it would "render[] superfluous" the Laken Riley Act's amendments to Section 1226(c), *e.g., Avila,* 2025 WL 2976539, at *6—even though portions of the Laken Riley Act overlap with Section 1225(b)(2)(A) under *either* side's interpretation. And these courts also reason that *Jennings v. Rodriguez*, 583 U.S. 281 (2018), "confirms" their interpretation, *id.*—even though *Jennings* resolved an entirely separate issue.

Finally, courts taking this approach note that the Notice to Appear issued to petitioners often checks the box for an "alien present in the United States without being admitted or paroled," not for an "arriving alien." *Avila*, 2025 WL 2976539, at *6. These courts believe this designation suggests the petitioners are subject to detention under Section 1226(a)'s discretionary regime—even though Section 1225(b)(2)(A) expressly applies to aliens "present in the United States who has not been admitted."

As for the substantial minority of courts that agree with the Government's approach to the law, *see supra* n. 5, that minority has been growing steadily since the BIA, an expert administrative body, reached its conclusion in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025). *See Sandoval*, 2025 WL 3048926, at *6 (noting "many of the[] cases" taking the majority position did so "before—or soon after—the BIA issued its opinion in" *Hurtado*). Many of these decisions include considerable in-depth legal analysis, and are based in part on the observation that the cases rejecting the government's interpretation

often "defer largely to each other." *Mejia*, 2025 WL 3131942, at *1. One judge, having initially rejected the government's view, adopted it in a later ruling "after additional research and analysis." *Ramos*, 2025 WL 3199872, at *4.

Just last month, one district court compiled all the Section 1225/26 decisions nationwide, finding only six agreed with the Government's approach. *See Demirel v. Fed. Detention Ctr. Phila.*, Civ. No. 25-5488, 2025 WL 3218243, at *4 (E.D. Pa. Nov. 18, 2025) (citing an appendix identifying 282 out of 288 district court decisions rejecting the Government's interpretation) (cited by *Roberto M.F.*, Case No. 25-cv-4456 (LMP/ECW) (D. Minn. Dec. 9, 2025). Today the number of district court decisions agreeing with the Government's approach stands at, at least, 30. *See supra* n. 5. Of course, in the end, "[w]hat governs this case is the text of the statute, not what other district courts have concluded." *Mejia*, 2025 WL 3131942, at *1 (denying habeas petition in this context and noting majorities "sometimes get the law very wrong.") (citation omitted). *Id.*

ARGUMENT

The INA's plain language requires DHS to detain noncitizens, like Petitioner, who are present in the United States without admission. Respectfully, the contrary conclusion reached by courts in this district flouts the statute's text and subverts congressional intent. This Court should join the growing minority that rejects that flawed approach.

I. Section 1225 of Title 8 deems all aliens who are "present in the United States" without admission to be "applicants for admission," and it mandates that all such applicants for admission—except for those otherwise exempted—"shall be detained" during their removal proceedings. 8 U.S.C. § 1225(a)(1), (b)(2)(A). Detention is mandatory,

regardless of the duration of the alien's presence in the United States, the alien's distance from the border when apprehended, or the affirmative acts he takes to secure lawful status or relief.

II. The phrase "seeking admission" in Section 1225(b)(2) does not undermine the Government's reading. The statute makes clear that an alien who is an "applicant for admission" is necessarily "seeking admission." *See* 8 U.S.C. § 1225(a)(3). No additional, affirmative act is needed for an "applicant for admission" to be "seeking admission." That is consistent with the everyday meaning of the terms; as a matter of plain English, a person who is *applying* for something is necessarily *seeking* it. This reading does not render the term "seeking admission" redundant; read consistent with the provision's structure, every portion has independent meaning. Even if there were redundancy, "[r]edundancies are common in statutory drafting," and "[r]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Barton v. Barr*, 590 U.S. 222, 223 (2020).

The references to the "arriving aliens" and "inspection" in the statutory headings do not undermine the Government's interpretation. Titles and headings cannot "limit the plain meaning of the text," *Trainmen*, 331 U.S. at 528-29—especially where, as here, the headings are not meant as a comprehensive summary of the law's content.

III. The Government's reading of Section 1225(b)(2) does not render Section 1226(c) superfluous. Here, too, courts fret about redundancy, but Section 1226(c)'s mandatory detention provisions, including as amended by the Laken Rily Act, govern a significant swath of aliens who are *not* covered by Section 1225(b)(2)—for example,

admitted aliens. The mere fact that the provisions overlap is not a basis for rewriting Section 1225(b)(2)'s clear text. Even as to the areas of overlap, Section 1226(c) does considerable independent work by prohibiting the Executive from granting parole to those aliens it covers.

IV. To make matters worse, the majority interpretation reimposes the same perverse regime that IIRIRA was meant to eliminate—requiring the detention of aliens who present at a port of entry as the law requires, but authorizing the release of those aliens who enter the United States in violation of law and make *no effort* to prove admissibility. The Court should not endorse such a backwards outcome—particularly one that is so plainly subversive of congressional intent.

V. The Government's interpretation of Section 1225(b)(2) is consistent with *Jennings*, 583 U.S. 281. That case did not address the scope of Sections 1225 and 1226's detention authority. Even so, *Jennings* characterized Section 1225(b)(2) consistent with the Government's interpretation as "a catchall provision that applies to all applicants for admission not covered by §1225(b)(1)." *Id.* at 287.

Each of these points is elaborated below.

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

Under the plain language of Section 1225(b)(2), DHS is required to detain all noncitizens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the alien has been in the United States or how far from the border they were detained. That unambiguous language resolves

this case. *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."). The contrary interpretation is incompatible with the statutory text and subverts Congress's manifest purpose in adopting Section 1225(b)(2)(A).

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

Section 1225(a) deems all noncitizens who are "present in the United States [and] ha[ve] not been admitted or who arrive[] in the United States" to be "applicant[s] for admission." 8 U.S.C. § 1225(a)(1). And "admission" under the INA means not mere physical entry, but "lawful entry … after inspection" by immigration authorities. 8 U.S.C. § 1101(a)(13)(A). Thus, an alien who enters the country without inspection and admission 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 Mejia*, 2025 WL 3131942, at *2-3; *Rojas*, 2025 WL 3033967, at *6, *8; *see also Torres*, 976 F.3d at 928 ("Now, in removal proceedings [after the addition of Section 1225(a)(1)], the relevant distinction for procedural purposes is whether the immigrant has been lawfully admitted, regardless of actual physical presence.") (citations omitted).[11]

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

---

[11] *Torres* is exceptionally strong persuasive authority. While superficially distinguishable (the case arose on different facts and involved a different ultimate legal question), the en banc Ninth Circuit's extended analysis of how Section 1225 operates was in fact central to its holding in the case. Not a single judge dissented.

admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statute's use of the term "shall" denotes that detention is mandatory. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998); *see Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) "mandate[s] detention"). And like subsection (a), subsection (b)(2) makes no exception for the duration of the noncitizen's presence in the country or how far the alien's incursion into the country. Therefore, except for those expressly exempted, the statute's plain text mandates that DHS detain all "applicants for admission" who are not "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A).

Petitioner falls squarely within the statute's definition. He was "present in the United States," there is no dispute that he has "not been admitted," and he does not fall within any of the exemptions to Section 1225(b)(2)(A). 8 U.S.C. § 1225(a), (b)(2)(B); *supra*, p. 15. Moreover, he cannot—and has not tried to—establish that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Therefore, the statute commands that Petitioner "shall be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

B. The Majority Approach Disregards the Clear Text of Section 1225(b)(2)(A).

Despite the clear language of Section 1225, most district courts have held that Section 1225(b)(2) applies only to noncitizens "seeking admission" in the United States, not those already present. That reading directly contradicts the statute. Nor is there any

other interpretation of Section 1225(b)(2)(A) that would exclude those, like Petitioner, who evaded inspection and were unlawfully present in the United States.

1. Section 1225(b)(2)'s Reference to Aliens "Seeking Admission" Does not Narrow the Statute's Scope.

The majority approach holds that the phrase "seeking admission" in Section 1225(b)(2)(A) requires that the provision be read to apply only to applicants for admission who are taking affirmative steps to gain admission to the United States—not those, like Petitioner, who were residing unlawfully in the United States *without* making any effort to gain admission. App. 342-43 R. Doc. 14, at 11-12. That is wrong. The statute itself makes clear that a noncitizen who is an "applicant for admission" *is* "seeking admission."

a. Section 1225(b)(2) requires the detention of an "applicant for admission, if the examining officer determines that an [i.e., the] alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory text and context show that being an "applicant for admission" is a means of "seeking admission." In other words, every "applicant for admission" is inherently and necessarily "seeking admission," at least absent a choice to pursue withdrawal. No additional affirmative step is necessary.

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 any noncitizen who is an "applicant for admission" *is* "seeking admission" for purposes of Section 1252(b)(2)(A).

"Seeking admission" is thus "a term of art" that includes not only those who "entered the United States with visas or other entry documents before their presence became lawful," but also those who "entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of section 235(a)(1) of the Act." *Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 n.6 (BIA 2012) (emphases omitted). As a result, "many 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." *Id.* at 743 (emphasis in original). For example, a noncitizen who previously unlawfully entered the United States and is never admitted, departs, and subsequently submits a literal application for admission to the United States—*e.g.*, applies for a visa—is deemed to be "*again* seek[ing] admission" to the United States. *Id.* at 743-44 & n.6 (emphasis added) (quoting and discussing 8 U.S.C. § 1182(a)(9)(B)(i)(I)-(II)). Mere presence without admission *is* seeking admission "by operation of law." *Id.*

The everyday meaning of the statutory terms also supports this reading. 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"); *accord Mejia Olalde*, 2025 WL 3131942, at *3 ("To 'seek' is a synonym of to 'apply' 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 necessarily "seeking admission" to the United States. *Rojas*, 2025 WL 3033967, at *8 ("seeking admission" is "best read as simply another way of referring to aliens who are applicants for admission").

All of this confirms that neither the duration of a noncitizen's unlawful presence in the United States nor his distance from the border when apprehended alters the legal reality that an "applicant for admission" is "seeking admission." "Congress knows how to limit the scope" of the INA "geographically and temporally when it wants to." *Mejia Olalde*, 2025 WL 3131942, at *4. For example, Section 1225(b)(1) may apply to aliens "arriving in the United States" or who "ha[ve] been physically present in the United States continuously for [a] 2-year period." 8 U.S.C. § 1225(b)(1). So, "[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." *Mejia Olalde*, 2025 WL 3131942, at *4. It did not. To the contrary, Section 1225(a)(1)'s inclusion of *both* aliens "arriving" and those "present

in the United States" confirms that *all* aliens who are not admitted are "applicants for admission," regardless of the length of their presence in the country.

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," *supra*, pp. 21-22—not the exclusive way. For example, lawful permanent residents returning to the United States are not "applicants for admission" but they still may be deemed to be "seeking admission" in some circumstances. *See* 8 U.S.C. § 1101(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 admission.

To be sure, the Government previously operated under a narrower application of Section 1225(b)(2)(A), such that noncitizens present in the United States who had entered without admission were instead detained under Section 1226(a). *Supra*, pp. 11-12; *but see* 8 C.F.R. § 235.3(b)(1)(ii) (requiring detention of applicants for admission pending removal proceedings "in accordance with section 235(b)(2) of the Act"). But past practice does not justify disregard of clear statutory language. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015). Indeed, the Supreme Court has rejected longstanding government interpretations that it has deemed incompatible with the INA specifically. *See Pereira v. Sessions*, 585 U.S. 198, 204-05, 208-09 (2018). After all, "[a] failure by the Executive Branch to enforce a statutory provision, or its conclusion that the law does not apply, does not nullify a duly-enacted law." *Chen*, 2025 WL 3484855, at *7. Therefore,

this Court must interpret the statute "as written." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019); *see Mejia Olalde*, 2025 WL 3131942, at *5 (rejecting the prior interpretation of Section 1225(b)(2) as "nontextual" and unsupported by any "thorough, reasoned analysis"); *Rojas*, 2025 WL 3033967, at *9 ("Prior administrations' generous interpretation of these laws … do not and cannot rewrite it.").

Under *Loper Bright Enters. v. Raimondo,* 603 U.S. 369 (2024), the Court should give administrative history particularly little weight here, because those emphasizing longstanding prior practice "nowhere cite[] a thorough, reasoned analysis from administrators explaining why aliens covered by 1225(b)(2) are eligible to receive bond hearings." *Valencia*, 2025 WL 3205133, at *5; *id.* (noting the 1997 interim rulemaking supporting past practice "offered no interpretation of the statute to justify that nontextual policy, so the Court accords it little to no weight. The plain meaning prevails."); *see also Rojas*, 2025 WL 3033967 at *9 ("If there was a documented prior rationale, the Court has not seen it"; therefore, "[t]he Court must apply the statute as written.").

b. The Government's reading does not render the term "seeking admission" redundant of the phrase "applicant for admission" in Section 1252(b)(2)(A); the structure of Section 1252(b)(2)(A) demonstrates that each phrase has independent meaning.

Section 1225(b)(2)(A) is composed of a primary (operative) clause, which is modified by two prefatory clauses offset by commas. The operative clause requires detention of aliens "seeking admission" who cannot show their admissibility ("if the examining immigration officer …, [then] the alien shall be detained"). That clause's mandate is modified by two prefatory clauses. The first excludes aliens covered by

subparagraphs (B) and (C). 8 U.S.C. § 1225(b)(2)(A) ("[s]ubject to …"). Like the first, the second prefatory clause narrows the operative clause to a subset of "case[s]"—namely, "in the case of an alien who is an applicant for admission…." *Id.* (emphasis added). Section 1225(b)(2) thus lays out a general command (the operative clause), and then qualifies that directive: "[I]f an alien seeking admission is not clearly and beyond a doubt entitled to be admitted," then "the alien shall be detained"—but only if (1) the alien is not covered by subparagraphs (B) or (C); and (2) the alien is seeking admission by being "an applicant for admission" under Section 1225(a)(1). No portion of the statute is redundant.

Even if it were otherwise, the canon against surplusage "is not a silver bullet." *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*, 590 U.S. at 239. Thus, "[t]he Court has often recognized: Sometimes the better overall reading of a statute contains some redundancy." *Id.* (quoting *Rimini St., Inc.*, 586 U.S. at 346) (internal quotations omitted). For that reason, "the surplusage canon … 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 239.

Those principles apply with full force here. Under a straightforward reading of the statute, being an "applicant for admission" is "seeking admission." Even if that reading produced 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 239; *see Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) ("Th[e] principle [that drafters do repeat themselves] carries extra weight where … the arguably redundant words that the drafters employed … are functional synonyms."). And that is especially true, where that re-writing would be so clearly contrary to Congress's objective in passing the law. *Infra*, pp. 37-38.

c. Even if "seeking admission" required some separate affirmative conduct by the noncitizen, an applicant for admission who attempts to avoid removal from the United States, rather than trying to voluntarily depart, is by any definition "seeking admission."

Section 1225(b)(2)(A) applies to a noncitizen who is present in the United States without admission, even for years. Although the noncitizen may not have been affirmatively seeking admission during those years of illegal presence, Section 1225(b)(2) is not concerned with 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 noncitizen's admissibility. 8 U.S.C. § 1225(b)(2)(A). At *that* point, the noncitizen is "seeking"—*i.e.*, presently "endeavor[ing] to obtain," American Heritage Dictionary, *supra*, at 1174—admission into the United States; if it were otherwise, the applicant would seek to withdraw his application for admission and voluntarily "depart immediately from the United States" in lieu of removal proceedings. *See* 8 U.S.C. § 1225(a)(4). An applicant who forgoes that statutory option and instead endeavors to remain in the United States by participating in Section 240 removal proceedings—proceedings in which the noncitizen has the "burden of establishing that [he] is clearly and beyond a doubt entitled to be

admitted" or satisfies the criteria for "relief from removal," 8 U.S.C. § 1229a(c)(2)(A), (c)(4)—is plainly "endeavor[ing] to obtain" admission to the United States. American Heritage Dictionary, *supra*, at 1174.

d. Simply put, as the growing minority of courts recognizes, "[t]here is no support in statutory text, precedent, or legislative history for the conclusion that Section 1225(b)(2) does not apply to aliens who are 'already here' after having illegally entered the country." *Chen*, 2025 WL 3484855, at *5. Indeed, "as a matter of text and logic, the proposition that someone who is physically present in the country cannot also be 'seeking admission' to the United States does not hold water." *Id.* at *6. Such an approach effectively amounts to a judicially-created "extra-statutory status." *Candido*, 2025 WL 3484932, at *4 (by arguing "he is not also 'seeking admission'" despite admitting having never been "'admitted' into the United States," Petitioner "creates his own extra-statutory status. Under such status, after *some undetermined period of time* of merely residing unlawfully in the United States, he no longer is 'seeking admission' and, thereby, converts himself to bond-eligible under Section 1226(a) by nothing more than remaining in the country unlawfully.") (emphasis in original).

These courts have seen that trying to read "seeking admission" as a separate or additional requirement "would pack a lot of meaning into what appears to be an alternate phrasing." *Rojas*, 2025 WL 3033967 at *8. Ultimately, they have concluded, "it makes no sense to describe an active applicant for admission as somebody who is not 'seeking' admission." *Valencia*, 2025 WL 3205133, at *3. This is so because, of course, "[a]n alien can have physically entered the country many years before and still be an applicant for

lawful entry, seeking legal 'admission.'" *Id.*; *see also Ramos*, 2025 WL 3199872, at *5 ("Petitioner is 'seeking admission' because the statute treats an alien who is 'an applicant for admission' as someone who is, legally speaking 'seeking admission.'"); *Cabanas,* 2025 WL 3171331, at *5 ("Congress could have said that 1225(b) applied only to *arriving* aliens if that's what was meant. But it didn't."); *Garibay-Robledo,* 2025 WL 3264478, at *4 (trying to distinguish between "applicant for admission" and "seeking admission . . . appears to place form over substance").

2. The Statute's Headings Do Not Support the District Court's Interpretation.

Petitioner may argue that the references to "arriving aliens" and "inspection" in the title and subheadings in Section 1225 support limiting Section 1225(b)(2)(A) to noncitizens who are arriving at the border, *not* those already physically present in the country. The Court should reject any such interpretation.

The reference to "arriving aliens" in Section 1225's title—"expedited removal of inadmissible arriving aliens"—cannot limit the statute to noncitizens entering the United States. After all, a statute's title is "of use only when [it] shed[s] light on some ambiguous word or phrase"; "the title of a statute and the heading of a section cannot limit the plain meaning of the text." *Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 528-29 (1947) (titles "cannot undo or limit that which the text makes plain"); *see Trs. of Sheet Metal Workers Loc. 7 Zone 1 Pension Fund v. Pro Servs., Inc.*, 65 F.4th 841, 848 (6th Cir. 2023) (same).

Here, Section 1225's text makes crystal clear that it applies to noncitizens who are already physically present in the United States, not just to those who are arriving. Section 1225(a)(1) explicitly deems noncitizens already "present in the United States who have not been admitted" to be applicants for admission. 8 U.S.C. § 1225(a)(1); *Rojas*, 2025 WL 3033967, at *6, *8. And nothing in Section 1225(b)(2)(A) refers to "arriving aliens." Likewise, Section 1225(b)(1) extends expedited removal procedures not just to "arriving" aliens but also to aliens who have been "physically present in the United States" for up to two years, 8 U.S.C. § 1225(b)(1)(A)(i), (iii)(II). The statute's title "cannot undo or limit that which the text makes plain." *Trainmen*, 331 U.S. at 529.

Section 1225's title is an especially weak indicator of the statute's scope. "Where the text is complicated and prolific, headings and titles can do no more than indicate the provisions in a general manner," and often "neglect to reveal that [the statute] also deals with" a variety of other subjects. *Trainmen*, 331 U.S. at 528 ("That the heading of s 17 fails to refer to all matters which the framers of that section wrote into the text is not an unusual fact."). Here, Section 1225 covers a multitude of subjects and classes of aliens, including arriving aliens; that the statute's title singles out arriving aliens specifically "cannot limit the plain meaning of the text." *Id.* Even if it could, the title refers to "arriving aliens" in a clause addressing "*expedited removal* of inadmissible ... aliens," and expedited removal is governed by subsection (b)(1), not subsection (b)(2). *See* 8 U.S.C. § 1225(b)(2)(B)(ii). If Section 1225's title had a limiting effect—and it does not—it would not extend to subsection (b)(2). *See Mejia Olalde*, 2025 WL 3131942, at *3 (adopting same interpretation).

Likewise, the word "inspection" in the heading of Section 1225(b)(2) does not narrow Section 1225's scope to arriving aliens. Section 1225 provides that "all aliens … *who are applicants for admission* or otherwise seeking admission or readmission … *shall be inspected* by immigration officers." 8 U.S.C. § 1225(a)(3) (emphasis added). Inspection is required for all aliens "present in the United States who have not been admitted," not just arriving aliens. *Id.* § 1225(a)(1).

The foregoing discussion all but disposes of any argument that Section 1225(b)(2)(A)'s reference to "crewm[e]n" and "stowaways" limits the statute to aliens at the border. Yes, Section 1225(b)(2)(A) also applies to certain aliens who arrive in the United States, *supra*, p. 8-9, which is why excluding "crewm[e]n" and "stowaways" from Section 1225(b)(2)(A) required express exemptions. *See* 8 U.S.C. § 1225(b)(2)(B)(i), (iii). But again, the statute "deem[s]" *both* aliens who arrive and aliens already "present in the United States" to be "applicant[s] for admission." *Id.* § 1225(a)(1). Congress's decision to exclude certain aliens from Section 1225(b)(2)(A) does not otherwise limit the provision's scope. [12]

[12] The courts' reliance on the Notice to Appear issued to detainees is flawed for the same fundamental reason. The courts reason that the box for an "alien present in the United States without being admitted or paroled" had been checked on the form, while the box for "arriving aliens" was unchecked. But because Section 1225 applies *both* to noncitizens already "present in the United States" and those who arrive in the United States, the checked box is perfectly consistent with Petitioner being subject to detention under Section 1225(b)(2)(A).

C. Section 1226 Does Not Support the Majority Reading of Section 1225.

Courts in this district have also reasoned that the Government's interpretation would render superfluous portions of Section 1226, which contains a separate mandatory detention provision for certain criminal aliens. *See, e.g.*, Order, *Hernan C.P.*, Cast No. 25-cv-04561 (LMP-ECW), Doc. No. 17 (D. Minn. Dec. 22, 2025), at 9 (concluding the Government's reading "would render Section 1226 a nullity."). That, too, is wrong. Although Section 1226(c) and Section 1225(b)(2) overlap for some aliens, each provision has independent effect. Mere overlap is no basis for re-writing unambiguous statutory text.

1. To begin, there is no colorable argument that the Government's interpretation of Section 1225(b)(2)(A) renders Section 1226(a)'s discretionary detention authority superfluous. Section 1226(a) authorizes the Executive to "arrest[] and detain[]" *any* "alien" pending removal proceedings but provides that the Executive also "may release the alien" on bond or conditional parole. 8 U.S.C. § 1226(a). That provision provides the detention authority for the significant group of noncitizens who are *not* "applicants for admission" subject to Section 1225(b)(2)(A)—that is, those who have been admitted to the United States but are now removable. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("the specific governs the general"). For example, the detention of any of the multitude of noncitizens who have overstayed their visas is governed by Section 1226(a), because those aliens (unlike Petitioner) *were* admitted to the United States.

Thus, those courts increasingly adopting the Government's approach see that "[h]eeding the plain language of [section 1225] does not contradict or render superfluous

1226." *Chavez*, 2025 WL 2730228, at *5. It is "simply not true" that the "broader, more natural reading of Section 1225(b)(2)" would "all but read Section 1226 off the books," since 1226 (unlike 1225) would still apply to noncitizens who had legal status but overstayed its expiration or committed certain crimes even during the legal status. *Chen*, 2025 WL 3484855, at *7. And an irony of the majority view is that, "while purporting to guard against one word of 'surplusage' in the statute, [majority-view] judges [. . .] would virtually nullify Section 1225(b)(2)." *Id.* at *5.

2. Likewise, the Government's reading of Section 1225(b)(2)(A) does not render Section 1226(c) superfluous. As described above, Section 1226(c) is the exception to Section 1226(a)'s discretionary detention regime, and it requires the Executive to detain "any alien" who is deportable or inadmissible for having committed specified offenses or engaged in terrorism-related actions "when the alien is released" from the custody of another law enforcement entity. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Like Section 1226(a), subsection (c) applies to significant groups of criminal aliens *not* encompassed by Section 1225(b)(2).

a. Most obvious, Section 1226(c)(1) requires the Executive to detain noncitizens who *have been admitted* to the United States and are now "deportable." *See* 8 U.S.C. § 1226(c)(1)(B). By contrast, Section 1225(b)(2) has no application to admitted aliens. Next, Section 1226(c)(1) requires detention of aliens who are "inadmissible" on certain grounds. *See* 8 U.S.C. § 1226(c)(1)(A), (D), (E). Here, too, Section 1226(c) sweeps more broadly than Section 1225(b)(2), because the referenced grounds cover aliens who are inadmissible but were erroneously admitted. *See* 8 U.S.C. § 1227(a), (a)(1)(A)

(providing for the removal of "[a]ny alien … in *and admitted to* the United States," including "[a]ny alien who at the time of entry or adjustment of status was within one or more of the classes of aliens *inadmissible* by the law existing at the time…." (emphasis added)). Finally, as noted above, Section 1225(b)(2)(A) does "not apply to an alien … who is a crewman" or "a stowaway." 8 U.S.C. 1225(b)(2)(B)-(C). Section 1226(c) applies to those aliens who are inadmissible or deportable on one of the specified grounds.

b. Section 1226(c) also differs from Section 1225(b)(2) in another crucial way; Section 1226(c) narrows the circumstances under which noncitizens may be *released* from mandatory detention. Recall that, for those subject to mandatory detention under Section 1225(b)(2), IIRIRA allows the Executive to "temporarily" parole them "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(b)(5); *supra*, p. 10. Section 1226(c)(1) takes that option off the table for noncitizens who have also committed the offenses or engaged in the conduct specified in Section 1226(c)(1)(A)-(E). As to those noncitizens, Section 1226(c) *prohibits* their parole and authorizes their release only if "necessary to provide protection to" a witness or a similar person "and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." 8 U.S.C. § 1226(c)(4).

Thus, as the growing minority of courts has seen, reading Section 1226 in a way that undermines detention authority properly granted by Section 1225 fails to give full and proper effect to either provision. *See, e.g.*, *Sandoval*, 2025 WL 3048926, at *6 n.7 (accepting petitioner's interpretation would "seemingly undermine the intent of Congress

in enacting the IIRIRA. This Court thus refuses to interpret the INA in a way that would in effect repeal Congress's statutory fix.") (quoting *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024)) (cleaned up); *see generally supra* n. 5.

c. The Government's reading also does not render superfluous Congress's recent amendment of Section 1226(c) through the Laken Riley Act. That law requires mandatory detention of criminal aliens who are "inadmissible" under 8 U.S.C. § 1182(a)(6)(A), (a)(6)(C), or (a)(7). *See* 8 U.S.C. § 1226(c)(1)(E)(i)-(ii). As with the other grounds of "inadmissibility" listed in Section 1226(c), both (a)(6)(C) and (a)(7) may apply to inadmissible aliens who were admitted in error, as well as those never admitted. *See Mejia Olalde*, 2025 WL 3131942, at *4 (noting that "the Laken Riley Act may apply to situations where § 1225 might not" (citing 8 U.S.C. § 1182(a)(6)(C)(i))). Again, Section 1225(b)(2) has no application to aliens admitted in error.

To be sure, the Laken Riley Act's application to noncitizens who are inadmissible under §1182(a)(6)(A)—for being "present … without being admitted or paroled"—overlaps with Section 1225(b)(2)(A). But again, "[r]edundancies are common in statutory drafting," and are "not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Barton*, 590 U.S. at 239; *see Mejia Olalde*, 2025 WL 3131942, at *4 ("even assuming there were surplusage, that cannot trump the plain meaning of [Section] 1225(b)(2)"). In any event, the canon against surplusage is "weak" when applied, as here, to "acts of Congress enacted at widely separated times." *Mejia Olalde*, 2025 WL 3131942, at *5; *see Rojas*, 2025 WL 3033967, at *9 ("legislation passed in 2025 has little bearing on the meaning of legislation enacted in 1996"). And it is especially weak where, as here,

there will be overlap under *any* possible reading of the statute. *See Microsoft Corp. v. I4I Ltd. P'ship*, 564 U.S. 91, 106 (2011) ("[T]he canon against superfluity assists only where a competing interpretation gives effect to every clause and word of a statute") (internal quotation omitted). After all, this portion of the Laken Riley Act requires detention of "arriving aliens" and "applicants for admission" who are taking affirmative steps toward admission or "lawful immigration status," as long as they meet the offense criteria, *see* 8 U.S.C. § 1226(c)(1)(E)(ii)—but Petitioner and the courts in this district would agree that those aliens are subject to Section 1225(b)(2)(A), too. Some overlap is unavoidable.

In any event, Section 1226(c) still does independent work, despite the overlap, by preventing the Executive from releasing the specified criminal aliens on parole. *Supra*, pp. 10-11. In fact, Congress's desire to further limit the parole power with respect to criminal aliens was one reason it enacted the Laken Riley Act. The Act was adopted in the wake of a heinous murder committed by an inadmissible alien who was "paroled into this country through a shocking abuse of that power," 171 Cong. Rec. at H278 (daily ed. Jan. 22, 2025) (Rep. McClintock), and an abdication of the Executive's "fundamental duty under the Constitution to defend its citizens," 171 Cong. Rec. at H269 (Rep. Roy). The Act thus reflects a "congressional effort to be double sure," *Barton*, 590 U.S. at 239, that unadmitted criminal aliens are not paroled into the country through an abuse of the narrow parole authority.

As one court noted earlier this month, "many members of Congress thought it necessary to enact [the Laken Riley Act] because of their perception that the Executive Branch had failed to enforce the detention options that were already available to it." *Chen*,

2025 WL 3484855, at *6 (citing *Tumba v. Francis,* 2025 WL 3079014, at *4 (S.D.N.Y. Nov. 4, 2025)). That court thus "declin[ed] to participate in [the] alchemy" of "transmut[ing]" a "law that clearly was enacted to strengthen immigration enforcement . . . into a reason to defang the law on the books." *Id.*; *see also Rojas*, 2025 WL 3033967 at *9 ("nothing in the Laken Riley Act suggests any Congressional thoughts concerning the issues presented in this case [relating to the interplay between 1225 and 1226]").

D. The Majority Approach's Narrow Interpretation Subverts Congressional Intent.

The majority approach's reading is not only textually baseless, it also subverts IIRIRA's express goal of eliminating preferential treatment for noncitizens who enter the country unlawfully. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to result "that Congress designed the Act to avoid"); *New York State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes.").

Recall that one of IIRIRA's express objectives was to dispense with the perverse pre-1996 regime under which those who entered the United States unlawfully were given "equities and privileges in immigration proceedings that [were] not available to aliens who present[ed] themselves for inspection" at the border, including the right to secure release on bond. House Rep., *supra*, at 225; *supra*, pp. 6-7. The majority approach's interpretation would restore the regime Congress sought to discard: It would require detention for those who present themselves for inspection at the border in compliance with law, yet grant bond hearings to noncitizens who evade immigration authorities, enter the United States

unlawfully, and remain here unlawfully for years or even decades until an involuntary encounter with immigration authorities. That is *exactly* the "perverse incentive to enter" unlawfully, *Thuraissigiam*, 591 U.S. at 140, that IIRIRA sought to eradicate. This Court should reject any interpretation that is so transparently subversive of Congress's stated objective. *King*, 576 U.S. at 492.

The Government's reading, by contrast, not only adheres to the statute's text and congressional intent, but it also brings the statute in line with the longstanding "entry fiction" that courts have employed for well over a century to avoid giving favorable treatment to noncitizens who have not been lawfully admitted. Under that doctrine, all "aliens who arrive at ports of entry … are treated for due process purposes as if stopped at the border," including those "paroled elsewhere in the country for years pending removal" who have developed significant ties to the country. *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). For example, *Kaplan v. Tod*, 267 U.S. 228 (1925), held that a noncitizen who was paroled for nine years into the United States was still "regarded as stopped at the boundary line" and "had gained no foothold in the United States." *Id.* at 230; *see also Mezei*, 345 U.S. at 214-15. The "entry fiction" thus prevents favorable treatment of noncitizens who have not been admitted—including those who have "entered the country clandestinely." *Yamataya v. Fisher*, 189 U.S. 86, 100 (1903). IIRIRA sought to implement that same principle with respect to detention. *See, e.g., Ramos*, 2025 WL 3199872, at *7; *Valencia*, 2025 WL 3205133, at *3 ("The suggestion that petitioner may evade the designation of 'applicant for admission' merely because he has already entered the United States elides the fact that

he was never lawfully admitted, regardless of what steps he may have taken to acquire that status."). The Government's reading is true to that purpose; the majority approach's reading subverts it.

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

The Government's interpretation is consistent with the Supreme Court's decision in *Jennings*, 583 U.S. 281. *Jennings* reviewed a Ninth Circuit decision that applied constitutional avoidance to "impos[e] an implicit 6-month time limit on an alien's detention" under Sections 1225(b) and 1226. 583 U.S. at 292. The Court held that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of aliens subject to Section 1225(b) or Section 1226. Nonetheless, consistent with the Government's reading, the Court recognized in its description of Section 1225(b) that "Section 1225(b)(2) …. serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1)." *Id.* at 287.

To be sure, *Jennings* described the detention authorities in Section 1225(b) and Section 1226, and in that context summarized Section 1226 as applying to aliens "already in the country":

> In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

583 U.S. at 289; *see also id.* at 288 (characterizing Section 1226 as applying to aliens "once inside the United States"). But "[t]he language of an opinion is not always to be parsed

[like the] language of a statute," and instead "must be read with a careful eye to context." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74 (2023) (quotation omitted). When describing the scope of Section 1226 in particular, *Jennings* refers to aliens "present in the country" who are removable under 8 U.S.C. § 1227(a)—a provision that applies *only* to admitted aliens. *See* 583 U.S. at 288. The Government's interpretation is perfectly consistent with that understanding: it allows that Section 1226 is the exclusive source of detention authority for the substantial category of noncitizens who are were admitted into the United States but are now removable. *Supra*, pp. 10-11.

Moreover, nothing in the quoted language from *Jennings* suggests that Section 1226 is the *sole* detention authority for *every* "alien[] already in the country," and the passage's use of the word "certain" conveys the opposite. At a minimum, the quoted language is ambiguous and such uncertain dicta is insufficient to displace the statute's text and the manifest congressional purpose; that is especially so, as no part of the holding in *Jennings* required resolution of the precise scope of Sections 1225(b) and 1226.[13]

---

[13] Petitioner's constitutional arguments are foreclosed by the Eighth Circuit's recent precedent in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024), The *Banyee* decision rejects a constitutional challenge to mandatory detention under 1226(c) for the length of an individual's removal proceedings. 115 F. 4th at 931 ("The rule has been clear for decades: '[d]etention during deportation proceedings [i]s ... constitutionally valid.'"). The only other Eighth Circuit case that has addressed detention during removal proceedings also highlighted that detention during removal proceedings is not, on its face, unconstitutional. *Farass Ali v. Brott, et al.*, No. 19-1244, 2019 WL 1748712 (8th Cir. Apr. 16, 2019).

II. No hearing is necessary.

The Court can rule on the Petitioner's habeas petition without a hearing. The facts are not likely to be disputed, and the only issue before the Court is one of legal interpretation capable of resolution on the papers.[14]

CONCLUSION

Federal Respondents request the Court hold Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and deny the habeas petition.

Respectfully submitted,

Dated: December 29, 2025

DANIEL N. ROSEN
United States Attorney

/s/David W. Fuller
By: DAVID W. FULLER
Assistant United States Attorney
Attorney ID Number 0390922
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5600
david.fuller@usdoj.gov

[14] Petitioner is not a member of the recently certified class of noncitizens present in the United States without admission. *See* Order, *Maldonado Bautista v. Santacruz*, 5:25-cv-01873 (C.D. Cal. Dec. 18, 2025) (ECF No. 92). A ruling last week in that California case reiterated the class definition, which does not include those who, like Petitioner, were "apprehended upon arrival." *Id.* at 2; *see* Minner Decl. Ex. A p. 1 (indicating "AT ENTRY" in box asking for "Length of Time Illegally in U.S."). In any event, even were Petitioner a class member, the Government takes the position that the above-cited partial final judgment in *Bautista* is neither binding nor applicable in this habeas matter for multiple other reasons. The Government stands ready to address these issues in additional briefing, should the Court so desire.