UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

MAHMOUD MOHAMMED MOHAMME ELGENDY

Petitioner,

v.

Pamela Bondi, Attorney General of the United States,

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

U.S. Department of Homeland Security,

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

U.S. Immigration and Customs Enforcement, and

David Easterwood, Acting Director, St. Paul Field Office Immigration and Customs Enforcement,

Respondents.

Case No. 0:26-cv-00646-SHL-SGE

REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Expedited Handling Requested

I. INTRODUCTION

Respondents' response (ECF No. 9) does not provide any applicable legal support that has not already been rejected in dozens of decisions from around the country. The question presented is a simple one considered by this District in dozens of recent cases: can ICE detain an individual who has a legal immigration status under Section 1225 of the Immigration Code without a valid order of removal or a showing that the Petitioner is a

threat to public safety? There are dozens of cases from within this District that say a detention under such circumstances is illegal and unconstitutional. *See, e.g.*, *Maria F. v. Bondi, et al.*, No. 26-cv-486, 2026 WL 172537 (D. Minn. Jan. 22, 2026) (Respondents' position "raises an issue of statutory interpretation that courts in this District have repeatedly considered and rejected, and it will be rejected here as well"). The cited statutory authority for detention under § 1225(a), even under Respondents' flawed reading, is inapplicable to Mr. Elgendy as a matter of law. *See infra* Section II(B)(1)(iii) (explaining that he was admitted to the United States pursuant to a visa and thus cannot be an "applicant for admission"). Therefore, Mr. Elgendy should immediately be released from custody upon his return to Minnesota.

On a practical level, Respondents' written submission is extraordinary puzzling as counsel for the US Attorneys' office, Mr. Cruz Rodriguez, **offered this morning to release Mr. Elgendy in Texas this morning**, but since Mr. Elgendy had no identification with him or means to drive back to Minnesota, counsel asked for him to be flown back to Minnesota and released here. Declaration of Brian D. Clark ("Clark Decl."), ¶ 2. Similarly, an ICE official from the El Paso field office offered to release Mr. Elgendy in Texas today, but the same request to get him to Minnesota today was made. *See id.*, ¶ 3. It is the height of arbitrariness for Respondents to argue hours later Petitioner should be detained further because of the simple logistical need for Petitioner to get back to Minnesota before being released, and risk Mr. Elgendy being detained days longer—especially where it appears that the transport of Mr. Elgendy to Texas was in violation of this Court's Order to Show Cause issued yesterday morning. Further, ICE has now stated to Petitioner's counsel they

intend to violate this Court's Order to Show Cause further tomorrow by not returning Petitioner by 9:00 a.m. Central. *Id.*, ¶ 4. Setting aside Respondents' failure to return Petitioner to Minnesota today as this Court had previously ordered, there are earlier flights and means available to return Mr. Elgendy to Minnesota that the Court should order because his detention is unlawful and illegal. *See id.*, ¶¶ 5-6.

The Court should order the immediate release of Mr. Elgendy upon his return to Minnesota tonight and allow the appeal of his previously granted asylum application to proceed in the ordinary course.

II. ARUGMENT

A. Respondents' redetention of Petitioner following the grant of asylum and release violates his due process rights and Respondents' own regulations.

Respondents claim the entitlement to redetain Petitioner at their own initiative because the Government has appealed the decision granting Petitioner asylum. Response 1, ECF No. 9 ("Because Mr. Elgendy's asylum application is currently under appeal, Mr. Elgendy does not currently have asylum status. As such, Mr. Elgendy's detention is mandatory under 8 U.S.C. ¶ [*sic*] 1225[.]"). However, as ICE has "reiterate[d]," where "the immigration court has granted asylum (or other protection relief such as withholding of removal or protection under the Convention Against Torture) and ICE has entered an appeal of the decision which is pending before the Board of Immigration Appeals" it is ICE's "general . . . policy to favor release of aliens who have been granted protection relief . . . absent exceptional concerns such as national security issue or danger to the community and absent any requirement under law to detain." *See* ECF No. 5-3 at 1.

Respondents were not entitled to redetain Petitioner without pre-deprivation process. *See Roble v. Bondi*, No. 25-cv-3196, 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025) (granting habeas petition and ordering release of a detained immigrant on supervised release where Government failed to give adequate pre-detention notice and "utterly fail[ed] to demonstrate to the Court why changed circumstances render [immigrant's] removal significantly likely in the reasonably foreseeable future"); *Sarail A. v. Bondi*, No. 25-cv-2144, 2025 WL 2533673, at *4–5 (D. Minn. Sept. 3, 2025) (granting habeas petition and ordering release of detained immigrant who was previously released into supervision where government failed to give adequate notice of re-detention, and merely cited "'changed circumstances' without any explanation"); *Yee S. v. Bondi*, No. 25-cv-02782, 2025 WL 2879479, at *4 (D. Minn. Oct. 9, 2025) (granting habeas petition of immigrant released into supervision where government failed to demonstrate a change in circumstances). Thus, before he could be redetained, Petitioner was entitled to "a series of procedural protections set forth in applicable regulations," including a notice of his bond revocation and the opportunity to apply to an immigration judge to have his relief reinstated. *See Barco Mercado v. Francis*, --- F. Supp. 3d ---, 2025 WL 3295903, at *11 (S.D.N.Y. Nov. 26, 2025); 8 C.F.R. § 236.1(c)(8)-(9), (d)(1) & (3).

Courts require the government to justify the redetention with "evidence" of specific facts, such as "(1) who made the decision to detain him, (2) when that decision occurred, (3) on what basis the decision to detain him was made, (4) whether there was any material change in circumstances with respect to [the petitioner] that triggered his detention, or (5) whether there was any sort of new policy in place that triggered his detention" and have

granted habeas writs where the government fails to do so. *Id.* (and granting writ); *Luna Sanchez v. Bondi*, No. 25-cv-18888, 2025 WL 3191922, at *5 (E.D. Va., Nov. 14, 2025) (granting writ: "There is a substantial likelihood that, by allowing DHS to arbitrarily revoke Petitioner's bond and detain him without any individualized findings, Petitioner will be erroneously deprived of liberty. DHS already has additional procedural safeguards that it could have employed to avoid an erroneous deprivation of liberty, namely the procedures for revoking bond outlined in § 1226(b).").

Respondents here do not even attempt to meet that standard. While they have submitted an affidavit detailing the procedural history of Petitioners' successful asylum application, his history of adherence with all requirements imposed by immigration authorities since then, and their redetention of him this week, they offer no explanation—let alone evidence—to justify his redetention. Respondents have, therefore, waived any argument that Petitioner poses a threat to "national security" or a "danger to the community." *See* ECF No. 5-3 at 1. Mr. Elgendy is a beloved teacher at his school and is no danger to the community whatsoever.

That leaves only a "requirement under law to detain" him. *Cf.* Response at 1 (claiming detention is "mandatory under 8 U.S.C. ¶ [*sic*] 1225"). However, for the reasons described above, § 1225 does not apply to Petitioner, and thus his redetention is unlawful.

B. Petitioner cannot be detained pursuant to Section 1225 of the Immigration and Naturalization Act ("INA").

Respondents argue that the plain language of the INA "requires DHS to detain noncitizens, like Petitioner[s], who are present in the United States without admission."

Resp. Br. 2, ECF No. 6 (incorporating by reference Appellants' Br. 13, *Avila*, No. 25-cv-3248). This misreads the INA and misstates the facts of this case. The Supreme Court has held that, while "Section 1225(b) 'authorizes the Government to detain certain aliens *seeking admission into the country*,' Section 1226 'authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings.'" *Gomes v. Hyde*, 2025 WL 1869299 at *2 (D. Mass. July 7, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)). In U.S. immigration law, there is a critical distinction between those seeking admission and those already within the United States. *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958). Indeed, the Seventh Circuit recently considered—and *rejected*—the exact argument raised by Respondents here, as have the courts of this District. *See Velasco Hurtado v. Bondi*, No. 26-cv-546, 2026 WL 184884, at *3–5 (D. Minn. Jan. 24, 2026); *see also Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1060–63 (7th Cir. 2025).

Notably, Respondents cite no cases from within this District that support their position. Petitioner is aware of none. And there are dozens of cases that reject it. *See, e.g.*, *Velasco Hurtado*, 2026 WL 184884, at *3–5; *Maria F. v. Bondi, et al.*, No. 26-cv-486, 2026 WL 172537 (D. Minn. Jan. 22, 2026) (Respondents' position "raises an issue of statutory interpretation that courts in this District have repeatedly considered and rejected, and it will be rejected here as well"); *Fulgencio B. v. Lyons*, No. 26-cv-395, 2026 WL 172677 (D. Minn. Jan. 22, 2026) (same); *Miguel T.G. v. Bondi, et al.*, No. 26-cv-243, 2026 WL 172722, at *2 (D. Minn. Jan. 22, 2026) ("The Court is not alone in its decision; rather, the majority of courts to rule on the matter—including the only federal court of appeals to weigh in on

the issue—came to the same conclusion"); *Elias C. v. Bondi*, No. 26-cv-307, 2026 WL 145962, at *2 (D. Minn. Jan. 20, 2026); *Francisco T. v. Bondi*, 797 F. Supp. 3d 970, 974–76 (D. Minn. 2025); *Belsai D.S. v. Bondi*, --- F. Supp. 3d ---, No. 25-cv-3682, 2025 WL 2802947, at *6–7 (D. Minn. Oct. 1, 2025); *Eliseo A.A. v. Olson*, --- F. Supp. 3d ---, No. 25-cv-3381, 2025 WL 2886729, at *2–4 (D. Minn. Oct. 8, 2025); *Avila v. Bondi*, No. 25-cv-3741, 2025 WL 2976539, at *5–7 (D. Minn. Oct. 21, 2025); *Andres R.E. v. Bondi*, No. 25-cv-3946, 2025 WL 3146312, at *2–3 (D. Minn. Nov. 4, 2025); *E.M. v. Noem*, 25-cv-3975, 2025 WL 3157839, at *4–8 (D. Minn. Nov. 12, 2025); *Santos M.C. v. Olson*, No. 25-cv-4264, 2025 WL 3281787, at *2–3 (D. Minn. Nov. 25, 2025). Respondents' interpretation of the INA is incorrect and should be rejected as a basis to detain Petitioner.

1. The plain text of 8 U.S.C. § 1225(b)(2) does not apply to Petitioner, who was not "seeking admission" when he was detained.

Section 1225(b)(2) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a[.]" 8 U.S.C. § 1225(b)(2). Petitioner is not an "applicant[] for admission."

At the time of his January 14, 2026, detention, Petitioner was not "seeking admission" as contemplated by 8 U.S.C. § 1225(b)(2)(A). He was not outside of the United States, and his apprehension did not occur at the threshold of the United States. Rather, Petitioner was apprehended hundreds of miles from the nearest border and nowhere near a port of entry. He has lived in the United States for over a decade, has complied with all

requirements imposed on him as an asylee, and is a valued member of his community in Blaine and St. Paul, Minnesota. As such, 8 U.S.C. § 1225(b)(2) cannot apply to him.

In reading a statute, "'we must 'give effect, if possible, to every clause and word of [the] statute.'" *Fischer v. United States*, 603 U.S. 480, 486 (2024) (citing *Williams v. Taylor*, 529 U.S. 362, 404 (2000)). A comprehensive reading of 8 U.S.C. § 1225 illustrates that both 8 U.S.C. § 1225(b)(1) and 8 U.S.C. § 1225(b)(2) apply only to those arriving at the border or those who have recently arrived.

i. The INA distinguishes between those seeking admission and those already present in the United States.

"[W]e start where we always do: with the text of the statute." *Van Buren v. United States*, 593 U.S. 374 (2021). In 8 U.S.C. § 1225(b)(2), the qualifier "seeking admission" limits the class of aliens to which 8 U.S.C. § 1225(b)(2) applies to those seeking entry into the United States from outside the country, either at the border or a port of entry. In this way, an "alien present in the United States who has not been admitted" is only subjected to 8 U.S.C. § 1225(b)(2) if he is "seeking admission." *See, e.g.*, *Castañon-Nava*, 161 F.4th at 1061 ("Defendants' construction would render § 1225(b)(2)(A)'s use of the phrase 'seeking admission' superfluous, violating one of the cardinal rules of statutory construction.").

The Supreme Court recognizes this critical distinction:

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

Leng May Ma, 357 U.S. at 187 (citing *Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206, 212 (1953)) (emphasis added); *see also Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law."). Petitioner was plainly beyond the threshold of entry when detained.

This is particularly notable given that the term "admission" is statutorily defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13). For § 1225(b)(2) to comport with the statutory definition of "seeking admission," a person must be seeking "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13). This is augmented by long-held interpretations of "[t]he word 'entry' [which] by its own force implies a coming from outside." *U.S. ex rel. Claussen v. Day*, 279 U.S. 398, 401 (1929).

The remainder of the INA's definition of "admission" reinforces the conclusion that "admission" contemplates entry from outside. The provisions related to when a lawful permanent resident ("LPR") will be treated as "seeking an admission" bear this out.

> An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission . . . unless the alien-
>
> has abandoned or relinquished that status,
>
> has been absent from the United States for a continuous period in excess of 180 days,
>
> has engaged in illegal activity after having departed the United States,

> (iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,
>
> has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or
>
> is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

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

If that were not enough, the "[a]dmission of immigrants into the United States" is governed under INA § 211, which requires "a valid unexpired immigrant visa . . . and [ ] a valid unexpired passport or other suitable travel document." 8 U.S.C. § 1181(a). Moreover, those seeking admission are "admitted into the United States." *Id.* This also necessarily contemplates an alien "seeking entry" from outside the United States.

ii. The statutory history of the term "seeking admission' supports the conclusion that Petitioner were not "seeking" admission at the time of detention.

In fact, the term "seeking admission" was plucked from a former version of 8 U.S.C. § 1225, which governed "exclusion proceedings" and the "[t]he inspection . . . of aliens (including alien crewmen) seeking admission or readmission to . . . the United States" who, then as now, were "examined by one or more immigration officers at the discretion of the

Attorney General and under such regulations as he may prescribe . . . ." 8 U.S.C. § 1225(a) (1994).

"When a statutory term is 'obviously transplanted from another legal source,' it 'brings the old soil with it.'" *Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019). Under the prior regime, those who were "seeking admission" were those "outside the United States seeking admission." *Landon v. Plasencia*, 459 U.S. 21, 25 (1982). Because the language now codified at 8 U.S.C. § 1225 came from the former 8 U.S.C. § 1225, which also governed the "inspection of aliens," the well-established legal principal applies: then as now, those "seeking admission" are those at the border or a port of entry, not those simply present in the United States without admission.

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

This is consistent with how Circuit Courts have "construe[d] the meaning of the phrase 'at the time of application for admission'" in the context of 8 U.S.C. § 1182(a)(7), to "refer[] to the particular point in time when a noncitizen submits an application to physically enter into the United States." *Torres v. Barr*, 976 F.3d 918, 924 (9th Cir. 2020); *see also Marques v. Lynch*, 834 F.3d 549, 561 (5th Cir. 2016) (quoting *Ortiz-Bouchet v. U.S. Atty. Gen.*, 714 F.3d 1353, 1356 (11th Cir. 2013)) ("Section 1182(a)(7) 'only applies to applicants for admission and not to immigrants ... who sought post-entry adjustment of status while already in the United States.'"); *see also Castañon-Nava*, 161 F.4th at 1061-

62. Just as an "application for admission" occurs at the specific moment an application is applied for, seeking admission also occurs at the moment admission is sought.

iii. Petitioner has already been admitted to the United States.

As Respondents admit, Petitioner "entered" the United States "with a valid B1/B2 VISA[.]" *See* Decl. James Van Der Vaart ¶ 5, ECF No. 11. That valid visa concededly rendered Peittioner "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Even under respondents' flawed and atextual reading of § 1225(a), that would render Petitioner *not* an immigrant "seeking admission." *Cf.* Response 3. While Respondents here abridge considerably their argument on this point—purposefully or otherwise—they have elsewhere routinely acknowledged that, as they read the statute, it "mandates detention" only for "any 'applicant for admission' who cannot show that he or she is 'clearly and beyond a doubt entitled to be admitted." *See, e.g.*, *Velasco Hurtado v. Bondi*, No. 26-cv-546, ECF No. 14 at p. 2 (D. Minn., filed Jan. 24, 2026) (citing 8 U.S.C. § 1225(b)(2)(A)).

Petitioner was "clearly and beyond a doubt entitled to be admitted" under his valid visa. He was admitted. *See* Van Der Vaart Decl. ¶ 5. Thus, even if the Court were to adopt the Respondents' flawed reading of § 1225, Petitioner cannot be deemed to be "seeking admission," and thus is not subject to Respondents' claims of mandatory detention.

2. No other cannon of statutory interpretation can—or does—override the plain text of the statute.

Because "[t]he plain text of the statute alone belies the government's interpretation of §1225(b)(2)(A)," "the Court need not go on" to consider whether any other principle of

statutory interpretation can salvage Respondents' meritless and tortured reading of the immigration laws. *Velasco Hurtado*, 2026 WL 184884, at *4. Nevertheless, "other cannons of statutory interpretation only strengthen [Petitioner's] reading of the statutes." *Id.*

i. Subsection titles and the ejusdem canon further support the conclusion that § 1225(b)(2) does not apply to Petitioner.

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

The "catchall" nature of 8 U.S.C. § 1225(b)(2) is not limitless either. It must reflect the general parameters of 8 U.S.C. § 1225(b)(1) and respond to the similarly situated individuals arriving to the country who are not arriving aliens. As the Supreme Court has noted, 8 U.S.C. § 1225(b)(2) is a "catchall" that "applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings v. Rodriguez*, 583 U.S. 281, 281 (2018). "The ejusdem canon applies when 'a catchall phrase' follows 'an enumeration of specifics, as in dogs, cats, horses, cattle, and other animals.'" *Fischer v. United States*, 603 U.S. 480, 509 (2024) (quoting A. Scalia & B. Garner, READING LAW § 32, at 199 (2012)). "We often interpret

the catchall phrase to 'embrace only objects similar in nature to those objects enumerated by the preceding specific words.'" *Id.*

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

Section 1225(b)(2) applies when a person presents some evidence that they are entitled to entry, but the examining officer is not clearly and beyond a reasonable doubt convinced of their admissibility. Precedent has acknowledged this distinct purpose within § 1225(b). Detention of non-arriving aliens attempting to enter from the outside is permissible because while "§ 235(b)(2) requires the INS to detain aliens 'not clearly and beyond a doubt entitled to be admitted' . . . in practice, these provisions often result in the mandatory detention of returning lawful permanent residents at places of inspection." *Tineo v. Ashcroft*, 350 F.3d 382, 387 (3rd Cir. 2003); *see also Kasneci v. Dir., Bureau of Immigr.*

& Customs Enf't, 2012 WL 3639112, at *3 (E.D. Mich. Aug. 23, 2012); *Bautista v. Sabol*, 2011 WL 5040894, at *4 (M.D. Pa. Oct. 24, 2011).

Nor does Petitioner's reading create a surplusage issue in which the 8 U.S.C. § 1225(b)(2) catchall becomes redundant in light of 8 U.S.C. § 1225(b)(1). While 8 U.S.C. § 1225(b)(1) expressly applies to those who are "arriving," and 8 U.S.C. § 1225(b)(2)(A) expressly excludes those "to whom paragraph (1) applies," 8 U.S.C. § 1225(b)(2)(B)(ii), there is a universe of "applicants for admission" who are "seeking admission" from outside the United States that fall outside of 8 U.S.C. § 1225(b)(1), and therefore fall into the catchall at 8 U.S.C. § 1225(b)(2).

These include most obviously any "alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry." 8 U.S.C. § 1225(b)(1)(F). These individuals are expressly exempted from 8 U.S.C. § 1225(b)(1). They fall into 8 U.S.C. § 1225(b)(2). It also includes lawful permanent residents suspected of abandoning residence or criminality. *See* 8 U.S.C. § 1101(a)(13)(C); *Tineo*, 350 F.3d at 387. They too fall into 8 U.S.C. § 1225(b)(2).

The neighboring inadmissibility provision at 8 U.S.C. § 1182(a)(9)(A) reinforces § 1225's limited application to the borders and ports of entry. This provision lumps those who are "removed under 8 U.S.C. § 1225(b)(1) of this title" together with those removed "at the end of proceedings under section 1229a of this title initiated upon the alien's arrival in the United States." 8 U.S.C. § 1182(a)(9)(A)(i). Given that the only provision of law that appears to authorize full proceedings under 8 U.S.C. § 1229a for those arriving at the border

is 8 U.S.C. § 1225(b)(2)(A), this inadmissibility provision reinforces Petitioner's interpretation that 8 U.S.C. § 1225(b)(2)(A), like 8 U.S.C. § 1225(b)(1), applies to those arriving at or near the border. That is why removals in 1229a proceedings initiated upon arrival at the border—that is, 8 U.S.C. § 1225(b)(2)(A) removals—are treated like removals under 8 U.S.C. § 1225(b)(1), triggering a five-year inadmissibility period, whereas those otherwise "ordered removed under section 1229a of this title" are subject to a ten-year bar. *See* 8 U.S.C. § 1182(a)(9)(A)(ii). This dichotomy between 1) border detention and removal, and 2) interior enforcement, is clear in both provisions.

8 U.S.C. § 1225(a)(3) does not undercut this point. 8 U.S.C. § 1225(a)(3) defines who "shall be inspected by immigration officers." It does not define who "shall be detained." Moreover, the notion that the word "or" somehow means that the subsequent phrase is necessarily synonymous with the proceeding one is meritless. Instead,

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

United States v. Woods, 571 U.S. 31, 45–46 (2013) (citing *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979)). In other words, "or" is generally disjunctive, and here, some "applicants for admission" are "seeking admission," and some who are not "applicants for admission" may be "otherwise seeking admission," and all those people are subject to inspection. *Romero v. Hyde* recently illustrated this poignantly. *See* 2025 WL 2403827, at *10 (illustrative graph). Ultimately, only those who are both an "applicant for admission" and "seeking admission . . . shall be detained." 8 U.S.C. § 1225(b)(2)(A). The provisions

are different and address different things. The Court must ensure it gives an independent meaning to each.

Petitioner was detained years after coming to the country and hundreds of miles from any border or port of entry. At the time of his arrest, he was not, and still is not, seeking to enter the United States. Therefore, 8 U.S.C. § 1225(b)(2)(A) cannot apply.[1]

ii. The canon against surplusage require finding that Petitioner is not subject to 8 U.S.C. § 1225(b)(2).

As a rule, courts do not "adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law." *Sudan v. Harrison*, 139 S. Ct. 1048, 1058 (2019). In fact, this "canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *Chicago v. Fulton*, 141 S.Ct. 585, 591 (2021) (quoting *Yates v. United States*, 574 U.S. 528, 543 (2015)).

Interpreting 8 U.S.C. § 1225(b)(2) as Respondents do would have the Court render the entire Laken Riley Act (LRA) superfluous. In the LRA, Congress added language to 8 U.S.C. § 1226(c) that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act, PL 119-1, January 29, 2025, 139 Stat 3. Pursuant to these amendments, an alien who "is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 212(a) of section 1182(a) of this title; and [] is charged

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[1] *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), is owed no deference under *Loper Bright*, 603 U.S. at 369, and simply regurgitates arguments that have been rejected by at least 20 district courts throughout the country. *Maria F. v. Bondi, et al.*, No. 26-cv-486, 2026 WL 172537, at *1 (D. Minn. Jan. 22, 2026) ("Maria has shown she has been misclassified under § 1225(b)(2) rather than § 1226. As courts have explained, the former statute applies to applicants 'seeking admission,' and the latter to 'aliens already in the country.'").

with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person" is subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(E).

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

iii. Legislative history and longstanding practice illustrate that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

If the structure and language did not make 8 U.S.C. § 1225(b)(2)'s inapplicability to this case clear, Congress did so expressly. "Section 1226(a)'s predecessor statute, § 1252(a), included discretionary release on bond." *Maldonado*, 2025 WL 2374411, at *11 (D. Minn. Aug. 15, 2025) (citing 8 U.S.C. § 1252(a) (1994)). In House reports accompanying the legislation that enacted 8 U.S.C. § 1225(b)(2), the legislators noted how the simultaneously enacted detention authority that now lives at 8 U.S.C. § 1226(a) merely "restates the [then] current provisions in section 242(a)(1) regarding the authority of the

Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same).

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

Furthermore, from 1996 to 2025, Respondents contended that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10323, 62 FR 10312-01, 10323. "[T]he contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect," particularly "when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024). This is long-held Agency practice, and it makes clear that, despite Respondents'

newfound position, 8 U.S.C. § 1226 governs Petitioner's detention, and as such, he is eligible for bond.

IV. CONCLUSION

Respondents are not authorized to detain Petitioner pursuant to 8 U.S.C. § 1225(b)(2) and have pointed to no support in this jurisdiction for their novel, and incorrect, interpretations of that statute. Nevertheless, Respondents have continued to deprive Petitioner of him fundamental rights since their detention on January 14, 2026.[2] Each day that they remain unlawfully detained, the harm compounds. Respondents are depriving Petitioner of him basic and fundamental due process rights, full access to counsel, and freedom from unlawful detention. Petitioner respectfully requests that the Court:

1) Grant the relief sought in the petition for a Writ of Habeas Corpus;
2) Order Respondents to immediately return Petitioner to the District of Minnesota;
3) Order that, after returning Petitioner to Minnesota, Respondents shall immediately release him from custody; and
4) Mandate compliance with such Orders by no later than January 28, 2026.

[2] Given Petitioner's clear entitlement to a writ of habeas corpus based on law and facts discussed herein, the Court should decline Respondents' invitation to re-litigate his asylum case. *See* Respondents' Br. at p. 2 ("Petitioner's asylum claim is inconsistent with the law.").

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Respectfully submitted,

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