

1 TODD BLANCHE  
 Deputy Attorney General of the United States  
 2 SIGAL CHATTAH  
 First Assistant United States Attorney  
 3 District of Nevada  
 Nevada Bar Number 8264  
 4 VIRGINIA T. TOMOVA  
 Assistant United States Attorney  
 5 Nevada Bar No. 12504  
 TAMER B. BOTROS  
 6 Assistant United States Attorney  
 Nevada Bar No. 12183  
 7 501 Las Vegas Blvd. So., Suite 1100  
 Las Vegas, Nevada 89101  
 8 Phone: (702) 388-6336  
 Fax: (702) 388-6787  
 9 [Virginia.Tomova@usdoj.gov](mailto:Virginia.Tomova@usdoj.gov)  
[Tamer.Botros@usdoj.gov](mailto:Tamer.Botros@usdoj.gov)  
 10 *Attorneys for the Federal Respondents*

11 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

12 OSCAR DAVID ALAS GARCIA,  
 13  
 14 Petitioner,  
 v.  
 15 JOHN MATTOS, Warden, Nevada  
 Southern Detention Center; MICHAEL  
 16 BERNACKE, Field Office Director, U.S.  
 Immigration and Customs Enforcement,  
 17 PAMELA BONDI, Attorney General of the  
 United States; and KRISTI NOEM,  
 18 Secretary of Homeland Security, in their  
 official capacities,  
 19  
 20 Respondents.

Case No. 2:25-cv-02580-RFB-NJK  
**Federal Respondents' Response to  
 Petitioner's Petition for Writ of Habeas  
 Corpus (ECF No. 1)**

21 Federal Respondents Michael Bernacke, Pamela Bondi and Kristi Noem, through  
 22 undersigned counsel, file their Response to Petitioner Oscar David Alas Garcia's Petition  
 23 for Writ of Habeas Corpus (ECF No. 1). In his Petition, Petitioner who does not have a  
 24 legal status in the United States, is asking the Court to either grant him release from  
 25 Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) or  
 26 in the alternative, order Respondents to provide Petitioner with an individualized custody  
 27 redetermination hearing before an Immigration Judge ("IJ"). ECF No. 1, Page 8, lines 14-16.

28 / / / /

## I. INTRODUCTION

As relevant here, Congress enacted what is now 8 U.S.C. § 1225, which requires the detention of any alien “who is an applicant for admission” and defines that term to encompass any “alien present in the United States who has not been admitted” following inspection by immigration authorities. 8 U.S.C. § 1225(a), (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, detention is the rule for aliens who have never been lawfully admitted. There is no dispute that Petitioner is an “applicant for admission” under Section 1225(a), because he entered the country without inspection. See I-213 Form April 15, 2012, attached hereto as Exhibit A. He was neither admitted nor paroled into the United States. This clear statutory text means that Petitioner is not entitled to a bond hearing and potential release. Despite the clear statutory text, this Court has held in prior cases before it that Petitioners are entitled to bond hearings, bond, and release. *Torralba et al v. Wright et al*, 2:25-cv-1366; *Maldonado Vasquez v. Feely*, 2:25-cv-01542; *Berto Mendez v. Noem et al*, 2:25-cv-02062; *Alvarado Gonzalez v. Mattos et al.*, 2:25-cv-01599; *Serrano Gonzalez v. Knight et al.*, 2:25-cv-02081; *Sanchez Aparicio v. Noem et al.*, 2:25-cv-01919; *Cornejo-Mejia v. Bernacke et al.*, 2:25-cv-02139; *E.C. v. Noem et al.*, 2:25-cv-01789. The Court reasoned that this narrow construction is necessary to avoid surplusage, but “[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 v. Barr*, 590 U.S. 222, 223 (2020).

Besides, that canon has no relevance where, as here, portions of a statute are superfluous under any interpretation. Nor is the Petitioner’s atextual reading necessary to give meaning 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, and the mere fact of partial overlap is not a reason to rewrite clear statutory text. Although the Government has previously operated under a different understanding of the law, this Court must apply the language of Section 1225(b)(2)(A) as

1 written. The Court’s interpretation in the above referenced cases and most likely in this case,  
2 is not only contrary to text, but it would reimpose the same perverse regime that IIRIRA  
3 was meant to eliminate — requiring the detention of aliens who present at a port of entry as  
4 the law requires, but authorizing the release of those aliens who enter the United States in  
5 violation of law. The Court should not endorse such a backwards outcome — particularly  
6 one that is so plainly subversive of congressional intent.

7 For the same reasons, Petitioner’s due process arguments fail, because they are based  
8 on entirely derivative of his mistaken interpretation of Section 1225.

## 9 II. STATUTORY FRAMEWORK

### 10 a. The Pre-IIRIRA Framework Gave Preferential Treatment to Aliens 11 Unlawfully Present in the United States.

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

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

24 At the time, the INA “provided for two types of removal proceedings: deportation  
25 hearing and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc).  
26 An alien who arrived at a port of entry would be placed in “exclusion proceedings and  
27 subject to mandatory detention, with potential release solely by means of a grant of parole.”  
28 *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223; see 8 U.S.C. § 1225(a)-(b) (1995); *id.*

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

6 Thus, the INA’s prior framework distinguishing between aliens based on physical  
7 “entry” had the “‘unintended and undesirable consequence’ of having created a statutory  
8 scheme where aliens who entered without inspection ‘could take advantage of the greater  
9 procedural and substantive rights afforded in deportation proceedings,’ *including the right to*  
10 *request release on bond*, while aliens who had ‘actually presented themselves to authorities for  
11 inspection’ ... were subject to mandatory custody.” *Matter of Yajure Hurtado*, 29 I. & N. Dec.  
12 at 223 (emphasis added) (quoting *Martinez v. Att’y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d  
13 Cir. 2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at  
14 225 (1996) (“House Rep.”) (“illegal aliens who have entered the United States without  
15 inspection gain equities and privileges in immigration proceedings that are not available to  
16 aliens who present themselves for inspection”).

17 **b. IIRARA Eliminated the Preferential Treatment of Aliens Unlawfully Present**  
18 **in the United States and Mandated Detention of all “Applicants for**  
19 **Admission.”**

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

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

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

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

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

12 An alien present in the United States who has not been admitted or who arrives in  
13 the United States (whether or not at a designated port of arrival and including an alien who  
14 is brought to the United States after having been interdicted in international or United States  
15 waters) shall be deemed for purposes of this chapter an applicant for admission. 8 U.S.C.  
16 § 1225(a)(1) (emphasis added). “All aliens ... who are applicants for admission or otherwise  
17 seeking admission or readmission to or transit through the United States” are required to  
18 “be inspected by [an] immigration officer[.]” *Id.* § 1225(a)(3). The inspection by the  
19 immigration officer is designed to determine whether the alien may be lawfully “admitted”  
20 to the country or, instead, must be referred to removal proceedings.

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

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

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

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

14 Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for  
15 admission, if the examining immigration officer determines that an alien seeking admission  
16 is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a  
17 proceeding under section 1229a of this title [Section 240]. 8 U.S.C. § 1225(b)(2)(A)  
18 (emphasis added).<sup>1</sup> *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention  
19 mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention  
20 of aliens throughout the completion of applicable proceedings and not just at the moment  
21 those proceedings begin”).

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

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

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

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

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

23 Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L.  
24 No. 119-1, § 2, 139 Stat. 3, 3 (January 29, 2025), which requires detention of (and prohibits  
25 parole for) aliens who (1) are inadmissible because they are physically present in the United  
26 States without admission or parole, have committed a material misrepresentation or fraud,  
27 or lack required documentation; and (2) are “charged with, arrested for, [] convicted of,

28 \_\_\_\_\_  
<sup>2</sup> Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

1 admit[] having committed, or admit[] committing acts which constitute the essential  
2 elements of” certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

### 3 III. STANDARD OF REVIEW

4 In a petition for a writ of habeas corpus, the petitioner is challenging the legality of  
5 his restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show  
6 the confinement is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941). Specifically,  
7 here, Petitioner challenges his temporary civil immigration detention pending his removal  
8 proceeding.

9 Judicial review of immigration matters, including of detention issues, is limited.  
10 *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. Am.-Arab Anti-Discrimination*  
11 *Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo*  
12 *v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow*  
13 *Sun Wong*, 426 U.S. 88, 101 n.21 (1976) (“the power over aliens is of a political character  
14 and therefore subject only to narrow judicial review”). The Supreme Court has thus  
15 “underscore[d] the limited scope of inquiry into immigration legislation,” and “has  
16 repeatedly emphasized that over no conceivable subject is the legislative power of Congress  
17 more complete than it is over the admission of aliens.” *Fiallo*, 430 U.S. at 792 (internal  
18 quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S.  
19 522, 531 (1954).

20 The plenary power of Congress and the Executive Branch over immigration  
21 necessarily encompasses immigration detention, because the authority to detain is elemental  
22 to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United*  
23 *States ex rel. Mezei*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to  
24 expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's  
25 political departments largely immune from judicial control.”); *Carlson v. Landon*, 342 U.S.  
26 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong*  
27 *Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be  
28 vain if those accused could not be held in custody pending the inquiry into their true

1 character, and while arrangements were being made for their deportation.”); *Demore v. Kim*,  
2 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally  
3 permissible part of that process.”).

#### 4 IV. FACTUAL AND PROCEDURAL BACKGROUND

5 Petitioner, who is a citizen and native of El Salvador entered the United States on  
6 April 13, 2012, without inspection. See Exhibit A. Border Patrol processed Petitioner for  
7 expedited removal. However, Border Patrol was unable to timely remove Petitioner. On June  
8 3, 2012, Petitioner was released from custody and processed for removal proceedings by filing  
9 and serving a Notice to Appear. In the Notice to Appear, Petitioner was charged as being  
10 removal under 2121(a)(7)(A)(i) of the INA. On September 16, 2013, Petitioner failed to  
11 appear before the IJ and was ordered removed in absentia. On July 27, 2020, DHS  
12 apprehended Petitioner. On August 13, 2020, the IJ granted Petitioner’s Motion to Reopen  
13 the removal proceedings. The IJ granted Petitioner a \$2,000 bond that Petitioner posted and  
14 was released from ICE custody on August 28, 2020. Petitioner applied for asylum and on  
15 August 15, 2022, the IJ denied the alien’s application for relief and ordered him removed to El  
16 Salvador. See Order of the Immigration Judge attached hereto as Exhibit B. Petitioner  
17 appealed the IJ’s decision on August 13, 2025, the Board of Immigration Appeals (“BIA”)  
18 dismissed the appeal. See Order of Board of Immigration Appeals attached hereto as Exhibit  
19 C. On September 2, 2025, Petitioner filed a Petition for Review with the Ninth Circuit Court  
20 of Appeals. See Docketing Notice attached hereto as Exhibit D. On September 5, 2025, ICE  
21 apprehended Petitioner. See I-213 Form September 5, 2025, attached hereto as Exhibit E.

#### 22 V. ARGUMENT

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

25 Under the plain language of Section 1225(b)(2), DHS is required to detain all aliens,  
26 like Petitioner, who are present in the United States without admission and are subject to  
27 removal proceedings — regardless of how long the alien has been in the United States or  
28 how far from the border they ventured. That unambiguous language resolves this case. *See*

1 *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020)

2 (“Our analysis begins and ends with the text.”).

3 **1. *The Plain Language of Section 1225(b)(2) Mandates the Detention of the Petitioner***  
4 ***Who is an Applicant for Admission.***

5 Section 1225(a) defines “applicant for admission” to encompass an alien who either  
6 “arrives in the United States” or who is “present in the United States who has not been  
7 admitted.” 8 U.S.C. § 1225(a)(1). And “admission” under the INA means not physical  
8 entry, but lawful entry after inspection by immigration authorities. 8 U.S.C.  
9 § 1101(a)(13)(A). Thus, an alien who enters the country without permission is and remains  
10 an applicant for admission, regardless of the duration of the alien’s presence in the United  
11 States or the alien’s distance from the border.

12 In turn, Section 1225(b)(2) provides that “an alien who is an applicant for  
13 admission” “shall be detained” pending removal proceedings if the “alien seeking admission  
14 is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1125(b)(2)(A)  
15 (emphasis added). The statute’s use of the term “shall” make clear that detention is  
16 mandatory, *see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998),  
17 and the statute makes no exception for the duration of the alien’s presence in the country or  
18 where in the country he is located. Therefore, the statute’s plain text mandates that DHS  
19 detain all “applicants for admission” who do not fall within one of its exceptions.

20 Petitioner falls squarely within the statute. He was “present in the United States,”  
21 and there is no dispute that he has “not been admitted.” 8 U.S.C. § 1225(a). Petitioner  
22 entered without an inspection the United States. See Exhibit A. Moreover, Petitioner cannot  
23 — and did not — establish that he is “clearly and beyond a doubt entitled to be admitted.” 8  
24 U.S.C. § 1225(b)(2)(A). Therefore, Petitioner is appropriately detained and “shall be  
25 detained for a proceeding under [8 U.S.C. § 1229a].”

26 **2. *Section 1225(b)(2)’s Reference to Aliens “Seeking Admission” Does Not Narrow Its***  
27 ***Scope.***

28 There is no denial that Petitioner (and others like him) are “applicants for  
admission” under Section 1225(b)(2). Petitioner has neither referenced nor pointed out, that

1 he is anything else but an applicant for admission under Section 1225(b)(2). Petitioner  
2 claims that he is detained and “is placed in removal proceedings.” ECF No. 7, ¶ 62. The  
3 statute itself makes clear that an alien who is an “applicant for admission” *is* necessarily  
4 “seeking admission.” Moreover, an alien like Petitioner, who is identified by immigration  
5 authorities as unlawfully present, and who does not choose to depart from the United States  
6 voluntarily, is “seeking admission” under any interpretation of that phrase. Here, the  
7 Petitioner entered the United States without an inspection.

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

15 Section 1225(a) provides that “[a]ll aliens ... who are applicants for admission *or*  
16 *otherwise* seeking admission or readmission ... shall be inspected.” 8 U.S.C. § 1225(a)(3)  
17 (emphasis added). The word “[o]therwise’ means ‘in a different way or manner[.]’” *Texas*  
18 *Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015)  
19 (quoting Webster’s Third New International Dictionary 1598 (1971)); *see also Att’y Gen. of*  
20 *United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds*  
21 *Tobacco Co.*, 839 F.3d 958, 963–64 (11th Cir. 2016) (en banc) (“or otherwise” means “the  
22 first action is a subset of the second action”); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482–  
23 83 (7th Cir. 2019). Being an “applicant for admission” is thus a particular “way or manner”  
24 of seeking admission, such that an alien who is an “applicant for admission” *is* “seeking  
25 admission” for purposes of Section 1252(b)(2)(A). No separate affirmative act is necessary.  
26 *See Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) (“[M]any people who are not  
27 *actually* requesting permission to enter the United States in the ordinary sense are  
28 nevertheless deemed to be ‘seeking admission’ under the immigration laws”).

1 This reading is consistent with the everyday meaning of the statutory terms. One  
2 may “seek” something without “applying” for it — for example, one who is “seeking”  
3 happiness is not “applying” for it. But one *applying* for something is necessarily *seeking* it.  
4 *Compare* Webster’s New World College Dictionary 69 (4th ed.) (“apply” means “To make a  
5 formal request (*to someone for something*)”), *with id.* at 1299 (“seek” means “to request, ask  
6 for”). For example, a person who is “applying” for admission to a college or club is  
7 “seeking” admission to the college or club. *See* The American Heritage Dictionary of the  
8 English Language 63 (1980) (“American Heritage Dictionary”) (“apply” means “[t]o  
9 request or *seek* employment, acceptance, or *admission*”) (emphasis added). Likewise, an alien  
10 who is “applying” for admission to the United States (*i.e.*, an “applicant for admission”) is  
11 “seeking admission” to the United States.

12 None of this is to say, however, that “seeking admission” has no meaning beyond  
13 “applicant for admission.” As Section 1225(a)(3) shows, being an “applicant for admission”  
14 is only *one* “way or manner” of “seeking admission,” not the exclusive way. For example,  
15 lawful permanent residents returning to the United States are not “applicants for admission”  
16 because they are already admitted, but they still may be “seeking admission.” *See* 8 U.S.C.  
17 § 1103(A)(13)(C). But for purposes of Section 1225(b)(2) and its regulation of “applicants for  
18 admission,” the statute unambiguously provides that an alien who is an “applicant for  
19 admission” is “seeking admission,” even if the alien is not engaged in some separate,  
20 affirmative act to obtain lawful admission.

21 To be sure, the Government previously operated under a narrower understanding of  
22 Section 1225(b)(2)(A). But past practice does not justify disregard of clear statutory  
23 language. A court must always interpret the statute “as written,” *Henry Schein, Inc. v. Archer*  
24 *& White Sales, Inc.*, 586 U.S. 63, 68 (2019), and here the statute as written requires detention  
25 of *any* applicant for admission, regardless of whether the applicant is taking affirmative steps  
26 toward admission.

27 That is the case here with this Petitioner. Under a straightforward reading of the  
28 statute, being an “applicant for admission” is “seeking admission.” Although that reading

1 may lead to some redundancy in Section 1225(b)(2)(A), that is “not a license to rewrite”  
2 Section 1225 “contrary to its text.” *Barton*, 590 U.S. at 223; see *Heyman v. Cooper*, 31 F.4th  
3 1315, 1322 (11th Cir. 2022) (“The principle [that drafter do repeat themselves carries extra  
4 weight where ... the arguably redundant words that the drafters employed ... are functional  
5 synonyms”). And that is especially true, where that re-writing would be so clearly contrary  
6 to Congress’s objective in passing the law.

7 Even if “seeking admission” required some separate affirmative conduct by the alien,  
8 an applicant for admission who attempts to avoid removal from the United States, rather  
9 than trying to voluntarily depart, is by any definition “seeking admission.” Section  
10 1225(b)(2)(A) applies to an alien who is present in the United States unlawfully, even for  
11 years. Although the alien may not have been affirmatively seeking admission during those  
12 years of illegal presence, Section 1225(b)(2) is not concerned with the alien’s pre-inspection  
13 conduct. Rather, the statute’s use of present tense language (“seeking” and “determines”)  
14 shows that its focus is a specific point in time — when “the examining immigration officer”  
15 is making a “determin[ation]” regarding the alien’s admissibility. 8 U.S.C. § 1225(b)(2)(A).  
16 At *that* point, the alien is “seeking” — *i.e.*, presently “endeavor[ing] to obtain,” American  
17 Heritage Dictionary, *supra*, at 1174 — admission into the United States; if it were otherwise,  
18 the applicant would not attempt to show that he is “clearly and beyond a doubt entitled to  
19 be admitted.” 8 U.S.C. § 1225(b)(2)(A). That inference is confirmed by Section 1225(a)(4),  
20 which authorizes an alien to voluntarily “depart immediately from the United States.” An  
21 applicant who forgoes that statutory option and instead endeavors to prove admissibility  
22 and opts for Section 240 removal proceedings — proceedings in which the alien has the  
23 “burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted,” *id.* §  
24 1229a(c)(2)(A) — is plainly “endeavor[ing] to obtain” admission to the United States.  
25 American Heritage Dictionary, *supra*, at 1174.

26 Here, Petitioner entered the United States without inspection and is in removal  
27 proceedings, subject to mandatory detention. A contrary view would make mandatory  
28 detention turn on the fortuity happenstance of when an alien attempts to prove

1 admissibility. See *United States v. Wilson*, 503 U.S. 329, 334 (1992) (courts must not “presume  
2 lightly” that statute’s application will turn on “arbitrary” issue of timing). Aliens subject to  
3 Section 1225(b)(2) must prove admissibility at two stages — first, at the time of inspection, 8  
4 U.S.C. § 1225(b)(2)(A); and second, during Section 240 removal proceedings if the alien  
5 cannot show admissibility “clearly and beyond a doubt” at the time of inspection, *id.*  
6 § 1229a(c)(2)(A) (alien has “burden of establishing that [he] is clearly and beyond a doubt  
7 entitled to be admitted”). Petitioner has failed to meet these two stages. There is “no reason  
8 why Congress would desire” the applicability of something so significant as mandatory  
9 detention “to depend on the timing” of when an alien attempts to show admissibility,  
10 *Wilson*, 503 U.S. at 334 — particularly given how susceptible that rule is to manipulation by  
11 the alien.

12 To be sure, the Laken Riley Act’s application to aliens who are inadmissible under  
13 §1182(a)(6)(A) — for being “present ... without being admitted or paroled” — overlaps with  
14 Section 1225(b)(2)(A). Both statutes mandate detention of “applicants for admission” who  
15 fall within the specified grounds of inadmissibility. But again, “[r]edundancies are common  
16 in statutory drafting,” and are “not a license to rewrite or eviscerate another portion of the  
17 statute contrary to its text.” *Barton*, 590 U.S. at 223. That is particularly true here, where this  
18 portion of the Laken Riley Act overlaps with Section 1225(b)(2)(A) even under *Petitioner’s*  
19 reading, which recognizes that applicants for admission who are “seeking admission” must  
20 be detained under Section 1225(b)(2)(A). See *Microsoft Corp. v. I4I Ltd. P’ship*, 564 U.S. 91,  
21 106 (2011) (“the canon against superfluity assists only where a competing interpretation  
22 gives effect to every clause and word of a statute”).

23 **b. The Recent *Vargas Lopez v. Trump* Decision Is Highly Instructive and Supports**  
24 **Petitioner’s Detention Under 8 U.S.C. § 1225.**

25 The United States District Court for the District of Nebraska’s decision denying the  
26 habeas corpus petition in *Vargas Lopez v. Trump* is particularly relevant here. In *Vargas Lopez*,  
27 the petitioner, an undocumented alien who had been residing in the United States since  
28 2013, sought immediate release from detention. *Vargas Lopez v. Trump*, No. 8:25CV526,

1 2025 WL 2780351, at \*1 (D. Neb. Sept. 30, 2025). Prior to filing his petition, Vargas Lopez  
2 had received a bond hearing, and the immigration judge ordered that he be released from  
3 custody under bond of \$10,000. *Id.* at \*3. DHS however appealed the bond determination,  
4 which automatically stayed Vargas Lopez’s release on bond. *Id.* Vargas Lopez then filed a  
5 petition for habeas corpus alleging that the automatic stay was *ultra vires* and violated his  
6 due process rights. *Id.* He also alleged that application of 8 U.S.C. § 1225 in his case was  
7 unlawful because 8 U.S.C. § 1226 should control his detention. *Id.*

8 First, the court denied the petition because Vargas Lopez failed to carry his burden of  
9 demonstrating by a preponderance of the evidence that his detention was unlawful. *Id.* at \*6.  
10 Vargas Lopez argued that he fell under § 1226, not 1225, but his petition and filings failed to  
11 provide proof of the “warrant for Vargas Lopez’s arrest” that § 1226 requires.

12 Second, the court concluded that Vargas Lopez was subject to detention without  
13 possibility of bond under § 1225(b)(2). To do so, the court analyzed the Supreme Court’s  
14 decision in *Jennings* to reject the notion that § 1225(b)(2) and § 1226(a) apply to two distinct  
15 groups of aliens; the two sections are not mutually exclusive. *Id.* at \*6–8. The court then  
16 concluded that Vargas Lopez is an alien within the “catchall” scope of § 1225(b)(2), subject  
17 to detention without possibility of release on bond through a proceeding on removal under §  
18 1229a. *Id.* at \*9. The court found that Vargas Lopez was an “applicant for admission”  
19 because his counsel admitted that Vargas Lopez “wishe[d] to stay in this country.” *Id.* That  
20 finding, according to the court, was consistent with the conclusions of the BIA  
21 in *Hurtado* and *Jennings*.

22 Pursuant to the language of the statute and the holding of *Jennings*, the court said that  
23 “just because Vargas Lopez illegally remained in this country *for years* does not mean that he  
24 is suddenly not an ‘applicant for admission’ under § 1225(b)(2).” *Id.* “Even if Vargas Lopez  
25 might have fallen within the scope of § 1226(a),” the court found “he also certainly fit  
26 within the language of § 1225(b)(2) as well.” *Id.* “The Court thus conclude[d] that the *plain*  
27 *language* of § 1225(b)(2) and the “all applicants for admission” language  
28 of *Jennings* permitted the DHS to detain Vargas Lopez under § 1225(b)(2).” *Id.*

1       **c. The Recent *Chavez v. Noem* Decision Is Also Instructive.**

2           The United States District Court for the Southern District of California’s decision in  
3 *Chavez v. Noem*, No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228, at \*1 (S.D. Cal. Sept. 24,  
4 2025), is also instructive. In *Chavez*, the court denied a motion for a temporary restraining  
5 order (“TRO”) filed by the petitioners who were detained under 8 U.S.C. § 1225(b)(2).  
6 *Chavez*, 2025 WL 2730228, at \*1. The *Chavez* petitioners argued they should not have been  
7 mandatorily detained and instead they should have received bond redetermination hearings  
8 under § 1226(a). *Id.* The *Chavez* petitioners filed a motion for TRO, seeking to “enjoin[]  
9 Respondents from continuing to detain them unless [they received] an individualized bond  
10 hearing . . . pursuant to 8 U.S.C. § 1226(a) within fourteen days of the TRO.” *Id.*

11           In denying the TRO, the *Chavez* court went no further than the plain language of §  
12 1225(a)(1). *Id.* at \*4. Beginning and ending with the statutory text, the *Chavez* court correctly  
13 found that because petitioners did not contest that they are “alien[s] present in the United  
14 States who ha[ve] not been admitted,” then the *Chavez* petitioners are “applicants for  
15 admission” and thus subject to the mandatory detention provisions of “applicants for  
16 admission” under § 1225(b)(2). *Id.*; see also *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221–  
17 222 (finding that an alien who entered without inspection is an “applicant for admission”  
18 and his argument that he cannot be considered as “seeking admission” is unsupported by  
19 the plain language of the INA, and further stating, “[i]f he is not admitted to the United  
20 States . . . but he is not ‘seeking admission’ . . . then what is his legal status?”).

21       **d. The BIA’s Decision in *Hurtado* Is Entitled to Significant Weight in Construing**  
22 **the Scope of 8 U.S.C. § 1225(b)(2).**

23           While *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), eliminated Chevron  
24 deference, *Hurtado* nonetheless should be afforded substantial weight under *Skidmore v. Swift*  
25 *& Co.*, 323 U.S. 134 (1944). Under *Skidmore*, the weight owed to an agency interpretation  
26 depends on “the thoroughness evident in its consideration, the validity of its reasoning, its  
27 consistency with earlier and later pronouncements, and all those factors which give it power  
28 to persuade, if lacking power to control.” *Id.* at 140. *Hurtado* scores highly on these factors.

1 First, the BIA applied its specialized expertise in immigration detention law, the very  
2 subject Congress charged it with administering. Its decision addressed the interplay between  
3 §§ 1225 and 1226 in detail, relying on statutory text, legislative history, and decades of  
4 experience resolving custody questions. Second, the BIA’s reasoning is thorough and well  
5 supported. It carefully explained why noncitizens who entered without inspection remain  
6 “applicants for admission” under § 1225(a)(1) and why reclassifying them under § 1226(a)  
7 would create statutory issues and undermine congressional intent. Third, the BIA’s  
8 interpretation is consistent with Supreme Court precedent, including *Jennings*, which  
9 recognized that detention under § 1225(b) is mandatory. Finally, adopting *Hurtado* promotes  
10 uniformity and coherence in federal immigration law by preventing detention outcomes  
11 from turning on the happenstance of when and where a noncitizen is apprehended.

12 **e. Under *Loper Bright*, the Statute Controls, Not Prior Agency Practices.**

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

26 The BIA’s recent precedent decision in *Hurtado* includes thorough reasoning. *Matter*  
27 *of Yajure Hurtado*, 29 I. & N. Dec. at 221–22. In *Hurtado*, the BIA analyzed the statutory  
28 text and legislative history. *Id.* at 223–225. It highlighted congressional intent that aliens

1 present without inspection be considered “seeking admission.” *Id.* at 224. The BIA  
2 concluded that rewarding aliens who entered unlawfully with bond hearings while  
3 subjecting those presenting themselves at the border to mandatory detention would be an  
4 “incongruous result” unsupported by the plain language “or any reasonable interpretation  
5 of the INA.” *Id.* at 228.

6 To be sure, “when the best reading of the statute is that it delegates discretionary  
7 authority to an agency,” the Court must “independently interpret the statute and effectuate  
8 the will of Congress.” *Loper Bright Enterprises*, 603 U.S. at 395. But “read most naturally, §§  
9 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain  
10 proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does  
11 not support Petitioner’s position that the plain language mandates detention under  
12 § 1226(a).

13 **f. Petitioner’s Temporary Detention Does Not Offend Due Process.**

14 As mentioned above, Congress broadly crafted “applicants for admission” to include  
15 undocumented aliens present within the United States like Petitioner. *See* 8 U.S.C. §  
16 1225(a)(1). And Congress directed aliens like the Petitioner to be detained during their  
17 removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 (“Read most  
18 naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until  
19 certain proceedings have concluded.”). In so doing, Congress made a legislative judgment to  
20 detain undocumented aliens during removal proceedings, as they — by definition — have  
21 crossed borders and traveled in violation of United States law. As explained above, that is  
22 the prerogative of the legislative branch serving the interest of the government and the  
23 United States.

24 The Supreme Court has recognized this profound interest. *See Shaughnessy*, 345 U.S.  
25 at 210 (“Courts have long recognized the power to expel or exclude aliens as a fundamental  
26 sovereign attribute exercised by the Government’s political departments largely immune  
27 from judicial control.”). And with this power to remove aliens, the Supreme Court has  
28 recognized the United States’ longtime Constitutional ability to detain those in removal

1 proceedings. *Carlson*, 342 U.S. at 538 (“Detention is necessarily a part of this deportation  
2 procedure.”); *Wong Wing*, 163 U.S. at 235 (“Proceedings to exclude or expel would be vain  
3 if those accused could not be held in custody pending the inquiry into their true character,  
4 and while arrangements were being made for their deportation.”); *Demore*, 538 U.S. at 531  
5 (“Detention during removal proceedings is a constitutionally permissible part of that  
6 process.”); *Jennings*, 583 U.S. at 286 (“Congress has authorized immigration officials to  
7 detain some classes of aliens during the course of certain immigration proceedings.  
8 Detention during those proceedings gives immigration officials time to determine an alien's  
9 status without running the risk of the alien's either absconding or engaging in criminal  
10 activity before a final decision can be made.”).

11 In another immigration context (aliens already ordered removed awaiting their  
12 removal), the Supreme Court has explained that detaining these aliens less than six months  
13 is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this  
14 presumptive constitutional limit has been subsequently distinguished as perhaps  
15 unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court  
16 explained Congress was justified in detaining aliens during the entire course of their removal  
17 proceedings who were convicted of certain crimes. *Demore*, 538 U.S. at 513. In that case,  
18 similar to undocumented aliens like Petitioner, Congress provided for the detention of  
19 certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court  
20 emphasized the constitutionality of the “definite termination point” of the detention, which  
21 was the length of the removal proceedings.<sup>3</sup> *Id.* at 512.<sup>4</sup> In light of Congress’s interest in  
22 dealing with illegal immigration by keeping specified aliens in detention pending the  
23  
24

25 <sup>3</sup> “In contrast, because the statutory provision at issue in this case governs detention of deportable criminal  
26 aliens *pending their removal proceedings*, the detention necessarily serves the purpose of preventing the aliens  
27 from fleeing prior to or during such proceedings. Second, while the period of detention at issue in *Zadvydas*  
28 was ‘indefinite’ and ‘potentially permanent,’ 533 U.S. 678, 690–691, the record shows that § 1226(c) detention  
not only has a definite termination point, but lasts, in the majority of cases, for less than the 90 days the Court  
considered presumptively valid in *Zadvydas*.”

<sup>4</sup> In 2018, the Court again highlighted the significance of a “definite termination point” for detention of certain  
aliens pending removal. *See Jennings*, 583 U.S. at 304.

1 removal period, the Supreme Court dispensed of any Due Process concerns without  
2 engaging in the “*Mathews v. Eldridge* test” *See id. generally*.

3 Likewise, in the case at bar, Petitioner’s temporary detention pending his removal  
4 proceedings does not violate Due Process. While in detention, Petitioner requested and was  
5 granted a bond hearing. Petitioner has not appealed the IJ’s decision not to grant a bond on  
6 jurisdictional grounds before the BIA. Petitioner’s ample available process in his current  
7 removal proceedings demonstrate no lack of Procedural Due Process — nor any deprivation  
8 of liberty “sufficiently outrageous” required to establish a Substantive Due Process claim.  
9 *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244  
10 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001).  
11 Congress simply made the decision to detain him pending removal which is a  
12 “constitutionally permissible part of that process.” *See Demore*, 538 U.S. at 531.

13 The temporary, automatic, and discretionary stays permit the United States an  
14 opportunity to appeal an IJ bond decision to correct any errors by the Immigration Judge  
15 while providing “an appropriate and less restrictive means whereby the government’s  
16 interest in seeking a stay of the custody redetermination may be protected without unduly  
17 infringing upon Petitioner’s liberty interest.” *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1077  
18 (N.D. Cal. 2004); *El-Dessouki v. Cangemi*, No. CIV 063536 DSD/JSM, 2006 WL 2727191, at  
19 \*3 (D. Minn. Sept. 22, 2006); *Altayar v. Lynch*, No. CV-16-02479-PHX-GMS (JZB), 2016  
20 WL 7383340, at \*10–11 (D. Ariz. Nov. 23, 2016).

21 As explained in *Altayar*, purpose of the automatic stay is to “avoid the necessity of  
22 having to decide whether to order a stay on extremely short notice with only the most  
23 summary presentation of the issues.” Review of Custody Determinations, 71 FR 57873-01,  
24 2006 WL 2811410; *Altayar*, 2016 WL 7383340 at \*12-13. An automatic stay of up to 90  
25 days does not violate due process because it is narrowly tailored to serve a compelling  
26 United States interest. *Id.* In *Altayar*, the Court found there is no procedural due process  
27 violation from § 1003.19(i)(2).  
28

1 In this case, Petitioner, who is present in the United States without admission or  
2 parole, is an applicant for admission in INA § 240 removal proceedings and is therefore  
3 detained pursuant to 8 U.S.C. § 1225. As discussed above, his detention is mandatory and  
4 the IJ does not have jurisdiction to issue a bond. As history has revealed, the BIA issued its  
5 precedential decision in *Hurtado*, in which it ruled that Immigration Judges lacked  
6 jurisdiction to grant bonds to illegal aliens like the Petitioner. The United States is aware of  
7 prior rulings in this District and others rejecting these arguments, but the United States  
8 respectfully maintains Petitioner has not been deprived of Due Process in light of the  
9 aforementioned precedent.

10 **g. Request for EAJA Fees Should be Denied.**

11 Petitioner seeks attorney's fees and costs pursuant to § 2412 of the Equal Access for  
12 Justice Act ("EAJA"), which allows fee-shifting in civil actions by or against the United  
13 States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504,  
14 and fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioner cannot obtain  
15 fees in this case under 5 U.S.C. § 504 since that provision excludes administrative  
16 immigration proceedings. *Ardestani v. I.N.S.*, 502 U.S. 129 (1991). His only recourse for fees  
17 is pursuant to § 2412(d)(1)(A), which provides, subject to exceptions not relevant here, that  
18 in an action brought by or against the United States, a court must award fees and expenses  
19 to a prevailing non-government party "unless the court finds that the position of the United  
20 States was substantially justified or that special circumstances make an award unjust." 28  
21 U.S.C. § 2412(d)(1)(A).

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

1 As described above, the United States District Court for the District of Nebraska  
2 and the United States District Court for the Southern District of California have both  
3 issued decisions holding that, under the plain language of § 1225(a)(1), aliens present in the  
4 United States who have not been admitted are “applicants for admission” and are thus  
5 subject to the mandatory detention provisions of “applicants for admission” under §  
6 1225(b)(2). *See Vargas Lopez*, 2025 WL 2780351; *Chavez*, 2025 WL 2730228. Because other  
7 federal judges have found persuasive the positions advanced by the Federal Respondents in  
8 this case, the Federal Respondents’ position is substantially justified. *See Medina Tovar v.*  
9 *Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that the district court did not abuse  
10 its discretion, in finding that the United States’ position was substantially justified for  
11 purposes of EAJA, where different judges disagreed about the proper reading of the statute  
12 and the case involved an issue of first impression). Because the United States’ position in  
13 this case is substantially justified, Petitioner’s request for attorney’s fees under EAJA  
14 cannot prevail.

## 15 VI. CONCLUSION

16 For the foregoing reasons, Federal Respondents respectfully request that the Court  
17 deny the Petition for Writ of Habeas Corpus.

18 Respectfully submitted this 9th day of January 2026.

19 TODD BLANCHE  
20 Deputy Attorney General of the United States  
21 SIGAL CHATTAH  
22 First Assistant United States Attorney

23 /s/ Tamer B. Botros  
24 VIRGINIA T. TOMOVA  
25 TAMER B. BOTROS  
26 Assistant United States Attorneys  
27  
28