

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Rosa Lopez de Rodriguez,

Petitioner,

v.

Pamela Bondi, et al.,

Respondents.

**Case No. 26-cv-00905-DMT-
DTS**

**PETITIONER'S
TRAVERSE IN REPLY TO
RESPONDENTS'
RESPONSE TO HIS
PETITION FOR A WRIT
OF HABEAS CORPUS**

INTRODUCTION

Petitioner Rosa Lopez de Rodriguez (hereinafter “Petitioner”) has been unlawfully detained and unlawfully denied a bond hearing by Respondents. Petitioner is aware of this Court’s decision in *Alatoma v. Bondi et al.*, 26-cv-00621-DMT-DJF (D. Minn. Feb. 3, 2026) but respectfully contends that case was wrongly decided. As articulated below, a comprehensive reading of the relevant statute – one that accounts for the use, meaning, and context of all the applicable language – illustrates that section 1225(b)(2)(A) cannot apply to Petitioner, who arrived in the United States more than a decade ago. Ultimately, the plain text, context, Congressional history, and longstanding administrative practice all require that the Court order Petitioner’s release.

Petitioner’s position is consistent with only appellate court to address the issue, *Castanon-Nava v. DHS*, -- F.4th --, 2025 WL 3552514 (7th Cir. Dec. 11,

2025), as well as the “[a]pproximately 1,600 federal district court cases across the country [that] have held against the government on this issue to date,” *Cruz Bautista v. Bondi et al.*, 1:25-cv-00280-DLH-CRH (D.N.D. Jan. 7, 2026). Petitioner takes, overwhelmingly, the majority position.

FACTS

Petitioner, a native and citizen of El Salvador, entered the United States without inspection around 2012. *See* ECF No. 1 ¶ 27. Petitioner has no criminal history, *see* ECF No. 1 ¶ 31. Respondents detained Petitioner many years after he first entered the United States from abroad. *See* ECF No. 1 ¶¶ 27, 32. No administrative arrest was issued to justify her detention. *see* ECF No. 1 ¶ 33.

ARGUMENT

I. THE PLAIN TEXT ILLUSTRATES THAT 8 U.S.C. § 1225(B)(2)(A) CANNOT APPLY AS PETITIONER WAS NOT “SEEKING ADMISSION” WHEN HE WAS DETAINED IN 2026.

The text and structure of the statute illustrate that 8 U.S.C. § 1225(b)(2) is totally inapplicable now, years after Petitioner first arrived and entered the United States. As the Supreme Court has held, Section 1225(b) “authorizes the Government to detain certain aliens seeking admission into the country,” while Section 1226 “authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings.” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Petitioner was apprehended in hundreds of miles from the nearest border and

nowhere near any port of entry. She was not “seeking admission” into the country. She was already here and has been for more than a decade.

In interpreting the meaning of this provision, “we start where we always do: with the text of the statute.” *Van Buren v. United States*, 593 U.S. 374 (2021). The subsection at issue reads:

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien **seeking admission** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

8 U.S.C. § 1225(b)(2)(A). The statute sets out a detention requirement in clause four, but a noncitizen is only subject to such detention if (1) she “is an applicant for admission,” (2) “subparagraphs (B) and (C)” do not apply, (3) she is an “alien seeking admission,” and (4) “the examining immigration officer determines that [he] is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). The crux of this matter turns on whether Petitioner is “seeking admission.” Under the plain text and longstanding precedent, she is not.

Respondents and this Court’s prior contention to the contrary turns on the proposition that a noncitizen like Petitioner is an “applicant for admission” and that an “active applicant for admission” is necessarily “seeking admission.” *Alatoma*, 26-cv-00621-DMT-DJF, at *5; ECF no. 4, at 6-7. The first problem with this analysis is that it starts from the false assertion that Petitioner “is” an “applicant for

admission.” That is simply not what the statute says. What the language actually says is that “[a]n alien present in the United States who has not been admitted ... shall be **deemed** for purposes of this chapter an applicant for admission.” 8 U.S.C. 1225(a)(1) (emphasis added). The difference is important.

The use of “deemed” is important because, as this Court has pointed out, “in matters of statutory interpretation, the Court always begins ‘with the statute’s plain language, giving words the meaning that proper grammar and usage would assign them.’” *Alatoma*, 26-cv-00621-DMT-DJF (citing *Union Pac. R.R. Co. v. Surface Transp. Bd.*, 113 F.4th 823, 833 (8th Cir. 2024)). The word “deem” means “[t]o treat (something) as if (1) it were really something else, or (2) it has qualities that it does not have.” *Deem*, Black’s Law Dict. (12th ed. 2024). The use of “deemed” creates a legal fiction around who is an “applicant for admission,” but it is also a textual recognition, that those who are “present in the United States who ha[ve] not been admitted” are not actually applying for, or seeking, “admission” as defined at 8 U.S.C. § 1101(a)(13)(A). They are just “deemed applicants for admission” for the purposes of the statute.

In contrast, the detention provision at 8 U.S.C. § 1225(b)(2)(A) first requires that the noncitizen satisfy the legal fiction of having been “deemed” an “applicant for admission” and, then, second, she must satisfy the requirement that she be actually “seeking admission.” After all, the provision requires both that the

noncitizen be first, “an alien who is an applicant for admission,” and second “an alien seeking admission.” 8 U.S.C. § 1225(b)(2)(A). Why would Congress have introduced the two qualifiers with the same subject, “an alien,” and within seven words of each other, if they did not carry independent meanings and requirements?

This is particularly important because 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). It is also well established that where a “term is not statutorily defined, we consider its ordinary dictionary definition.” *Iverson v. United States*, 973 F.3d 843, 848 (8th Cir. 2020). To “seek” is, alternatively, “to go in search of,” to “to make a request for,” to “to make an effort to do.” *Seek*, Merriam Webster’s English Dictionary (12th ed. 2025). Thus, to be “seeking admission,” a person must be making “an effort to” “lawful[ly] ent[er] ... into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13). Given that “[t]he word ‘entry’ [which] by its own force implies a coming from outside,” *Claussen v. Day*, 279 U.S. 398, 401 (1929), this means a lawful entry into the United States from outside.

Indeed, the Circuits have long defined the term “admission” as “refer[ing] expressly to entry into the United States, denoting by its plain terms passage into the country from abroad at a port of entry.” *Negrete-Ramirez v. Holder*, 741 F.3d 1047, 1051 (9th Cir. 2014); *Medina-Rosales v. Holder*, 778 F.3d 1140 (10th Cir. 2015);

Husic v. Holder, 776 F.3d 59 (2d Cir. 2015); *Stanovsek v. Holder*, 768 F.3d 515 (6th Cir. 2014); *Papazoglou v. Holder*, 725 F.3d 790 (7th Cir. 2013); *Leiba v. Holder*, 699 F.3d 346 (4th Cir. 2012); *Hanif v. Att'y Gen. of U.S.*, 694 F.3d 479 (3d Cir. 2012); *Lanier v. U.S. Att'y Gen.*, 631 F.3d 1363 (11th Cir. 2011); *Martinez v. Mukasey*, 519 F.3d 532 (5th Cir. 2008).

Petitioner is not outside the United States, her apprehension did not occur at the threshold of the United States, and she has not been outside the country for years. As such, she is not seeking admission into the United States at this time, nor was he at the time of her detention and 8 U.S.C. § 1225(b)(2) cannot apply to her. This is also consistent with longstanding Supreme Court precedent recognizing that:

[O]ur 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 v. Barber, 357 U.S. 185, 187 (1958) (citing *Shaughnessy v. Mezei*, 345 U.S. 206, 212 (1953)). Petitioner was plainly beyond the threshold of entry when detained. She was not, and is not, “seeking admission.”

Application of the INA’s definitional section also lays to rest the Court’s prior concerns that “if the group of aliens ‘seeking admission’ were a subset of “applicants for admission,” one would assume that Congress would have provided some

directives as to the contours of that subset, e.g., factors to consider in deciding what qualifies as “seeking admission.” *Contra Alatoma*, 26-cv-00621-DMT-DJF. The reality is that Congress did just that. In setting out the applicable definition of “admission” at 8 U.S.C. § 1101(a)(1), Congress defined precisely who is “seeking admission,” and it did so with specificity.

In light of the statutory recognition that not all those “deemed” applicants for admission” are actually “seeking admission,” the remainder of Respondents’ reading collapses. As Judge Hovland in North Dakota recently held, “the terms ‘applicant for admission’ and ‘seeking admission’ [are] in the same statutory scheme, [and] they are within seven words of each other in the same sentence,” so “[a]n alien seeking admission’ thus must mean something different than ‘applicant for admission.’” *Beltran v. Bondi*, ECF 1:25-cv-00258, at 18 (D.N.D. Dec. 5, 2025).

Ultimately, if we are to maintain any fidelity to the cardinal principal that if “‘give effect, if possible, to every clause and word of [the] statute,” *Fischer v. United States*, 603 U.S. 480, 486 (2024), the term “alien seeking admission” [cannot be] simply another way of referring to an ‘alien who is an applicant for admission.’” *Contra Alatoma*, 26-cv-00621-DMT-DJF (citing *Coronado v. Sec’y, Dep’t of Homeland Sec.*, 2025 WL 3628229, at *7 (S.D. Ohio Dec. 15, 2025)). After all, the “‘canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.” *Marx v. Gen. Revenue*

Corp., 568 U.S. 371, 386 (2013). That is the case here and the terms “applicant for admission” and “seeking admission” appear in the same sentence. They cannot be synonymous.

This is further reinforced by the contrast between what it takes to be “deemed an applicant for admission,” and what it means to seek admission. A person deemed an “applicant for admission” is necessarily “present in the United States” or otherwise “arriv[ing] in the United States.” 8 U.S.C. § 1225(a)(1). “In other words, to be an ‘applicant for admission,’ one must actually be here, either in the United States or at its door. By contrast, one can ‘seek admission’ from anywhere in the world, ‘for example, by applying for a visa at a consulate abroad.’” *Romero v. Hyde*, 795 F. Supp. 3d 271, 283 (D. Mass. 2025) (citing *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 741 (BIA 2012)). Again, these terms are not, and cannot be, interchangeable.

It is also important to point out that the term “applicant for admission” describes a passive class of people that does not require any affirmative act, whereas “seeking admission” requires action. Contrary to the Court’s prior finding, section 1225(a)(1) does not describe an “active applicant for admission.” *Alatoma*, 26-cv-00621-DMT-DJF, at *6. Instead, the group deemed “applicants for admission” include people “present in the United States who ha[ve] not been admitted.” 8 U.S.C. § 1225. Mere presence is not action. If we defined all UND graduates as “hockey

players,” would Olaf Thormodsgard suddenly be “playing hockey?” No. There is simply no basis to believe that the statute sets forth an active requirement. This is a passive class.

In contrast, “seeking” conveys a requisite action and Congress further defined “admission” as an “entry of the alien into the United States.” 8 U.S.C. § 1101(a)(13). The Supreme Court has long indicated that “entry” means “coming from outside.” *Claussen*, 279 U.S. at 401. Thus, a person “seeking admission” must be endeavoring to lawfully enter into the country from outside. This is active, rather than passive, conduct. The statutory text is crystal clear.

The Court’s previously asserted concerns about verb tenses, *see Alatoma*, 26-cv-00621-DMT-DJF, at *6, also start from the false premise that all noncitizens must necessarily “seek admission” at some point if they are to remain in the United States. This is simply not the case and that the vast majority of people present in the United States without authorization who will eventually legalize their status will not do so via any sort of admission.

Instead, such people are likely to seek forms of relief like asylum under 8 U.S.C. § 1158, *see Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013) (“A grant of asylum is not an ‘admission’ to the United States”), adjustment of status under 8 U.S.C. § 1255, *see Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008) (“‘admission’ is the lawful entry of an alien after inspection, something quite different, obviously,

from post-entry adjustment of status”); or temporary protected status under 8 U.S.C. § 1254a, *see Sanchez v. Mayorkas*, 593 U.S. 409, 416 (2021) (“TPS does not come with a ticket of admission”), just to name a few. Not every form of relief constitutes an “admission,” indeed most are distinct from it, so suggesting that everyone seeking to remain is seeking “admission” is entirely inaccurate. Instead, most noncitizens in the United States will *never* seek “admission.”

That is why the contention that “[a]n applicant who ... attempts to remain in the United States by participating in removal proceedings is plainly ‘seeking admission’” is simply wrong as a matter of black letter immigration law. There is the “admission of immigrants into the United States” under 8 U.S.C. § 1181, and there are the myriad other forms of relief that noncitizens may seek, independent of “admission.” These things cannot be conflated.

Rather than reading these terms synonymously, “we must ‘give effect, if possible, to every clause and word of [the] statute.’” *Fischer v. United States*, 603 U.S. 480, 486 (2024). In so doing, we “avoid interpreting a statute in a manner that renders any section of the statute superfluous or fails to give effect to all of the words used by Congress.” *Morrison Enters. v. Dravo Corp.*, 638 F.3d 594, 609 (8th Cir. 2011). This “canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.” *Marx*, 568 U.S. at

386. The core problem with Respondents' reading is that it reads the term "seeking admission" right out of 8 U.S.C. § 1225(b)(2)(A).

This is particularly true given the phrasing of the provision. To fall within the mandatory custody provisions at section 1225(a)(2)(B), a noncitizen must first be "an alien who is an applicant for admission" and then must also be "an alien seeking admission." 8 U.S.C. § 1225(b)(2)(A). By using the introductory phrase "an alien," and then setting out two different terms carrying independent statutory meanings, *compare* 8 U.S.C. § 1101(a)(13), *with* 8 U.S.C. § 1225(a), Congress was clearly requiring that the noncitizen in question meet both standards.

The remainder of the INA's definition of "admission" reinforces the conclusion that "admission" contemplates entry from outside and that the qualifier "seeking admission" cabins 8 U.S.C. § 1225(a)(2)(B) to those aliens entering the United States from abroad. For starters,

An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission ... unless the alien-

- (i) has abandoned or relinquished that status,
- (ii) has been absent from the United States for a continuous period in excess of 180 days,
- (iii) 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,

- (v) 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
- (vi) 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” 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.

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

This is also consistent with how the pre-IIRAIRA INA distinguished between aliens present in the United States and those seeking to enter. Prior to 1997, “[t]he deportation hearing [was] the usual means of proceeding against an alien already physically in the United States, and the exclusion hearing [was] the usual means of

proceeding against an alien outside the United States seeking admission.” *Landon v. Plasencia*, 459 U.S. 21, 25 (1982). The term “seeking admission” was plucked from former 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.” 8 U.S.C. § 1225(a) (1994). 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).

Given that this 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 principal applies: “[w]hen 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). 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 “admission into the United States.” 8 U.S.C. § 1181.

The subsection’s title further reinforces this conclusion. While subtitles 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, Inc., 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) also cautions against the expansive meaning attributed by Respondents. “We often interpret the catchall phrase to ‘embrace only objects similar in nature to those objects enumerated by the preceding specific words.’” *Fischer v. United States*, 603 U.S. 480, 509 (2024). Thus, while 1225(b)(2) is a “catchall” that “applies to most other applicants for admission not covered by § 1225(b)(1),” *Jennings*, 583 U.S. at 281, the “other applicants for admission” to which it refers are those “seeking admission” from outside the country. It is a catchall after all, not a force multiplier. Such a catchall would be an odd place to hide the most far-reaching detention authority in the INA. “Congress does not ‘hide elephants in mouseholes.’” *Sackett v. Env’t Prot. Agency*, 598 U.S. 651, 677 (2023). For thirty years, all parties agreed it did not do so here.

Thus, section 1225(b)(2) follows in line behind section 1225(b)(1). While section 1252(b)(1) applies to noncitizens “arriving in the United States,” 8 U.S.C. § 1225(b)(1), section 1225(b)(2) addresses a variety of others seeking entry from outside the country who do not fall within the ambit of 8 U.S.C. § 1225(b)(1). As

the Third circuit has recognized, “§ 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 (3d Cir. 2003).

This is why, contrary to Respondents position, ECF No. 4, at 7, Petitioner’s reading does not 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 broad 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). Such individuals are expressly exempted from 8 U.S.C. § 1225(b)(1). They fall under 8 U.S.C. § 1225(b)(2) instead. This group 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.

Respondents' reliance on *Jennings* is also totally misplaced. See ECF No. 4, at 5. As indicated, *supra*, *Jennings*'s synthesis of these provisions suggested that section 1225 applies "at the Nation's borders and ports of entry," 583 U.S. at 287, while section 1226 applies to aliens "inside the United States." *Id.* at 288. This squarely refutes Respondents' position.

Any reliance on the Board of Immigration Appeals decision in *Matter of Yahure Hurtado* is also severely undercut by the Supreme Court's unequivocal holding in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 369 (2024) ("courts may not defer to an agency interpretation of the law"). As the Eighth Circuit has put it, "[d]eference to the Board ... is now a relic of the past." *Quito-Guachichulca v. Garland*, 122 F.4th 732, 735 (8th Cir. 2024). To the extent that deference to the Executive is appropriate, courts may do so "when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time." *Loper Bright*, 603 U.S. at 385–86. When 8 U.S.C. § 1225 was codified, Respondents issued guidance stating:

Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens 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 10312-01, 10323

(Mar. 6, 1997). This was the position for 29 years. If any agency interpretation is due deference under *Loper Bright*, it is the one proposed by Petitioner, not the Agency's newfound interpretation rolled out 30 years after the law's codification.

Respondents' reliance on *Melgar v. Noem*, No. 8:25CV555, 2025 WL 3496721 (D. Neb. Dec. 5, 2025) is also misplaced. Respectfully the *Ramirez Melgar* decision simply cannot be reconciled with the text of the statute and rest on several incorrect assumptions about immigration law. First, the *Melgar* court erred by suggesting that "some aliens certainly fall within § 1225(b)(2), even if they may also fall within § 1226(a)" and that "Respondents may either 1) detain such aliens without the possibility of release on bond under § 1225(b)(2), or 2) detain the aliens under § 1226(a) and provide the permissive possibility of release on bond" is itself internally inconsistent. *Id.* at *12. How the permissiveness afforded to the executive can be reconciled with "mandatory" detention at section 1225(b), without rendering section 1226(a) superfluous, is anyone's guess. Second, the court's reliance on "the 'all applicants for admission' language of *Jennings*," *id.*, misreads that case by ignoring applicable qualifying language and by failing to recognize the limited scope of that decision to aliens detained "upon arrival." *Jennings*, 283 U.S. at 287; *Rodriguez v. Robbins*, 804 F.3d 1060, 1082 (9th Cir. 2015). Third, *Melgar* failed to address the surplusage issues vis-à-vis "seeking admission" created by its reading in any meaningful way. Fourth, the court erroneously suggested that "an alien who is an

applicant for admission' is synonymous with 'an alien seeking admission.'" 2025 WL 3496721, at *14, despite clear definitional demarcations between both terms, which mean this cannot be true. *See Romero*, 795 F. Supp. 3d at 283. Fifth, the suggestion that a Mr. Ramirez Melgar's "fil[ing of] an Application for Cancellation of Removal for Non-Permanent Residents in administrative proceedings ... confirm[ed] his status as an alien seeking admission," *Ramirez Melgar*, 2025 WL 3496721, at *14, overlooks the obvious textual difference between the "admission of immigrants into the United States," 8 U.S.C. § 1181, and the "cancellation of removal and adjustment of status for certain nonpermanent residents." 8 U.S.C. § 1229b(b). Once again, these are not the same.

Petitioner was detained years after entering the country and hundreds of miles from any border or port of entry. At the time of his arrest, she was, and still is not, seeking admission. Therefore, 8 U.S.C. § 1225(b)(2)(A) cannot apply.

II. CANONS AGAINST SURPLUSAGE REQUIRE FINDING THAT PETITIONER IS NOT SUBJECT TO 8 U.S.C. § 1225(B)(2).

Respondents' reading creates two gaping surplusage issues. First, the government's reading redlines "seeking admission" out of section 1225(b)(2)(A) entirely. Second, it renders the core of the Laken Riley Act a mere nullity.

This is problematic because, once again, "the canon against surplusage is strongest when an interpretation would render superfluous another part of the same

statutory scheme.” *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013). As Judge Daniel Hovland recently held, “the terms ‘applicant for admission’ and ‘seeking admission’ [are] in the same statutory scheme, [and] they are within seven words of each other in the same sentence,” so “[a]n alien seeking admission’ thus must mean something different than ‘applicant for admission.’” *Beltran v. Bondi*, ECF 1:25-cv-00258, at 18 (D.N.D. Dec. 5, 2025). This forecloses Respondents’ reading.

Second, the Laken Riley Act added language to section 1226(c) that directly references aliens who entered without inspection. *See* Laken Riley Act, PL 119-1, 139 Stat 3 (Jan. 29, 2025). These amendments subject any alien who “is inadmissible under paragraph (6)(A) ... and is charged 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” to mandatory detention. 8 U.S.C. § 1226(c)(1)(E).

This cannot be squared Respondents’ reading of section 1225, mandating custody for all entrants without admission. 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 this portion of the Laken Riley Act at all. That would render an entire provision of the INA surplusage and run 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 stands as Congressional recognition that section 1225 did not, and still does not, mandate detention for everyone who entered the country without authorization.

III. CONGRESSIONAL INTENT FAVORS PETITIONER.

Express congressional records illustrate that, in enacting IIRIRA, Congress meant to retain the pre-existing bond system that allowed those who had entered the United States unlawfully to obtain release on bond pending deportation proceedings.

In enacting IIRIRA, Congress specifically noted how it intended to “amend section 236 of the INA to include provisions currently contained in sections 236 and 242” and then added that 8 U.S.C. § 1226 simply “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 (Mar. 4, 1996). IIRIRA did not materially change the government’s detention authority as it applied to noncitizens unlawfully in the country, and the House indicated as much expressly. Noncitizens like Petitioner therefore remain eligible for bond. That same House Report also describes how 8 U.S.C. § 1225(b)(2) addresses the “[i]nspection of other arriving aliens.” H.R. REP. 104-469, at 229. Once again, Congress understood that section 1225(b)(2) was limited to those seeking entry into the country from abroad.

If that were not enough, the report also noted “an increase in INS detention facilities to 9,000 beds by FY 1997.” H.R. REP. 104-469, at 229. That number was based on findings that “83,400 aliens were detained in 6,418 funded detention beds in FY 1995, with an average stay of 28.3 days, [so i]ncreasing the available beds to 8,500 [would] enable the detention of more than 100,000 aliens.” *Id.* at 545. Those additional 500 beds for fiscal year 1997 added capacity to house roughly 6,600 more noncitizens. As such, Congress contemplated detaining about 35,400 additional aliens annually under IIRIRA’s provisions. This fell in line with IIRIRA’s new mandatory detention provisions for criminal noncitizens, *see* IIRIRA, 110 Stat. 3009-546 § 303(a) (Apr. 1, 1997), but fell well short of the millions of bedspaces needed to house every undocumented person in the country.

In short, Congress specifically confirmed its intention to maintain the pre-existing bond system. The “intent to place noncitizens who are present without admission on equal footing with those who are apprehended upon arrival,” ECF No. 4, at 7, that general proposition wilts in light of the specific intent as it related to the custody regime. As such, noncitizens like Petitioner who are present without inspection is governed under 8 U.S.C. § 1226(a).

IV. THE RELEVANT WARRANT REQUIREMENTS ILLUSTRATE SECTION 1226’S APPLICABILITY.

As a general proposition, “the Fourth Amendment applies to arrests of illegal

aliens.” *United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir. 2010). Warrantless searches and seizures “are generally prohibited under the Fourth Amendment unless an exception to the warrant requirement applies.” *United States v. Hayes*, 75 F.4th 925, 927 (8th Cir. 2023). However, searches and seizures at the border are “not subject to the warrant provisions of the Fourth Amendment.” *United States v. Ramsey*, 431 U.S. 606, 617 (1977). This is why the warrantless arrest and detention provisions at section 1225(b) apply “at the Nation's borders and ports of entry,” while the warrant requirement at section 1226(a) applies to “alien[s] present in the country.” *Jennings*, 583 U.S. at 287-88.

Under section 1226(a), a noncitizen may only be detained “[o]n a warrant issued by the Attorney General.” 8 U.S.C. § This is consistent with the longstanding understanding that, absent some extenuating circumstance, law enforcement officials cannot simply arbitrarily detain anyone. However, things are different at the border, where those who are “seeking admission [and are] not clearly and beyond a doubt entitled to be admitted ... shall be detained.” 8 U.S.C. § 1225(b)(2)(A). Congress codified this bifurcated warrant requirement into law at 8 U.S.C. § 1357, noting the different rules that apply to domestic enforcement and border actions.

By statute, “[a]ny officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant ... to arrest any alien who in his presence or view is *entering or attempting to enter the*

United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens.” 8 U.S.C. § 1357(a)(2). At the border, consistent with 8 U.S.C. § 1225(b), there is no warrant requirement.

Things are different for internal enforcement actions, as officers may only “arrest any alien in the United States, *if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest.*” 8 U.S.C. § 1357(a)(2). Inside the United States, consistent with 8 U.S.C. § 1226(a), a warrant is required, unless exigent circumstances justify the exception. This, in turn is consistent with the longstanding “exception to the warrant requirement ... when there is an imminent risk ... that a suspect will escape.” *Kentucky v. King*, 563 U.S. 452, 473 (2011). If a noncitizen is detained without a warrant, the regulations require that “a determination will be made within 48 hours of the arrest, except in the event of an emergency or other extraordinary circumstance in which case a determination will be made within an additional reasonable period of time, whether the alien will be continued in custody or released on bond or recognizance and whether a notice to appear and warrant of arrest as prescribed in 8 CFR parts 236 and 239 will be issued.” 8 C.F.R. § 287.3(d). In short, even when an arrest occurs without a warrant inside the United States, one must be issued within 48 hours. This is consistent with

the application of section 1226(a), and its warrant requirement, inside the United States.

The procedures legislated at 8 U.S.C. § 1357, as well as traditional Fourth Amendment jurisprudence, reinforce what the statutes already make clear. Section 1225(b) applies “at the Nation's borders and ports of entry,” and section 1226(a) applies to “alien[s] present in the country.” *Jennings*, 583 U.S. at 287-88.

V. THE VAST MAJORITY OF CURTS HAVE SIDED WITH PETITIONER

Respondents cite 36 cases that have endorsed their position. *See* ECF No. 4, at 3-4. This is not just a “minority position.” ECF No. 4, at 4. As judge Hovland pointed out, this represents less than three percent of the applicable decisions in light of the “[a]pproximately 1,600 federal district court cases across the country [that] have held against the government on this issue.” *Cruz Bautista*, 1:25-cv-00280-DLH-CRH. In Minnesota, all courts in this district, save for this one and one other, have rejected the government’s position. *See, e.g., Belsai v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Eliseo A.A. v. Olson*, No. CV 25-3381 (JWB/DJF), 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *J.O.E. v. Bondi*, 797 F. Supp. 3d 957 (D. Minn. 2025) (Tostrud); *Maldonado v. Olson*, 795 F. Supp. 3d 1134 (D. Minn. 2025) (Nelson); *Ferrera Bejarano v. Bondi*, 25-cv-03236 (NEB/JFD) (D. Minn. Aug 18, 2025); *Herrera Avila v. Bondi*, 25-cv-03741

(JRT/SGE) (D. Minn. Oct. 21, 2025); *Fuentes v. Olson*, No. 25-CV-4456 (LMP/ECW), 2025 WL 3524455 (D. Minn. Dec. 9, 2025); *Mahamed C.A. v. Noem et al.*, No. 25-CV-4551 (MJD/JFD), 2025 WL 3771299 (D. Minn. Dec. 16, 2025); *Santos M.C. v. Olson*, No. 25-CV-4264 (PJS/DJF), 2025 WL 3281787 (D. Minn. Nov. 25, 2025); *Francisco T. v. Bondi*, 797 F. Supp. 3d 970, 975 (D. Minn. 2025) (Bryan). The vast weight of authority favors Petitioner.

VI. SCOPE OF THE REMEDY.

Immediate release, **without conditions or check in appointments arising from custody under** 8 U.S.C. § 1226, is required, as no warrant of arrest has been produced. When given the opportunity to provide a warrant justifying detention under 8 U.S.C. § 1226(a), *see* ECF No. 3, Respondents failed to do so. *See* ECF No. 5. As such, release is the appropriate remedy. As illustrated in *Roberto M.F.*, 2025 WL 3524455, at *4, section 1225's mandatory detention provisions cannot apply to Petitioner. If Respondents had issued an administrative warrant, they could certainly detain him under 8 U.S.C. § 1226(a). *See* 8 U.S.C. § 1226(a) (“On a warrant issued by the Attorney General ...”). In that case, a bond hearing under 8 U.S.C. § 1226(a) would be appropriate. However, no such warrant was produced, so detention under 8 U.S.C. § 1226(a) is also plainly unlawful, and immediate release is required.

“Section 1226 provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained.” *Ahmed M.*, 2026 WL 25627, at *1 (citing 8

U.S.C. § 1226(a)) (emphasis in original). Thus, “[i]ssuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a) [and i]t follows that absent a warrant a noncitizen may *not* be arrested and detained under section 1226(a).” *Id.* (citing *Chogllo Chafla v. Scott*, No. 2:25-cv-00437-SDN, 2025 WL 2688541, at *11 (D. Me. Sept. 21, 2025)) (emphasis in original). As was the case in *Ahmed*, Petitioner “requested in his Petition that Respondents produce any warrant that might have authorized [his] arrest pursuant to § 1226[, but] Respondents have not produced any warrant.” *Id.*

Given that “the record shows Respondents have not identified a valid statutory basis for detention in the first place, the remedy is not to supply one through further proceedings.” *Id.* (citing *Vedat C.*, 2025 WL 2886729). Thus, immediate release is required. Holding otherwise “would treat the absence of statutory power as a mere procedural irregularity rather than a substantive defect. Habeas relief requires more because it addresses the lawfulness of custody itself, not the adequacy of procedures that might attend some other, uninvoked challenge to detention.” *Vedat C.*, 2025 WL 2886729, at *6 (citing *Wajda v. United States*, 64 F.3d 385, 389 (8th Cir. 1995)). Release is the appropriate remedy. See *Sebrian Reyes v. Bondi et al.*, 26-cv-5 PJS/LIB (D. Minn. Jan. 23, 2026).

Finally, given the absence of any detention authority, Respondents cannot, as has become the practice in this district, attach ongoing custodial conditions on

Petitioner pursuant to 8 U.S.C. § 1226. Absent a warrant, there is no such authority. For that reason, Petitioner requests that the Court order her unconditionally released. She will, of course, appear for immigration court as scheduled, but further ICE check ins, absent the requisite authority, are improper. Furthermore, Petitioner requests that the Court specifically require **Respondents to return all of Petitioner's property to her upon his release, including her state ID, employment authorization document, and any other identification documents required for her to lawfully work and reside in Minnesota.** These things are her property and cannot be withheld absent some custodial authority to do so.

VII. ORAL ARGUMENT

There are no disputed facts in this matter, so an evidentiary hearing is not required. However, if the Court feels that any portions of the legal argument need to be refined, Petitioner is more than happy to appear for oral arguments to clarify any points at the Court's request.

CONCLUSION

The text, context, structure, and history of the INA illustrate that Respondent cannot be detained under 8 U.S.C. § 1225 and the absent of a warrant means Petitioner cannot be detained under 8 U.S.C. § 1226. Immediate release is required.

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Respectfully submitted,

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