

1 TODD BLANCHE  
Deputy Attorney General of the United States  
2 SIGAL CHATTAH  
First Assistant United States Attorney  
3 District of Nevada  
4 Nevada Bar Number 8264

5 SUMMER A. JOHNSON  
Assistant United States Attorney  
6 501 Las Vegas Blvd. South, Suite 1100  
7 Las Vegas, Nevada 89101  
(702) 388-6336  
8 Summer.Johnson@usdoj.gov  
*Attorneys for the Federal Respondents*

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

11  
12 MARCOS JUAREZ SALVADOR,  
13 Petitioner,  
14 v.  
15 KRISTI NOEM, et. al. ,  
16 Respondents.

Case No. 2:26-cv-00043-RFB-BNW  
**Federal Respondents' Response to  
Order to Show Cause, ECF No. 5**

17 Federal Respondents hereby file their response to Order to Show Cause. ECF No. 5.  
18 Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2). This response  
19 is supported by the following memorandum of points and authorities. In his Petition, the  
20 Petitioner, who does not have a legal status in the United States, is asking the Court to order  
21 Respondents to conduct a bond hearing under § 1226(a). ECF No. 1 at 28. Petitioner is  
22 charged with having entered the United States without admission or inspection. ECF No. 1,  
23 ¶ 24. Petitioner is claiming that he is unlawfully detained by DHS because the mandatory  
24 detention § 1225(b)(2)(A) does not apply to him since he previously entered and is now  
25 residing in the United States and such individuals are subject to a different statute, § 1226(a),  
26 that allows for release on conditional parole or bond. ECF No. 1, ¶ 23. The Petition should  
27 be denied because Petitioner is lawfully detained in mandatory detention under 8 U.S.C. §  
28 1225(b)(2)(A). Federal Respondents' position is supported by the I-213 Record of

1 Deportable/Inadmissible Alien and DHS Form I-862 Notice to Appear attached hereto as  
2 Exhibit A.

3 Federal Respondents waive oral argument with respect to the Petition for Writ of  
4 Habeas Corpus, the Court's Order to Show Cause, this Response, and any Reply filed by  
5 Petitioner.

### 6 **I. Factual Background**

7 Petitioner is detained in Immigration and Customs Enforcement (ICE) custody at  
8 the Nevada Southern Detention Center, in Pahrump, Nevada pending removal  
9 proceedings. ECF No. 1, ¶ 1. Petitioner has been detained since December 15, 2025. *Id*; see  
10 Exhibit A, at 2. Petitioner is seeking to challenge the policy adopted by the Board of  
11 Immigration Appeals ("BIA") in the *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).  
12 ECF No. 3, ¶ 4. It does not appear that Petitioner has requested a bond redetermination  
13 hearing. Petitioner is claiming that he is unlawfully detained by DHS because the  
14 mandatory detention § 1225(b)(2)(A) does not apply to him since he previously entered and  
15 is now residing in the United States and such individuals are subject to a different statute, §  
16 1226(a), that allows for release on conditional parole or bond. ECF No. 1, ¶ 10. Petitioner  
17 requests that this Court order that Petitioner be either released or provided a bond  
18 redetermination hearing to be held by the Immigration Court immediately. ECF No. 1 at  
19 26.

### 20 **II. Legal Background**

21 The plain language of the Immigration and Nationality Act ("INA") mandates that  
22 the Petitioner—who is present in the United States without being admitted—is correctly  
23 considered "applicant for admission" and therefore subject to detention under 8 U.S.C. §  
24 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) ("Read most naturally, §§  
25 1225(b)(1) and (b)(2) thus mandate detention of applicants of admission until certain  
26 proceedings have concluded.") The best reading of the statutes is that, Congress insured that  
27  
28

1 all aliens would be inspected by immigration authorities, by treating aliens, who are present  
2 in the United States without having been inspected and admitted, as applicants for  
3 admission. Aliens who are present without having been inspected and admitted have the  
4 benefit of full removal proceedings and are not subject to expedited removal. But they are  
5 subject to detention during their removal proceedings. The Court should deny Petitioners'  
6 Petition for Writ of Habeas Corpus.

### 7 **A. Applicants for Admission**

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

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

14 8 U.S.C. § 1225(a)(1).<sup>1</sup> Section 1225(a)(1) was added to the INA as part of the Illegal  
15 Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”). Pub. L. No.  
16 104-208, § 302, 110 Stat. 3009-546. “The distinction between an alien who has effected an  
17 entry into the United States and one who has never entered runs throughout immigration  
18 law.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

19 Before IIRIRA, “immigration law provided for two types of removal proceedings:  
20 deportation hearings and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir.  
21 1999) (en banc). A deportation hearing was a proceeding against an alien already physically  
22 present in the United States, whereas an exclusion hearing was against an alien outside of  
23 the United States seeking admission *Id.* (quoting *Landon v. Plasencia*, 459 U.S. 21, 25 (1982)).  
24 Whether an applicant was eligible for “admission” was determined only in exclusion  
25 proceedings, and exclusion proceedings were limited to “entering” aliens—those aliens

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

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

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

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

22 IIRIRA established distinct types of removal proceedings. Pub. L. 104-208, 110 Stat.  
23 3009, 3009-546 (1996). Removal proceedings under § 1225 are known as “expedited removal  
24 proceedings.” *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109–113 (2020) (citing  
25 provisions). Only two categories of aliens are eligible for expedited removal, rather than full  
26 removal proceedings, (1) “arriving aliens” and (2) aliens who “ha[ve] not been admitted or  
27

1 paroled into the United States” and have not been “physically present in the United States”  
2 for two years. 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). “Arriving aliens” are defined by regulation as  
3 “an applicant for admission coming or attempting to come into the United States at a port-  
4 of-entry ...” 8 C.F.R. § 1.2.

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

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

19 Removal proceedings under § 1229a are commonly referred to as “full removal  
20 proceedings” or “240 removal proceedings” due to the statutory section of the INA in which  
21 they appear. 8 U.S.C. § 1229a; INA § 240. The proceedings take place before an IJ, an  
22 employee of the Department of Justice. 8 U.S.C. § 1229a(a)(1), (b)(1). Aliens in 1229a  
23 proceedings have an opportunity to apply for relief from removal. *See, e.g.*, 8 U.S.C. § 1158  
24 (asylum); 8 U.S.C. § 1229b(b) (cancellation of removal for nonpermanent residents); 8  
25 U.S.C. § 1255 (adjustment of status). These are adversarial proceedings in which the alien  
26 has the right to hire counsel, examine and present evidence, and cross-examine witnesses. 8  
27  
28

1 U.S.C. § 1229a(b)(4). Either party may appeal the IJ decision to the BIA. 8 U.S.C. §  
2 1229a(b)(4)(C); *see also* 8 C.F.R. § 1240.15. If the BIA issues a final order of removal, the  
3 alien may also seek judicial review at a U.S. court of appeals through a petition for review.  
4 8 U.S.C. § 1252.

#### 5 **D. Detention under the INA**

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

##### 12 **i. Detention under Section 1225**

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

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

20 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583  
21 U.S. at 287. The Supreme Court recognized that 1225(b)(2) “applies to all applicants for  
22 admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant  
23 for admission” shall be detained for a removal proceeding “if the examining immigration  
24 officer determines that [the] alien seeking admission is not clearly and beyond a doubt  
25 entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). While section 1225 does not provide for  
26 aliens to be released on bond, DHS has the sole discretionary to release any applicant for  
27

1 admission on a “case-by-case basis for urgent humanitarian reasons or significant public  
2 benefit.” 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

3 **ii. Detention under Section 1226**

4 Section 1226 provides that “an alien may be arrested and detained pending a decision  
5 on whether the alien is to be removed. 8 U.S.C. § 1226(a). Under § 1226(a), the government  
6 may detain an alien during his removal proceedings, release him on bond, or release him on  
7 conditional parole.<sup>2</sup> By regulation, immigration officers can release an alien if the alien  
8 demonstrates that he “would not pose a danger to property or persons” and “is likely to  
9 appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request custody  
10 redetermination (i.e., a bond hearing) by an IJ at any time before a final order of removal is  
11 issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

12 **III. Argument**

13 The INA, 8 U.S.C. § 1101 *et seq.*, entrusts the Executive branch to remove  
14 inadmissible and deportable aliens and to ensure that aliens who are removable are in fact  
15 removed from the United States. “[D]etention necessarily serves the purpose of preventing  
16 deportable [] aliens from fleeing prior to or during their removal proceedings, thus increasing  
17 the chance that if ordered removed, the aliens will be successfully removed.” *Demore v. Kim*,  
18 538 U.S. 510, 528 (2003). The Supreme Court has long held that deportation proceedings  
19 “would be in vain if those accused could not be held in custody pending the inquiry” of their  
20 immigration status. *Wong Wing v. United States*, 163 U.S. 228, 235 (1896). Congress intended  
21 for all applicants for admission to be detained during the course of their removal proceedings.  
22 *See Jennings*, 583 U.S. at 299 (interpreting the “plain meaning” of sections 1225(b)(1) and (2)  
23 to mean that applicants for admission be mandatorily detained for the duration of their  
24 immigration proceedings).

25  
26  
27 <sup>2</sup> Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United States  
under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007).

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

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

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

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

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

23 Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for  
24 judicial review of immigration proceedings. 8 U.S.C. § 1252(a)(5). “Taken  
25 together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—  
26 arising from *any* removal-related activity can be reviewed *only* through the [petition-for-  
27

1 review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in  
2 original); *see id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including  
3 policies-and-practices challenges . . . whenever they ‘arise from’ removal proceedings”);  
4 *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is  
5 “unrelated to any removal action or proceeding” is it within the district court’s jurisdiction).

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

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

21 Here, the Petition challenges the decision and action to detain Petitioner, which arises  
22 from DHS’s decision to commence removal proceedings, and is thus an “action . . . to  
23 remove [him] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583  
24 U.S. at 294–95; *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at \*3 (W.D.  
25 Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention  
26 decision). As such, the Court lacks jurisdiction over this action. Petitioner must present his  
27

1 claims before the appropriate court of appeals because he challenges the government's  
2 decision or action to detain him, which must be raised before a court of appeals, not this  
3 Court. *See* 8 U.S.C. § 1252(b)(9).

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

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

12 The statute indicates that only the D.D.C. can hear challenges to “a regulation, or  
13 written policy directive, written policy guideline, or written procedure” to § 1225(b).

14 8 U.S.C. § 1252(e)(3).

15 Any argument that § 1252(e)(3)’s restriction on review is limited to policies relating  
16 to expedited removal orders under 1225(b)(1) and not to policies relating to detention under  
17 1225(b)(2) is meritless. Section 1252(e) has five paragraphs numbered 1 through 5.

18 8 U.S.C. § 1252(e). Paragraphs (1), (2), (4), and (5) specifically reference § 1225(b)(1), while  
19 paragraph (3) references all of § 1225(b). *Id.* The inclusion of “(b)(1)” in some paragraphs,  
20 but using just “(b)” in paragraph (3) shows that Congress wanted review of the three  
21 subsections of § 1225(b) to be limited to the D.D.C.

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

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

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

5 The plain language of the statute is clear: Petitioner is subject to detention under §  
6 1225(b)(2) because he is an applicant for admission. *Matter of Yajure-Hurtado*, 29 I. & N. Dec.  
7 216, 220 (BIA 2025). The INA specifies that “an alien present in the United States who has  
8 not been admitted” “shall be deemed . . . an applicant for admission.” 8 U.S.C. § 1225(a).  
9 Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and  
10 those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. As the Supreme Court indicated  
11 in *Jennings*, “[r]ead most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of  
12 applicants of admission until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297.  
13 Despite the clear direction from the Supreme Court, Petitioners argue that there is some third  
14 category of applicants for admission that are not subject to mandatory detention. *Jennings*,  
15 583 U.S. at 287. Section 1225(b)(1) covers which applicants for admission, including arriving  
16 aliens *or* aliens who have not been admitted and have been present for less than two years,  
17 and directs that both of those classes of applicants for admission are subject to expedited  
18 removal. 8 U.S.C. § 1225(b)(1). Section 1225(b)(2) “serves as a catchall provision that applies  
19 to all applicants not covered by 1225(b)(1) (with specific exceptions not relevant here).”<sup>3</sup>  
20 *Jennings*, 583 U.S. at 287. *Jennings* recognized that 1225(b)(2) mandates detention. *Id.* at 297;  
21 *see also Matter of Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) (“[A]n applicant for  
22 admission . . . whether or not at a port of entry, and subsequently placed in removal  
23 proceedings is detained under . . . 8 U.S.C. § 1225(b), and is ineligible for any subsequent  
24 release on bond.”). The IJs in these cases were correct in holding that § 1225(b) applied  
25 because Petitioners, present in the United States without being admitted, are applicants for  
26

27 <sup>3</sup> The two exceptions are crewmen and stowaways. *See* 8 U.S.C. §§ 1225(a)(2), 1281, and 1282(b).

1 admission. *See Yajure*, 29 I. & N. Dec. at 221.

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

21 Petitioner's interpretation reads "applicant for admission" out of 1225(b)(2)(A).  
22 "[O]ne of the most basic interpretive canons" instructs that a "statute should be construed so  
23 that effect is given to all its provisions." *Corley v. United States*, 556 U.S. 303, 314 (2009).  
24 "Applicant" is defined as "[s]omeone who requests something; a petitioner, such as a person  
25 who applies for letters of administration." Black's Law Dictionary (12th ed. 2024). Applying  
26 the definition of "applicant" to "applicant for admission," an applicant for admission is an  
27  
28

1 alien “requesting” admission, defined by statute as “the lawful entry of the alien into the  
2 United States after inspection.” 8 U.S.C. § 1101(a)(13)(A). “Seeking admission” does not  
3 have a different meaning from applicant for admission (“requesting admission”); the terms  
4 are synonymous.

5 “The canon against surplusage is not an absolute rule.” *Marx v. Gen. Revenue Corp.*,  
6 568 U.S. 371, 385 (2013); *see also Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S.  
7 291, 299 n.1 (2006) (“While it is generally presumed that statutes do not contain surplusage,  
8 instances of surplusage are not unknown”). “Sometimes drafters *do* repeat themselves and *do*  
9 include words that add nothing of substance, either out of a flawed sense of style or to engage  
10 in the ill-conceived but lamentably common belt-and-suspenders approach.” *United States v.*  
11 *Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017) (quoting Antonin Scalia & Bryan A. Garner,  
12 *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 176–77 (2012)  
13 (emphasis in original)). “This is why the surplusage canon of statutory interpretation must  
14 be applied with statutory context in mind.” *Id.* (citing Scalia & Garner, *READING LAW*  
15 179); *see also Doe v. Boland*, 698 F.3d 877, 881 (6th Cir. 2012) (recognizing that the U.S. Code  
16 is “replete with meaning-reinforcing redundancies” including “null and void;,” “arbitrary  
17 and capricious,” “cease and desist,” and “free and clear”). “[A]n alien who is an applicant  
18 for admission” and “an alien seeking admission” are functional synonyms. *See Heyman v.*  
19 *Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) (“That principle [that drafters do repeat  
20 themselves] carries extra weight where, as already explained, the arguably redundant words  
21 that the drafters employed—‘rental’ and ‘lease’—are functional synonyms.”) In *Doe v.*  
22 *Boland*, the Sixth Circuit determined that “any person who, while a minor, was a *victim* of a  
23 variety of sex crimes and *who suffers personal injury* as a result” in 18 U.S.C. § 2255 a “victim  
24 by definition is someone who suffers an injury” and Congress did not intend for those phrases  
25 to have separate meanings. *Doe*, 698 F.3d at 882. “If one possible interpretation of a statute  
26 would cause some redundancy and another interpretation would avoid redundancy, that  
27  
28

1 difference in the two interpretations can supply a clue as to the better interpretation of a  
2 statute. But only a clue. Sometimes the better overall reading of the statute contains some  
3 redundancy.” *Rimini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334 (2019). In Section 1225(b)(2),  
4 “an alien who is an applicant for admission” is by definition “an alien seeking admission.”

5 Presumably once in removal proceedings, petitioner will seek relief from removal and  
6 therefore will be seeking admission. *See, e.g., Ocampo-Duran v. Ashcroft*, 254 F.3d 1133, 1134–  
7 35 (9th Cir. 2001) (concluding that a post-entry adjustment of status is an admission).  
8 Petitioner’s reading would create an absurd result where an alien in removal proceedings,  
9 not subject to mandatory detention, would then be “seeking admission” and subject to  
10 mandatory detention when they filed for relief in immigration court, but not before seeking  
11 relief from removal. If Petitioner contest this reading, then there would be no category of  
12 alien section 1225(b)(2) would apply to. Interpreting the statute as congress drafting a  
13 detention section that applies to no one is an absurd result. Under the plain language of the  
14 statute, Petitioner is subject to detention under § 1225(b)(2). *Yajure*, 21 I. & N. Dec. at 220–  
15 21.

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

18 The Ninth Circuit disfavors construction of the INA that would provide “aliens who  
19 entered this country illegally [with] greater rights . . . than those who entered lawfully.”  
20 *Gonzalez-Gonzalez v. Ashcroft*, 390 F.3d 649, 652 (9th Cir. 2004) (holding that Congress did  
21 not intend to make aliens convicted of domestic violence who entered illegally eligible for  
22 cancellation of removal while specifically excluding aliens who had entered lawfully). The  
23 “IIRIRA amendments sought to ensure sensibly enough, that those who enter the country  
24 illegally, without proper inspection, are not treated more favorably under the INA than those  
25 who seek admission through proper channels, but are denied access.” *Wilson v. Zeithern*, 265  
26 F. Supp. 2d 628, 631 (E.D. Va. 2003). Petitioner’s reading of the statute ignores the context  
27  
28

1 and purpose of IIRIRA in the treatment of aliens present without inspection. *See Norfolk &*  
2 *W. Ry. Co. v. Am. Train Dispatchers Ass’n*, 499 U.S. 117, 129 (1991) (noting that interpretive  
3 canons must yield “when the whole context dictates a different conclusion); *see also U.S. Nat.*  
4 *Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993) (“In expounding a  
5 statute, we must not be guided by a single sentence or member of a sentence, but look to the  
6 provisions of the whole law, and to its object and policy.”).

7 The Supreme Court has long held that “the due process rights of an alien seeking  
8 initial entry” are no greater than “[w]hatever the procedures authorized by Congress.”  
9 *Thuraissigiam*, 591 U.S. at 139 (citation omitted). For unadmitted aliens, like the Petitioner  
10 here, “the decisions of executive or administrative officers, acting within powers expressly  
11 conferred by Congress, are due process of law.” *Nishimura Ekiu v. United States*, 142 U.S. 651,  
12 660 (1892); *accord Thuraissigiam*, 591 U.S. at 138–140.<sup>4</sup>

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

---

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

1 detection must, once found, be “treated as if stopped at the border.” *See Mezei*, 345 U.S. at  
2 215.

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

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

22 Any argument that prior agency practice applying § 1226(a) to Petitioner is unavailing  
23 because under *Loper Bright*, the plain language of the statute and not prior practice controls.  
24 *Yajure-Hurtado*, 29 I. & N. Dec. at 225–26. In overturning *Chevron*, the Supreme Court  
25 recognized that courts often change precedents and “correct[] our own mistakes” *Loper Bright*  
26 *Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res.*  
27  
28

1 *Def. Council, Inc.*, 467 U.S. 837 (1984)). *Loper Bright* overturned a decades old agency  
2 interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that  
3 itself predated IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380. Thus,  
4 longstanding agency practice carries little, if any, weight under *Loper Bright*. The weight given  
5 to agency interpretations “must always ‘depend upon their thoroughness, the validity of their  
6 reasoning, the consistency with earlier and later pronouncements, and all those factors which  
7 give them power to persuade.’” *Loper Bright Enterprises*, 603 U.S. at 432–33 (quoting *Skidmore*  
8 *v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)).

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

17 To be sure, “when the best reading of the statute is that it delegates discretionary  
18 authority to an agency,” the Court must “independently interpret the statute and effectuate  
19 the will of Congress.” *Loper Bright Enterprises*, 603 U.S. at 395. But “read most naturally, §§  
20 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain  
21 proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does not  
22 support Petitioner’s position that the plain language mandates detention under § 1226(a).

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

24 Petitioner seeks attorney’s fees and costs pursuant to § 2412 of the Equal Access for  
25 Justice Act (“EAJA”), which allows fee-shifting in civil actions by or against the United  
26 States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504, and  
27  
28

1 fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioner cannot obtain fees  
2 in this case under 5 U.S.C. § 504 since that provision excludes administrative immigration  
3 proceedings. *Ardestani v. Immigration and Naturalization Service*, 502 U.S. 129 (1991). His only  
4 recourse for fees is pursuant to § 2412(d)(1)(A), which provides, subject to exceptions not  
5 relevant here, that in an action brought by or against the United States, a court must award  
6 fees and expenses to a prevailing non-government party “unless the court finds that the  
7 position of the United States was substantially justified or that special circumstances make  
8 an award unjust.” 28 U.S.C. § 2412(d)(1)(A).

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

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

1 Because the United States' position in this case is substantially justified, Petitioner's  
2 request for attorney's fees under EAJA cannot prevail.

3 **IV. Conclusion**

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

10 Respectfully submitted this 20th day of January 2026.

11 TODD BLANCHE  
12 Deputy Attorney General of the United States  
13 SIGAL CHATTAH  
14 First Assistant United States Attorney

15 /s/ Summer A. Johnson  
16 SUMMER A. JOHNSON  
17 Assistant United States Attorney  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28