

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

OUSMANE CAMERA : No. 3:26-cv-00292  
Petitioner, :  
 :  
v. : (Judge Munley)  
 :  
CRAIG LOWE, :  
Respondent : Filed Electronically

**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

This is a habeas action filed on February 5, 2026, by Petitioner Ousmane Camera, an immigration detainee in the custody of the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), at the Pike County Correctional Facility in Lords Valley, Pennsylvania. Doc. 1, Petition for Writ of Habeas Corpus, at 2. Specifically, Camera requests that this Court grant his Petition and order his immediate release, or alternatively require that he be provided a bond hearing pursuant to 8 U.S.C. § 1226(a). *Id.* at 26. Petitioner also requests that this Court declare his detention unlawful and award attorneys' fees and costs. *Id.*

On February 6, 2026, this Court directed Respondent to respond to the Petition by February 13, 2026. Doc. 3, Order to Show Cause, at 1 ¶ 4. This Response is filed in accordance with that Order.

Camera is properly detained under 8 U.S.C. § 1225(b) and is not eligible for release under 8 U.S.C. § 1226(a); therefore, his Petition should be denied.

Respondent recognizes that other jurists of this District have recently rejected Respondent's arguments related to the proper detention of petitioners such as Camera. See, e.g., *Santana-Rivas v. Warden of Clinton County Correctional Facility*, No. 3:25-cv-01896, 2025 WL 3522932 (M.D. Pa. Nov. 13, 2025) (Camoni, M.J.), *adopted in part, rejected in part*, 2025 WL 3513152 (M.D. Pa. Dec. 8, 2025) (Wilson, J.); *Darshan H. Patel v. David O'Neill, et al.*, 3:25-cv-2185, 2025 WL 3516865 (M.D. Pa. Dec. 8, 2025) (Mariani, J.); *Luis Alberto Paredes Quispe v. Michael T. Rose, et al.*, No. 3:25-cv-02276, 2025 WL 3537279 (M.D. Pa. Dec. 10, 2025) (Mehalchick, J.); *Juan Maria Chimborazo Cunin v. Brian McShane, et al.*, No. 3:25-cv-1887, 2025 WL 3542999 (M.D. Pa. Dec. 10, 2025) (Neary, J.); *Tahirou Samassa v. Craig Lowe, et al.*, No. 1:25-CV-02197, 2025 WL 3653751 (M.D. Pa. Dec. 17, 2025) (Brann, C.J.) (while this decision was not dispositive on the underlying petition, Chief Judge Brann granted a request for a temporary restraining order finding that the petitioner was likely to succeed on the merits); *Ronil Jose Gonzalez Centeno v. Lowe et al.*, No.3:25-CV-02518, 2026 WL 94642 (M.D. Pa. Jan. 13, 2026) (Munley, J.); *Mauro Luis Carrero Romero v. Lowe*, No. 4:26-CV-00009, 2026 WL 296215 (M.D. Pa. Feb. 4, 2026) (Brann, C.J.).

However, the United States Court of Appeals of the Third Circuit has not addressed this detention-specific issue, but the Fifth Circuit has found in the Government's favor and accepted the Government's argument that Section

1225(b)(2) applies to noncitizens who entered illegally and were then arrested and detained. See *Buenrostro-Mendez v. Bondi*, ---4th---, 2026 WL 323330 (5th Cir. 2026); see also, Rep. and Recommendation, *Singh v. Lowe*, No. 3:25-CV-02388 (M.D. Pa. Feb. 10, 2026), ECF #13 at 15-17 (copy attached) (following *Buenrostro-Mendez* and recommending denial of habeas corpus petition because “an ‘applicant for admission’ is necessarily ‘seeking admission,’ and therefore is subject to mandatory detention under Section 1225(b)(2)(A).”); Rep. and Recommendation, *Patel v. Lowe*, No. 1:25-CV-02128 (M.D. Pa. Feb. 10, 2026), ECF #12 at 13-16 (copy attached) (same).

Respondent respectfully remains of the view that his position is correct and therefore presents these arguments in order to preserve them for appeal (if ultimately authorized by the Solicitor General). As such, Respondent respectfully requests that the Court deny the Petition.

### **FACTUAL BACKGROUND**

The Petitioner is a native and citizen of the Mauritania who entered the United States without inspection on or about June 18, 2023, at or near Lukeville, Arizona. Exhibit 1, I-213 Record of Deportable/Inadmissible Alien at 2. ICE initially placed Camara in expedited removal proceedings under INA § 235(b) and, after Camara established a credible fear of persecution, transferred him to full removal proceedings under INA § 235(b)(2)(A) and paroled him into the United States. *Id.*

at 2-3. A Notice to Appear issued on July 28, 2023, charges Camara as inadmissible pursuant to INA § 212(a)(6)(A)(i), codified at 8 U.S.C. §1182(a)(6)(A)(i), because he entered the country without being admitted or paroled, and pursuant to INA § 212(a)(7)(A)(i)(I), codified at 8 U.S.C. § 1182(a)(7)(A)(i)(I), because at the time of his application for admission, he did not possess a valid entry document. Ex. 2, Notice to Appear, July 28, 2023, at 4. United States Citizenship and Immigration Services (USCIS) accepted an asylum application from Camara on March 29, 2024. Exhibit 1, I-213 Record of Deportable/Inadmissible Alien at 3.

On August 14, 2025, ICE served a Notice to Appear on Camara, again charging him as removable pursuant to INA §§ INA § 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). Ex. 3, Notice to Appear, Aug. 14, 2025, at 4. USCIS administratively closed his asylum application for lack of jurisdiction as his asylum application must be decided by an immigration judge. Exhibit 1, I-213 Record of Deportable/Inadmissible Alien at 3. Camara was detained by an ICE Officer and transferred to Pike County Correctional Facility on August 27, 2025. Ex. 4, Notice to EOIR: Alien Address, at 2. An Immigration Judge denied Camara's request for a custody redetermination that same day for lack of jurisdiction. Ex. 5, IJ Order, Aug. 27, 2025. An immigration judge denied his appeal of that decision on October 7, 2025, because the immigration court lacks jurisdiction to conduct bond redeterminations pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA

2025), and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Ex. 6, Bond Memorandum, Oct. 7, 2025. Ex. 6, IJ Bond Memorandum. Camara has appealed that decision to the Board of Immigration Appeals. Ex. 7, Notice of BIA Appeal.

Meanwhile, an immigration hearing is scheduled for February 23, 2026. Automated Case Information, available at: <https://www.justice.gov/eoir/immigration-court-information> (last accessed Feb. 11, 2026).

## STATUTORY FRAMEWORK

### A. **The pre-IIRIRA<sup>1</sup> framework gave preferential treatment to noncitizens unlawfully present in the United States.**

The INA, as amended, contains a comprehensive framework governing the regulation of noncitizens, including the creation of proceedings for the removal of noncitizens unlawfully in the United States and requirements for when the Executive is obligated to detain noncitizens pending removal.

Prior to 1996, the INA treated noncitizens differently based on whether the noncitizen had physically “entered” the United States. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-23 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). “Entry” referred to “any coming of [a noncitizen] into the United States,” 8 U.S.C.

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<sup>1</sup> The Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

§ 1101(a)(13) (1994), and whether a noncitizen had physically entered the United States (or not) “dictated what type of [removal] proceeding applied” and whether the noncitizen would be detained pending those proceedings. *Hing Sum v. Holder*, 602 F.3d at 1099.

At the time, the INA “provided for two types of removal proceedings: deportation hearing and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). A noncitizen who arrived at a port of entry would be placed in “exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole.” *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, a noncitizen who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Noncitizens in deportation proceedings, unlike those in exclusion proceedings, “were entitled to request release on bond.” *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

Thus, the INA’s prior framework distinguishing between noncitizens based on physical “entry” had

the “unintended and undesirable consequence” of having created a statutory scheme where [noncitizens] who entered without inspection “could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,” *including the right to request release on bond*, while noncitizens who had “actually presented themselves to authorities for inspection ... were subject to mandatory custody.”

*Hurtado*, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y General of U.S.*, 693 F.3d 408, 413 n.5 (2012)); see also *Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“House Rep.”) (noncitizens “who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to [noncitizens] who present themselves for inspection”).

**B. IIRIRA eliminated the preferential treatment of noncitizens unlawfully present in the United States and mandated detention of all “Applicants for Admission.”**

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

To that end, IIRIRA replaced the prior focus on physical “entry” and instead made lawful “admission” the governing touchstone. IIRIRA defined “admission” to mean “the *lawful* entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish noncitizens based on whether they had managed to evade detection and enter the

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

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

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

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

8 U.S.C. § 1225(a)(1) (emphasis added). All noncitizens “who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States” are required to “be inspected by [an] immigration officer[.]” *Id.* § 1225(a)(3). The inspection by the immigration officer is designed to determine

whether the noncitizen may be lawfully “admitted” to the country or, instead, must be referred to removal proceedings.

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

Section 1225(b)(1) provides for so-called “expedited removal proceedings,” *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of noncitizens—those who (1) are “arriving in the United States,” or who (2) have “not been admitted or paroled into the United States” and have “not affirmatively shown, to the satisfaction of an immigration officer, that the [noncitizen] has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these noncitizens, the immigration officer shall “order the [noncitizen] removed from the United States without further hearing or review unless the [noncitizen] indicates either an intention to apply for asylum ... or a fear of persecution.” *Id.* § 1225(b)(1)(A)(i). In that event, the noncitizen “shall be detained pending a final determination of credible fear or persecution and, if found not to have such fear, until removed.” *Id.* § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). A noncitizen processed for expedited removal who does

not indicate an intent to apply for a form of relief from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

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

Subject to subparagraphs (B) and (C), in the case of [a noncitizen] who is an applicant for admission, if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall be detained* for a proceeding under section 1229a of this title [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added).<sup>2</sup> *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention of [noncitizens] throughout the completion of applicable proceedings and not just at the moment those proceedings begin”).

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

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

release an applicant for admission, but “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). Parole, however, “shall not be regarded as admission” of the noncitizen. *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that “the purposes of such parole ... been served,” the noncitizen “shall ... be returned to the custody from which he was paroled” and be “dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A).

**Section 1226:** IIRIRA also created a separate authority addressing the arrest, detention, and release of noncitizens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of noncitizens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas or are later determined to have been improperly admitted. The statute provides that “[o]n a warrant issued by the Attorney General, [a noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States.” *Id.* § 1226(a). Detention under this provision is generally discretionary: The Attorney General “may” either “continue to detain the arrested” noncitizen or release the noncitizen on bond or conditional parole. *Id.* § 1226(a)(1)-(2).<sup>3</sup>

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<sup>3</sup> Conditional parole under Section 1226(a) is broader than parole under Section

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

Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for) noncitizens who (1) are inadmissible because they are physically present in the United States without admission or parole, have committed a material misrepresentation or fraud, or lack required documentation; and (2) are “charged with, arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of” certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

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1182(d)(5)(A).

**C. The Board of Immigration Appeals concluded that Section 1225(b)(2) requires detention of all Applicants for Admission.**

For many years after IIRIRA, immigration judges treated noncitizens who entered the United States without admission and were later detained away from the border as being subject to discretionary detention under 8 U.S.C. § 1226(a) rather than mandatory detention under 8 U.S.C. § 1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6.

The Board of Immigration Appeals rejected this interpretation in *Hurtado*. The Board concluded that Section 1225(b)(2)'s mandatory detention regime applies to *all* noncitizens who entered the United States without inspection and admission:

[Noncitizens] ... who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United State for a lengthy period of time following entry without inspection, by itself, does not constitute an "admission."

29 I. & N. Dec. at 228; *see also id.* at 225 ("Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] ... who are present in the United States without admission").

### **STANDARD OF REVIEW**

In a petition for a writ of habeas corpus, the Petitioner is challenging the legality of his restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the Petitioner to show the confinement is unlawful. *See Walker v. Johnston*, 312

U.S. 275, 286 (1941). Specifically, here, Petitioner challenges his temporary civil immigration detention pending his removal proceeding.

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

The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or exclude [noncitizens] as a fundamental sovereign attribute exercised by the Government's political departments largely immune from

judicial control.”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.”); *Demore v. Kim*, 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally permissible part of that process.”)

Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2) and must therefore make a strong showing to demonstrate that his continued detention violates the Constitution or laws of the United States. *See United States v. Five Gambling Devices*, 346 U.S. 441, 449 (1953) (“This Court does and should accord a strong presumption of constitutionality to Acts of Congress. This is not a mere polite gesture. It is a deference due to deliberate judgment by constitutional majorities of the two Houses of Congress that an Act is within their delegated power or is necessary and proper to execution of that power”); *Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 402 F. Supp. 251, 254 (E.D. Pa. 1975) (“[D]efendants here carry a heavy burden, for a strong presumption of validity attaches to an Act of Congress.”).

### **ARGUMENT**

Petitioner is currently detained under 8 U.S.C. § 1225(b)(2)(A) and is therefore ineligible for release under 8 U.S.C. § 1226(a). He seeks to circumvent

the detention statute under which he is rightfully detained to secure release or a custody redetermination hearing that he is not entitled. Petitioner argues that, contrary to the plain language of 8 U.S.C. § 1225(b)(2)(A), the authority for his detention is better understood to arise under 8 U.S.C. § 1226(a), a detention statute that allows for release on bond or conditional parole. That argument fails to square with the fact that he falls neatly and precisely within the statutory definition of noncitizens subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A). Petitioner was detained under 8 U.S.C. § 1225(b) and subsequently released on humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). When that parole was terminated, he returned to the custody from which he was paroled and is treated in the same manner as that of any other applicant for admission. *See* 8 U.S.C § 1182(d)(5)(A).

As for Petitioner's constitutional claims, the due process afforded to applicants for admission is that which is provided by the INA. And since no additional process is due to Petitioner, DHS's detention of Petitioner does not violate Petitioner's due process rights, even if he has lived in the United States years. Additionally, Petitioner does not have standing to bring a claim under the APA.

To the extent that the Court rejects these arguments and is inclined to grant Camera's Petition, Respondent respectfully asks that it order a bond hearing, rather than outright release. *See Chimborazo Cunin*, 2025 WL 3542999.

**A. Section 1225(b)(2) mandates detention of noncitizens, like Petitioner, who are present in the United States without having been lawfully admitted.**

Under the plain language of Section 1225(b)(2), DHS is required to detain all noncitizens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the noncitizen has been in the United States or how far from the border they ventured. That unambiguous language resolves this case. Indeed, the Fifth Circuit has agreed with the Government’s reading of Section 1225(b)(2). *See Buenrostro-Mendez v. Bondi*, ---4th---, 2026 WL 323330 (5th Cir. 2026).

**1. The plain language of Section 1225(b)(2) mandates detention of applicants for admission.**

Section 1225(a) defines “applicant for admission” to encompass a [noncitizen] who either “arrives in the United States” or who is “present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). And “admission” under the INA means not physical entry, but lawful entry after inspection by immigration authorities. 8 U.S.C. § 1101(a)(13)(A); *Mejia Olalde v. Noem*, 2025 WL 3131942, at \*3 (E.D. Mo. Nov. 10, 2025). Thus, a noncitizen who enters the country without permission is and remains an applicant for admission, regardless of the duration of the noncitizen’s presence in the United States or the noncitizen’s distance from the border.

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

Petitioner falls squarely within the statutory definition. He was “present in the United States,” and there is no dispute that he has “not been admitted.” 8 U.S.C. § 1225(a). Moreover, Petitioner cannot—and did not—establish that he is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Therefore, Petitioner “shall be detained for a proceeding under [8 U.S.C. § 1229a].”

**2. Section 1225(b)(2)’s reference to noncitizens “seeking admission” does not narrow its scope.**

It is undisputed that Petitioner is an “applicant for admission” under Section 1225(b)(2). The statute itself makes clear that a noncitizen who is an “applicant for admission” *is* necessarily “seeking admission.” Moreover, a noncitizen like Petitioner, who is identified by immigration authorities as unlawfully present, and who does not choose to depart from the United States voluntarily, is “seeking

admission” under any interpretation of that phrase particularly since she could only remain in the United States by gaining admission.

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

Section 1225(a) provides that all noncitizens “who are applicants for admission *or otherwise* seeking admission or readmission ... shall be inspected.” 8 U.S.C. § 1225(a)(3) (emphasis added). The word “[o]therwise” means “in a different way or manner[.]” *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster’s Third New International Dictionary 1598 (1971)); *see also Att’y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) (“or otherwise” means “the first action is a subset of the second action”); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th Cir. 2019). Being an “applicant for admission” is thus a particular “way or

manner” of seeking admission, such that a noncitizen who is an “applicant for admission” *is* “seeking admission” for purposes of Section 1252(b)(2)(A). No separate affirmative act is necessary. *See Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 (BIA 2012) (“[M]any people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws”).

This reading is consistent with the everyday meaning of the statutory terms. One may “seek” something without “applying” for it—for example, one who is “seeking” happiness is not “applying” for it. But one *applying* for something is necessarily *seeking* it. *Compare* Webster’s New World College Dictionary 69 (4th ed.) (“apply” means “To make a formal request (*to someone for something*)”), *with id.* at 1299 (“seek” means “to request, ask for”). For example, a person who is “applying” for admission to a college or club is “seeking” admission to the college or club. *See* The American Heritage Dictionary of the English Language 63 (1980) (“American Heritage Dictionary”) (“apply” means “[t]o request or *seek* employment, acceptance, or *admission*”) (emphasis added). Likewise, a noncitizen who is “applying” for admission to the United States (*i.e.*, an “applicant for admission”) is “seeking admission” to the United States. And that’s true even when the noncitizen has been physically present in the country for many years, as that noncitizen can “still be an applicant for *lawful* entry, seeking legal ‘admission.’”

*Mejia Olalde*, 2025 WL 3131942, at \*3. As the geographic and temporal limits in the neighboring provision, Section 1225(b)(1), demonstrate, “[i]f Congress meant to say that [a noncitizen] no longer is ‘seeking admission’ after some amount of time in the United States, Congress knew how to do so.” *Id.* at \*4.

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

To be sure, the Government previously operated under a narrower understanding of Section 1225(b)(2)(A), such that noncitizens present in the United States who had entered without admission were instead detained under Section 1226(a). But past practice does not justify disregard of clear statutory language. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015). Indeed, in the context of this very statute the Supreme Court has rejected longstanding government

interpretations that it deemed incompatible with statutory text. *See Pereira v. Sessions*, 585 U.S. 198, 204-05, 208-09 (2018). A court therefore must always interpret the statute “as written,” *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019), and here the statute as written requires detention of *any* applicant for admission, regardless of whether the applicant is taking affirmative steps toward admission. A “nontextual” practice cannot upend that plain statutory meaning. *Mejia Olalde*, 2025 WL 3131942, at \*5 (rejecting the Government’s prior understanding as “nontextual” and unsupported by any “thorough, reasoned analysis”).

**b.** An “applicant for admission” covers a subset of noncitizens “seeking admission.” The phrase “in the case of [a noncitizen] who is an applicant for admission,” offset at the beginning of Section 1225(b)(2)(A), therefore modifies and narrows the scope of the remaining language—“if the examining immigration officer determines that [a noncitizen] seeking admission is not . . . entitled to be admitted, the [noncitizen] shall be detained.” The structure of the provision indicates that any such redundancy simply serves to make the provision more readable. This is not a case where the additional language serves to limit the provision’s scope.

And in any event, “[t]he canon against surplusage is not an absolute rule.” *Rimini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019). “Redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly

sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication.” *Barton v. Barr*, 590 U.S. 222, 223 (2020). Thus, “[t]he Court has often recognized that sometimes the better overall reading of a statute contains some redundancy.” *Id.* For that reason, “the surplusage canon ... must be applied with statutory context in mind,” *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017), and “redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text.” *Barton*, 590 U.S. at 223.

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

c. Even if “seeking admission” required some separate affirmative conduct by the noncitizen, an applicant for admission who attempts to avoid removal

from the United States, rather than trying to voluntarily depart, is by any definition “seeking admission.”

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

Other statutory provisions discussed *supra* provide even further support. Congress made clear that any noncitizen “present in the United States who has not been admitted” is “deemed . . . an applicant for admission.” 8 U.S.C. § 1225(a)(1). And the statute’s use of “otherwise” when referring to noncitizens “who are applicants for admission or *otherwise* seeking admission,” *Id.* § 1225(a)(3), makes clear that all applicants for admission are seeking admission. Accordingly, a noncitizen’s presence in the United States without lawful admission is *itself* an act of seeking admission, whether that noncitizen is present in southern Texas or northeastern Pennsylvania.

Petitioner is seeking admission. A contrary view would make mandatory detention turn on the fortuity happenstance of when a noncitizen attempts to prove admissibility. *See United States v. Wilson*, 503 U.S. 329, 334 (1992) (courts must not “presume lightly” that statute’s application will turn on “arbitrary” issue of timing). Noncitizens subject to Section 1225(b)(2) must prove admissibility at one of two stages—first, at the time of inspection, 8 U.S.C. § 1225(b)(2)(A); and second, during Section 240 removal proceedings if the noncitizen cannot show admissibility “clearly and beyond a doubt” at the time of inspection, *id.* § 1229a(c)(2)(A) (noncitizen has “burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted”). The required showing is the same. Because attempting to show admissibility is the sort of act that demonstrates a noncitizen is “seeking

admission,” detention is required only of noncitizens who attempt to show admissibility at the time of inspection, but not of those who wait until removal proceedings are commenced. There is “no reason why Congress would desire” the applicability of something so significant as mandatory detention “to depend on the timing” of when a noncitizen attempts to show admissibility, *Wilson*, 503 U.S. at 334—particularly given how susceptible that rule is to manipulation by the noncitizen.

Respondent continues to believe, however, that the governing statutory provisions under the INA allow DHS to detain Petitioner under Section 1225. Although the Third Circuit has not yet ruled on whether a noncitizen like Petitioner may be detained under § 1225(b)(2), Respondent acknowledged in the introduction of this response that courts in this District have ruled contrary to the Government’s reading of the statute, but continues to present this argument in order to preserve it for appeal.

The Fifth Circuit, however, has ruled that a noncitizen like Petitioner may be detained under § 1225(b)(2). See *Buenrostro-Mendez v. Bondi*, ---4th---, 2026 WL 323330 (5th Cir. 2026). Additionally, an increasing number of district courts have found the Government’s arguments persuasive and found in its favor. See, e.g., *Chavez v. Noem*, --- F.Supp.3d ---, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (holding that Petitioner was an applicant for admission under § 1225); *Vargas Lopez*

*v. Trump*, --- F.Supp.3d ---, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (finding petitioner was lawfully detained under § 1225); *Rojas v. Olson*, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (similar); *Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (similar); *Mejia Olalde*, 2025 WL 3131942 at \*1 (“The plain text provides that Mejia Olalde is an applicant for admission to the United States, so he is governed by § 1225(b)(2) and is ineligible to receive a bond hearing.”); *Maceda Jimenez v. Thompson*, 2025 WL 3265493 (S.D. Tx. Nov. 24, 2025) (similar); *Tenemasa-Lema v. Hyde*, --- F.Supp.3d ----, 2025 WL 3280555, at \*1-4 (D. Ma. Nov. 25, 2025) (similar); *Candido v. Bondi*, 2025 WL 3484932 (W.D. N.Y. Dec. 4, 2025) (“A fair reading of [8 U.S.C. § 1225(b)(2)(A)], in context, requires detention of [noncitizens], such as Petitioner, who have not been admitted.”); *Chen v. Almodovar*, 2025 WL 3484855, at \*1 (S.D. N.Y. Dec. 4, 2025) (“On any reasonable interpretation of [8 U.S.C. § 1225(b)(2)(A)] and the undisputed facts of this case, the statute applies to Petitioner.”); *Rodriguez v. Noem*, --- F.Supp.3d ----, 2025 WL 3639440 (E.D. Tx. Dec. 10, 2025) (finding petitioner properly detained pursuant to § 1225(b)(2)(A)); *Coronado v. Secretary, Dep’t of Homeland Sec.*, 2025 WL 3628229 (S.D. Oh. Dec. 15, 2025) (similar); *A.M. v. Joyce*, 2025 WL 3706922 (D. Me. Dec. 22, 2025) (similar); *Montoya v. Holt*, 2025 WL 3733302, at \*12 (W.D. Ok. Dec. 26, 2025) (“§ 1225 unambiguously deems Petitioner an ‘applicant for admission’ who is ‘seeking admission.’”); *Parra v. Secretary, Dep’t of Homeland*

*Sec.*, 2026 WL 21243 (M.D. Fl. Jan. 5, 2026) (concluding petitioner was properly detained under § 1225 and was not entitled to a bond hearing); *Rodriguez v. Olson*, --- F.Supp.3d ----, 2026 WL 63613, at \*2 (N.D. Ill. Jan. 8, 2026) (“petitioner is properly detained under § 1225(b)(2)—which requires mandatory detention pending removal proceedings—and is not entitled to a bond hearing under § 1226.”); *Singh v. Noem*, 2026 WL 74558 (E.D. Ken. Jan. 9, 2026) (similar); *Chen v. Almodovar, et al.*, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026) (similar); *Sanchez v. Soto*, 2026 WL 125576, at \*2 (D.N.J. Jan. 16, 2026) (denying petition for habeas corpus after finding petitioner was an arriving alien under 8 U.S.C. § 1225(b)(2) and subject to mandatory detention).

### **3. Section 1226(c) is not superfluous.**

There is no colorable argument that the Government’s interpretation of Section 1225(b)(2)(A) renders Section 1226(a)’s discretionary detention authority superfluous. Section 1226(a) authorizes the Executive to “arrest[] and detain[]” *any* noncitizen pending removal proceedings but provides that the Executive also “may release” the noncitizen on bond or conditional parole. 8 U.S.C. § 1226(a). Section 1226(a) provides the detention authority for the significant group of noncitizens who are *not* “applicants for admission” subject to Section 1225(b)(2)(A)—specifically, noncitizens who have been admitted to the United States but are now removable. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (“the

specific governs the general”). For example, the detention of any of the millions of [noncitizen] who have overstayed their visas will be governed by Section 1226(a), because those noncitizens (unlike Petitioner) *were* lawfully admitted to the United States.

As described above, Section 1226(c) is the exception to Section 1226(a)’s discretionary detention regime. It requires the Executive to detain any noncitizen who is deportable or inadmissible for having committed specified offenses or engaged in terrorism-related actions “when the [noncitizen] is released” from another entity’s custody. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Like Section 1226(a), subsection (c) applies to significant groups of noncitizens *not* encompassed by Section 1225(b)(2), such as visa overstayers or noncitizen who are lawfully present but have committed certain crimes.

Section 1226(c)(1) requires the Executive to detain noncitizens who *have been admitted* to the United States and are now “deportable.” *See* 8 U.S.C. § 1226(c)(1)(B)-(C). By contrast, Section 1225(b)(2) has no application to admitted noncitizens. Next, Section 1226(c)(1) requires detention of noncitizens who are “inadmissible” on certain grounds, *see* 8 U.S.C. § 1226(c)(1)(A), (D), (E). Those provisions, too, sweep more broadly than Section 1225(b)(2), because they cover noncitizens who are inadmissible but were erroneously admitted. *See* 8 U.S.C. § 1227(a), (a)(1)(A) (providing for the removal of any noncitizen “in *and admitted*

to the United States,” including any noncitizen “who at the time of entry or adjustment of status was within one or more of the classes of [noncitizens] *inadmissible* by the law existing at the time....” (emphasis added). In this respect, Section 1226(c)(1) applies to admitted noncitizens, who are not covered by Section 1225(b)(2).

Finally, as noted above, Section 1225(b)(2)(A) does “not apply to [a noncitizen] ... who is a crewman,” “a stowaway,” or “is arriving on land ... from a foreign territory contiguous to the United States.” 8 U.S.C. § 1225(b)(2)(B)-(C). Section 1226(c) would apply to those noncitizens, too, if they were inadmissible or deportable on one of the specified grounds.

Nor does the Government’s reading render superfluous Congress’s recent amendment of Section 1226(c) through the Laken Riley Act. That law requires mandatory detention of criminal noncitizens who are “inadmissible” under 8 U.S.C. § 1182(a)(6)(A), (a)(6)(C), or (a)(7). *See* 8 U.S.C. § 1226(c)(E)(i)-(ii). As with the other grounds of “inadmissibility” listed in Section 1226(c), both (a)(6)(C) and (a)(7) apply to inadmissible noncitizens who were admitted in error, as well as those never admitted. That means there is no surplusage, as Section 1225(b)(2) has no application to noncitizens who were admitted in error.

To be sure, the Laken Riley Act’s application to noncitizens who are inadmissible under § 1182(a)(6)(A)—for being “present ... without being admitted

or paroled”—overlaps with Section 1225(b)(2)(A). Both statutes mandate detention of “applicants for admission” who fall within the specified grounds of inadmissibility. But again, “[r]edundancies are common in statutory drafting,” and are “not a license to rewrite or eviscerate another portion of the statute contrary to its text.” *Barton*, 590 U.S. at 223. And “even assuming there were surplusage, that cannot trump the plain meaning of [Section] 1225(b)(2).” *Mejia Olalde*, 2025 WL 3131942, at \*4. That is particularly true here, where this portion of the Laken Riley Act overlaps with Section 1225(b)(2)(A), which recognizes that applicants for admission who are “seeking admission” must be detained under Section 1225(b)(2)(A). *See Microsoft Corp. v. I4I Ltd. P’ship*, 564 U.S. 91, 106 (2011) (“[T]he canon against superfluity assists only where a competing interpretation gives effect to every clause and word of a statute”).

Even so, Sections 1225(b)(2) and 1226(c) use different language that reflects the distinct obligations each section imposes. Section 1226(c), which applies “when [a criminal noncitizen] is released” from another entity’s custody, specifies that the “Attorney General shall take into custody” the noncitizen. That provision therefore directs the Executive to take affirmative steps to apprehend covered noncitizens when they are released from state or federal custody. *Id.*; *see Nielson v. Preap*, 586 U.S. 392, 414 (2019) (explaining that “the duty to arrest is triggered[] upon release from criminal custody”). Section 1225(b)(2), by contrast, applies “if an examining

officer determines” that the noncitizen “is not clearly and beyond a doubt entitled to be admitted,” and directs that the noncitizen “shall be detained.” That distinct language does not itself impose an obligation on the Executive to apprehend such a noncitizen; it applies once an examining officer has encountered an applicant for admission. *Id.* Each provision thus has independent application—one states that the Executive “shall take into custody” certain noncitizens in specified circumstances, insisting that the Executive prioritize certain criminal noncitizens for apprehension; the other states that a noncitizen “shall be detained” once encountered by immigration officials. Because “Section 1226(c) regulates not only *what* the Attorney General must do (take [noncitizens] into custody), but also *when* the Attorney General must do so,” while Section 1225 “does not specify a timeline,” the Government’s reading of Section 1225 “does not render the Laken Riley Act superfluous.” *Mejia Olalde*, 2025 WL 3131942, at \*4.

Moreover, Section 1226(c) does additional independent work, despite any overlap, by narrowing the circumstances under which noncitizens may be *released* from mandatory detention. Recall that, for noncitizens subject to mandatory detention under Section 1225(b)(2), IIRIRA allows the Executive to “temporarily” parole them “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(b)(5). Section 1226(c)(1) takes that option off the table for noncitizens who have also committed the offenses or engaged in the

conduct specified in Section 1226(c)(1)(A)-(E). As to those noncitizens, Section 1226(c) *prohibits* their parole and authorizes their release only if “necessary to provide protection to” a witness or similar person and the noncitizen “satisfies the Attorney General that the [noncitizen] will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.” 8 U.S.C. § 1226(c)(4). So even as to noncitizens who are already subject to mandatory detention under Section 1225(b)(2), Section 1226(c) is not superfluous: It significantly narrows the Executive’s parole power with respect to those noncitizens.

In fact, Congress’s desire to further limit the parole power with respect to criminal noncitizens was one of the principal reasons that it enacted the Laken Riley Act. The Act thus reflects a “congressional effort to be double sure,” *Barton*, 590 U.S. at 239, that unadmitted criminal noncitizens are not paroled into the country through an abuse of the Secretary’s exceptionally narrow parole authority. It does not suggest congressional uncertainty about Section 1225(b)(2)(A)’s detention mandate, but rather congressional desire to shut down a parole loophole that allowed the Government to circumvent that mandate.

The statute itself does not contain any such limitation. *See* 8 U.S.C. § 1225(a) (defining applicant for admission as either [a noncitizen “present in the United States who has not been admitted or who arrives in the United States . . . .”]). Further, Congress defined *all* noncitizens who are present in the United States without

being admitted as “applicant[s] for admission,” regardless of when they entered. *See* 8 U.S.C. § 1225(a)(1). When an immigration officer encounters and examines an applicant for admission who seeks to remain in the United States, and that noncitizen (like Petitioner) desires to remain in the United States, he is necessarily “seeking admission” within the meaning of 8 U.S.C. § 1225(b)(2)(A). Otherwise, the noncitizen must “withdraw the application for admission and depart immediately from the United States.” 8 U.S.C. § 1225(a)(4). A noncitizen continues to be “seeking admission” while in immigration removal proceedings to determine whether he can “be admitted to the United States.” *See* 8 U.S.C. § 1229a(3); *In Re Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (recognizing that “many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws”). In other words, an “applicant for admission” is necessarily “seeking admission.” *See Rojas v. Olson*, Civ. No. 25-1437, 2025 WL 3033967, at \*8 (E.D. Wis. Oct. 30, 2025); *but see Bethancourt Soto v. Soto*, Civ. No. 25-16200, 2025 WL 2976572, at \*6 (D. N.J. Oct. 22, 2025).

**4. The Supreme Court’s decision in *Jennings* does not undermine the Government’s interpretation.**

The Government’s interpretation is consistent with the Supreme Court’s decision in *Jennings*, 583 U.S. 281 (2018). *Jennings* reviewed a United States Court of Appeals for the Ninth Circuit decision that applied constitutional avoidance to

“impos[e] an implicit 6-month time limit” on a noncitizen’s detention under Sections 1225(b) and 1226. 583 U.S. at 292. The Court held that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of noncitizens subject to Section 1225(b) or Section 1226. Nonetheless, consistent with the Government’s reading, the Court recognized in its description of Section 1225(b) that “Section 1225(b)(2) .... serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* at 287.

Some lower courts have rejected the Government’s interpretation based on language in *Jennings* where the Court described the detention authorities in Section 1225(b) and Section 1226, and in that context summarized Section 1226 as applying to noncitizens “already in the country”:

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

583 U.S. at 289; *see also id.* at 288 (characterizing Section 1226 as applying to noncitizens “once inside the United States”). The Government’s interpretation is consistent with that language: it allows that Section 1226 is the exclusive source of detention authority for the substantial category of noncitizens who are were admitted into the United States (and so are “in the country”) but are now removable. Indeed,

in context, the best reading of that language in *Jennings* is that the discussion refers to noncitizens who are “in and admitted to the United States.” 8 U.S.C. § 1227(a). The opinion’s reference to noncitizens “present in the country” specifically cites Section 1227(a), which covers only admitted noncitizens. *See* 583 U.S. at 288. Moreover, nothing in the quoted language from *Jennings* suggests that Section 1226 is the *sole* detention authority that applies to noncitizens “already in the country.” Indeed, the passage’s use of the word “certain” conveys the opposite. At a minimum, the quoted language is ambiguous and such uncertain language is insufficient to displace the statute’s plain text and the manifest congressional purpose. *See Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74 (2023) (explaining that “the language of an opinion is not always to be parsed as though we were dealing with language of a statute,” and instead “must be read with a careful eye to context” (citation omitted)). That is especially so as no part of the holding in *Jennings* required it to decide the precise scope of Sections 1225(b) and 1226.

As such, Petitioner remains an applicant for admission as he has not clearly and beyond doubt established that he is entitled to be admitted to the United States. Consequently, he is subject to mandatory detention under § 1225(b)(2) and ineligible for a bond hearing before an immigration judge.

**B. Petitioner’s temporary detention does not offend Due Process.**

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

The Supreme Court has recognized this profound interest. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or exclude [noncitizens] as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.”). And with this power to remove noncitizens, the Supreme Court has recognized the United States’ longtime Constitutional ability to detain those in removal proceedings. *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those

accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.”); *Demore v. Kim*, 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally permissible part of that process.”); *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) (“Congress has authorized immigration officials to detain some classes of [noncitizens] during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine [a noncitizen's] status without running the risk of the [noncitizen] either absconding or engaging in criminal activity before a final decision can be made.”).

In another immigration context (noncitizens already ordered removed awaiting their removal), the Supreme Court has explained that detaining these noncitizens less than six months is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this presumptive constitutional limit has been subsequently distinguished as perhaps unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court explained Congress was justified in detaining noncitizens during the entire course of their removal proceedings who were convicted of certain crimes. 538 U.S. at 513. In that case, similar to undocumented noncitizens like Petitioner, Congress provided for the detention of certain convicted noncitizens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court emphasized the constitutionality of the “definite termination point” of the

detention, which was the length of the removal proceedings. *Id.* at 512 (“In contrast, because the statutory provision at issue in this case governs detention of deportable criminal [noncitizens] *pending their removal proceedings*, the detention necessarily serves the purpose of preventing the [noncitizens] from fleeing prior to or during such proceedings. Second, while the period of detention at issue in *Zadvydas* was “indefinite” and “potentially permanent,” *id.*, at 690–691, 121 S.Ct. 2491, the record shows that § 1226(c) detention not only has a definite termination point, but lasts, in the majority of cases, for less than the 90 days the Court considered presumptively valid in *Zadvydas*.”).<sup>4</sup> In light of Congress’s interest in dealing with illegal immigration by keeping specified noncitizens in detention pending the removal period, the Supreme Court dispensed of any Due Process concerns without engaging in the “*Mathews v. Eldridge* test.” *See id. generally.*

Following this precedent, the United States District Court for the District of Massachusetts dismissed a habeas action, finding that it was not a violation of due process to detain a noncitizen during the course of his removal proceedings. *See Webert Alvarenga Pena, Petitioner, v. Patricia Hyde, et al., Respondents.*, No. CV 25-11983-NMG, 2025 WL 2108913, at \*1 (D. Mass. July 28, 2025) (highlighting

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<sup>4</sup> In 2018, the Court again highlighted the significance of a “definite termination point” for detention of certain noncitizens pending removal. *See Jennings v. Rodriguez*, 583 U.S. 281, 304 (2018).

the petitioner had been detained for 17 days leading up to the court’s decision, far less than other detention times found constitutional in other cases).

Likewise, Petitioner’s temporary detention pending his removal proceedings does not violate Due Process. He has been detained for over four months. Petitioner’s ample available process in his current removal proceedings demonstrate no lack of procedural due process—nor any deprivation of liberty “sufficiently outrageous” required to establish a substantive due process claim. *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001). Congress simply made the decision to detain him pending removal which is a “constitutionally permissible part of that process.” *See Demore v. Kim*, 538 U.S. 510, 531 (2003). Moreover, Respondent has an interest in its use of detention, particularly in the context of immigration proceedings, and Congress and Supreme Court have historically agreed. *Id.* (holding “[d]etention during removal proceedings is a constitutionally permissible part of that process.”).

**C. Alternatively, Respondent requests that this Court order a bond hearing if it is inclined to grant Petitioner’s petition.**

In the alternative, if this Court is inclined to grant Camera’s Petition, the Respondent respectfully requests that this Court order a bond hearing, rather than outright release. In *Chimborazo Cunin*, another Court within this district granted a similar petition related to detention under 8 U.S.C. § 1225, but found the relief

necessary was limited to a bond hearing. 2025 WL 3542999 at \*1-4. Other courts have also followed this rationale. *See, e.g., Gomez, v. Unknown Party*, No. 25-CV-03255, 2025 WL 3269055 (D. Ariz. Nov. 24, 2025); *Roman v. Olson*, No. 25-CV-169, 2025 WL 3268403 (E.D. Ky. Nov. 24, 2025) *Cantu-Cortes v. O'Neill*, No. 25-CV-6338, 2025 WL 3171639 (E.D. Pa. Nov. 13, 2025). In the event this Court is inclined to grant the petition, the Respondent respectfully requests that the Court order a bond hearing to determine whether the Petitioner is a flight risk or a danger to the community in accordance with Section 1226(a). *See Chimborazo Cunin*, 2025 WL 3542999 at \*1.

**D. Petitioner’s request for costs and fees associated with the Equal Access to Justice Act is premature.**

In the Petitioner’s Prayer for Relief, he requests costs and reasonable attorneys’ fees as provided for by the Equal Access to Justice Act (EAJA). Doc. 1, Petition for Writ of Habeas Corpus, at 16. Respondent respectfully requests that the Court defer a decision on EAJA costs and fees until a motion is made in accordance with 28 U.S.C. 2412(d)(1)(B). *See Toshiba Am. Med. Sys., Inc. v. Valley Open MRI & Diagnostic Ctr. Inc.*, 674 F. App’x 130, 133 (3d Cir. 2016) (nonprecedential) (reversing a district court’s grant of a request for fees based “solely [on] a declaration stating the amount claimed”); *Patel v. O’Neill*, No. 3:25-CV-02289, 2026 WL 323121, at \*7 n. 2 (M.D. Pa. Dec. 6, 2026); 072394 *Ohm Sys., Inc. v. Senergene Sols., LLC*, No. CV 23-1340, 2025 WL 2772612, at \* 2 (D. N.J. Sept. 29, 2025) (holding

that a court cannot award attorney's fees without sufficient evidence that the amount of fees sought are reasonable).

Section 2412(d)(1)(B) sets forth the timing and process to consider an award of fees under the statute. That provision states:

A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

28 U.S.C. § 2412(d)(1)(B). *See also Johnson v. Gonzalez*, 416 F.3d 205, 208 (3d Cir. 2005) (“Under the EAJA, a motion for attorneys’ fees must be filed within thirty days of final judgment in the action. In this context, final judgment means a judgment that is final and not appealable. We have held that the thirty-day cut-off for EAJA petitions begins when the government's right to appeal the order has lapsed.”) (internal quotations and citations omitted). Therefore, the determination of the merits of any EAJA award requires a motion or application to be filed 30 days after final judgment, which has not occurred here.

## CONCLUSION

Because Camera's temporary detention is lawful, Respondent respectfully requests that this Court deny the Petition in its entirety or order a bond hearing before an immigration judge to determine whether the Petitioner is a flight risk or a danger to the community.

Respectfully submitted,

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Date: February 13, 2026

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

**OUSMANE CAMERA** : **No. 3:26-cv-00292**  
**Petitioner,** :  
 :  
**v.** : **(Judge Munley)**  
 :  
**CRAIG LOWE,** :  
**Respondent** : **Filed Electronically**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on February 13, 2026, she served a copy of the attached

**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

by electronic service pursuant to Local Rule 5.7 and Standing Order 05-6, & 12.2 to the following individual(s):

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Cynthia E. Roman  
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