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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Victor Kalid JACOBO RAMIREZ,

Petitioners,

v.

Kristi NOEM et al.,

Respondents.

Case No. 2:25-cv-02136-RFB-MDC

**Federal Respondents' Opposition to
Plaintiffs' Motion for Partial Summary
Judgment, ECF No. 74**

The Federal Respondents hereby submit this Opposition to Plaintiffs' Motion for Partial Summary Judgment (ECF No. 74).

INTRODUCTION

The plain language of the Immigration and Nationality Act ("INA") mandates that the Petitioners—who are present in the United States without being admitted—are correctly considered "applicants for admission" and therefore subject to detention under 8 U.S.C. § 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain

proceedings have concluded.”) The best reading of the statutes is that Congress ensured that all aliens would be inspected by immigration authorities, by treating aliens, who are present in the United States without having been inspected and admitted, as applicants for admission. Aliens who are present without having been inspected and admitted have the benefit of full removal proceedings and are not subject to expedited removal. But they are subject to detention during their removal proceedings. The Court should deny Petitioners’ Motion for Summary Judgment.

Plaintiffs’ motion rests on a single premise: that noncitizens present in the United States without lawful admission who were not apprehended at the border must be detained under 8 U.S.C. § 1226(a), and are therefore entitled to bond hearings, rather than under 8 U.S.C. § 1225(b)(2)(A). That premise is incorrect.

The only federal court of appeals to address this precise statutory question has now rejected Plaintiffs’ theory. In *Buenrostro-Mendez v. Bondi*, the Fifth Circuit held that noncitizens present in the United States who have not been admitted remain “applicants for admission” under § 1225(a)(1) and are subject to mandatory detention under § 1225(b)(2)(A), not § 1226(a). *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026).

Plaintiffs’ textual arguments, surplusage arguments, historical-practice arguments, and reliance on *Jennings v. Rodriguez* were all considered and rejected by the Fifth Circuit. *Id.* Because Plaintiffs’ statutory interpretation conflicts with the plain text of the INA and persuasive appellate authority, their motion should be denied.

BACKGROUND

I. Statutory Framework

A. The Pre-IIRIRA Framework Gave Preferential Treatment to Aliens Unlawfully Present in the United States.

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

Prior to 1996, the INA treated aliens differently based on whether the alien had physically “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); see *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). “Entry” referred to “any coming of an alien into the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) “dictated what type of [removal] proceeding applied” and whether the alien 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). An alien 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, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens 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 aliens based on physical “entry” had

the ‘unintended and undesirable consequence’ of having created a statutory scheme where aliens 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 aliens 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.”) (“illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection”).

B. IIRARA Eliminated the Preferential Treatment of Aliens 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 alien 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 aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the “pivotal factor in determining an alien’s status” would be “whether or not the alien 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 an alien “present in the United States who has not been admitted or who arrives in the United States” “shall be deemed ... an applicant for admission”:

An alien 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 an alien 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 aliens ... 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 alien 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 aliens—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 alien 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 aliens, the immigration officer shall “order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum ... or a fear of persecution.” *Id.* § 1225(b)(1)(A)(i). In that event, the alien “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). An alien 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 aliens be detained pending Section 240 removal proceedings:

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,

1 the alien *shall be detained* for a proceeding under section 1229a of this title
2 [Section 240].

3 8 U.S.C. § 1225(b)(2)(A) (emphasis added).¹ See 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section
4 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2)
5 “mandate[s] detention of aliens throughout the completion of applicable proceedings and not
6 just at the moment those proceedings begin”).

7 While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA
8 grants DHS discretion to exercise its parole authority to temporarily release an applicant for
9 admission, but “only on a case-by-case basis for urgent humanitarian reasons or significant
10 public benefit.” 8 U.S.C. § 1182(d)(5)(A). Parole, however, “shall not be regarded as
11 admission of the alien.” *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority).
12 Moreover, when the Secretary determines that “the purposes of such parole ... been served,”
13 the “alien shall ... be returned to the custody from which he was paroled” and be “dealt with
14 in the same manner as that of any other applicant for admission to the United States.” 8
15 U.S.C. § 1182(d)(5)(A).

16 **Section 1226:** IIRIRA also created a separate authority addressing the arrest
17 detention, and release of aliens generally (versus applicants for admission specifically). See 8
18 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for
19 example, lawfully enter the country but overstay or otherwise violate the terms of their visas
20 or are later determined to have been improperly admitted. The statute provides that “[o]n a
21 warrant issued by the Attorney General, an alien may be arrested and detained pending a
22 decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a).
23 Detention under this provision is generally discretionary: The Attorney General “may” either
24
25
26

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

1 “continue to detain the arrested alien” or release the alien on bond or conditional parole. *Id.*
 2 § 1226(a)(1)-(2).²

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

12 Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No.
 13 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for) aliens
 14 who (1) are inadmissible because they are physically present in the United States without
 15 admission or parole, have committed a material misrepresentation or fraud, or lack required
 16 documentation; and (2) are “charged with, arrested for, [] convicted of, admit[] having
 17 committed, or admit[] committing acts which constitute the essential elements of” certain
 18 listed offenses. 8 U.S.C. § 1226(c)(1)(E).

19 **C. DHS Concluded That Section 1225(b)(2) Requires Detention of All**
 20 **Applicants for Admission.**

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

27 _____
 28 ² Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

On July 8, 2025, DHS “revisited its legal position on detention and release authorities”³ and issued interim guidance that brought the Executive’s practices in line with the statute’s plain text. Specifically, DHS concluded that all aliens who enter the country without being admitted or who otherwise arrive in the United States are “subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)] and may not be released from ICE custody except by INA § 212(d)(5) parole.”⁴ As a result, the “only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under the INA § 236(a) are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C. § 1227].”⁵

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

Aliens ... 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 aliens ... who are present in the United States without admission”).

STANDARD OF REVIEW

The Court can only grant summary judgment if Plaintiffs “show[] that there is no genuine dispute as to any material fact and [they] [are] entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). An issue is “genuine” only if a sufficient evidentiary basis exists upon which a reasonable jury could find for the nonmoving party. *See, e.g., Anderson v. Liberty*

³ *See* ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission, <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last visited Dec. 2, 2025).

⁴ *Id.*

⁵ *Id.*

1 *Lobby, Inc.*, 477 U.S. 242, 248–49 (1986). A factual dispute is “material” only if it might affect
2 the outcome of the suit under governing law. *See, e.g., id.* at 248.

3 ARGUMENT

4 I. Section 1225(b)(2) Mandates Detention of Aliens, Like Petitioners, Who Are 5 Present in the United States Without Having Been Lawfully Admitted.

6 Under the plain language of Section 1225(b)(2), DHS is required to detain all aliens
7 like Petitioners, who are present in the United States without admission and are subject to
8 removal proceedings—regardless of how long the alien has been in the United States or how
9 far from the border they ventured. That unambiguous language resolves this case. *See Little*
10 *Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) (“Our
11 analysis begins and ends with the text.”).

12 The Fifth Circuit recently addressed this precise statutory question in *Buenrostro*
13 *Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). There, the petitioners were noncitizens who
14 had entered the United States without inspection years earlier and were later arrested by ICE
15 while living in the interior. At the time of their apprehension, they were “present in the United
16 States and had not been admitted.” *Id.* at 502. The court began from that undisputed premise
17 and explained the legal consequence that flows directly from § 1225(a)(1): “Presence without
18 admission deems the petitioners to be applicants for admission.” *Id.* Section 1225(a)(1) applies
19 to “[a]n alien present in the United States who has not been admitted,” and that status
20 attaches by operation of law.

21 Having established that the petitioners were “applicants for admission,” the Fifth
22 Circuit then turned to § 1225(b)(2)(A). The court emphasized that the provision states that
23 such an alien “shall be detained” if not “clearly and beyond a doubt entitled to be admitted.”
24 *Id.* at 498, 502 (quoting 8 U.S.C. § 1225(b)(2)(A)). The court described this language as
25 “unambiguous” and reaffirmed that the statute “provides for mandatory detention,” further
26 noting that the provision “does not include any exception that permits the government to
27 release detained aliens on bond.” *Id.* (citing *Jennings v. Rodriguez*, 583 U.S. 281, 297, 302
28 (2018)). On that basis, the Fifth Circuit concluded that the Government’s interpretation—that

§ 1225(b)(2)(A) governs and mandates detention of noncitizens present in the United States without admission—was correct and reversed the district courts’ contrary rulings. *Id.* at 498–502, 508.

The significance of *Buenrostro-Mendez* is therefore straightforward but decisive. When a noncitizen is present in the United States and has not been admitted, § 1225(a)(1) deems that person an applicant for admission. And once that statutory status applies, § 1225(b)(2)(A) mandates detention pending removal proceedings unless the alien is clearly entitled to admission. That is precisely the posture here.

A. The Plain Language of Section 1225(b)(2) Mandates Detention of Applicants for Admission.

Section 1225(a) defines “applicant for admission” to encompass an alien 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). Thus an alien who enters the country without permission is and remains an applicant for admission regardless of the duration of the alien’s presence in the United States or the alien’s distance from the border.

In *Buenrostro-Mendez*, the Fifth Circuit addressed detainees who, like Petitioners here, had entered without inspection and were later arrested while living in the United States. The court explained that “[p]resence without admission deems the petitioners to be applicants for admission.” *Buenrostro*, 166 F.4th at 502. The court further observed that § 1225(a)(1) applies to “[a]n alien present in the United States who has not been admitted,” and that, following IIRIRA, “an alien’s status as an applicant for admission does not turn on where or how the alien entered the United States.” *Id.* at 499–500.

In turn, Section 1225(b)(2) provides that “an alien who is an applicant for admission” “shall be detained” pending removal proceedings if the “alien 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.*

1 *v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998), and the statute makes no
 2 exception for the duration of the alien's presence in the country or where in the country he is
 3 located. Therefore, the statute's plain text mandates that DHS detain all "applicants for
 4 admission" who do not fall within one of its exceptions.

5 The Fifth Circuit emphasized that § 1225(b)(2)(A) "unambiguously provides for
 6 mandatory detention," noting that aliens covered by the provision "shall be detained," and
 7 that the statute "does not include any exception that permits the government to release
 8 detained aliens on bond." *Buenrostro*, 166 F.4th at 499, 502 (citing *Jennings v. Rodriguez*, 583
 9 U.S. 281, 297, 302 (2018)).

10 Petitioners fall squarely within the statutory definition. They are "present in the
 11 United States," and there is no dispute that they have "not been admitted." 8 U.S.C. § 1225(a).
 12 Moreover, Petitioners cannot—and did not—establish that they are "clearly and beyond a
 13 doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Therefore, Petitioners "shall be
 14 detained for a proceeding under [8 U.S.C. § 1229a]."

15 **B. Plaintiffs' Attempt to Limit § 1225(b)(2)(A) to Border "Inspection" and**
 16 **Active Efforts to Enter the United States Is Contrary to the Statutory Text**
 17 **and Persuasive Appellate Authority**

18 Plaintiffs contend that 8 U.S.C. § 1225(b)(2)(A) applies only when several allegedly
 19 narrow conditions are satisfied: an "examining immigration officer" conducts an
 20 "inspection," determines that an individual is an "applicant for admission," and that the
 21 individual is "seeking admission." ECF No. 74, at 11–13. According to Plaintiffs, a person
 22 apprehended inside the United States is not undergoing an "examination," because
 23 "examination" is a "specific legal process one undergoes while trying to enter the country."
 24 They further argue that § 1225(a)(3)'s reference to "inspection" demonstrates that the
 25 "inspection" contemplated in § 1225(b)(2)(A) occurs only at the time an individual first
 26 applies for or otherwise seeks admission to the United States—not during an ICE encounter
 27 "far from any port of entry," long after entry. Plaintiffs also emphasize that § 1225(b)(2)(A)
 28 applies only if "an alien seeking admission is not clearly and beyond a doubt entitled to be
 admitted," and they invoke the INA's definition of "admission" as "the lawful entry of the

1 alien into the United States after inspection and authorization by an immigration officer.’
2 From this, they argue that noncitizens apprehended while residing in the United States are
3 not “seeking admission” and therefore cannot fall within § 1225(b)(2)(A). They maintain that
4 even if such individuals were once “applicants for admission,” they are not “seeking lawful
5 entry” at the time of arrest and thus must instead be detained under § 1226(a), which they
6 characterize—relying on *Jennings*—as the provision governing noncitizens “inside the United
7 States.”

8 In *Buenrostro-Mendez v. Bondi*, the Fifth Circuit considered aliens who had entered the
9 United States without inspection years earlier and were later arrested by ICE while living in
10 the interior. *Buenrostro*, 166 F.4th at 497–98. In finding that similarly situated aliens are subject
11 to mandatory detention under 8 U.S.C. § 1225, the court began with § 1225(a)(1), which
12 provides that “[a]n alien present in the United States who has not been admitted ... shall be
13 deemed ... an applicant for admission.” *Id.* at 499–500 (quoting statute). The court explained
14 that, following IIRIRA, “an alien’s status as an applicant for admission does not turn on
15 where or how the alien entered the United States.” *Id.* at 500.

16 Applying that definition, the Fifth Circuit stated: “The petitioners concede that they
17 are applicants for admission within the meaning of § 1225(a)(1).” *Id.* at 502. “At the time ICE
18 apprehended them, they were present in the United States and had not been admitted.” *Id.*
19 “Presence without admission deems the petitioners to be applicants for admission.” *Id.*

20 The court then turned to § 1225(b)(2)(A), which provides that if an applicant for
21 admission is not “clearly and beyond a doubt entitled to be admitted,” he “shall be detained”
22 pending removal proceedings. *Id.* at 498, 502. The Fifth Circuit described that language as
23 “unambiguous” and held that § 1225(b)(2)(A) “provides for mandatory detention.” *Id.* at 502
24 (citing *Jennings*, 583 U.S. at 297, 302).

25 Critically, the court rejected the argument that § 1225(b)(2)(A) is limited to border
26 encounters. In *Buenrostro*, although the petitioners had entered the United States without
27 inspection and were later apprehended by ICE, the Fifth Circuit concluded that they were
28 “present in the United States” and had “not been admitted,” and they thus remained

1 applicants for admission under § 1225(a)(1), and § 1225(b)(2)(A) governed their detention. *Id.*
2 at 500, 502.

3 The Fifth Circuit also addressed the “seeking admission” argument on which Plaintiffs
4 rely. The Fifth Circuit rejected the argument that the phrase “alien seeking admission”
5 narrows § 1225(b)(2)(A) to exclude individuals deemed applicants for admission under §
6 1225(a)(1). In fact, the Fifth Circuit stated that the “provisions of § 1225 confirm that
7 applicants for admission are indeed necessarily seeking admission.” *Id.* at 503. Similarly, the
8 Fifth Circuit stated that if Congress had intended an alien “seeking admission” to effectively
9 mean “arriving alien,” it would simply have said “arriving alien.” *Id.* at 504. But that is not
10 what Congress has done here.

11 The statute itself makes clear that an alien who is an “applicant for admission” is
12 necessarily “seeking admission.” Moreover, aliens like Petitioners, who are identified by
13 immigration authorities as unlawfully present, and who do not choose to depart from the
14 United States voluntarily, are “seeking admission” under any interpretation of that phrase
15 particularly since they could only remain in the United States by gaining admission.

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

23 Section 1225(a) provides that “[a]ll aliens ... who are applicants for admission or
24 otherwise seeking admission or readmission ... shall be inspected.” 8 U.S.C. § 1225(a)(3)
25 (emphasis added). The word “[o]therwise” means “in a different way or manner[.]” *Texas*
26 *Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015)
27 (quoting Webster’s Third New International Dictionary 1598 (1971)); see also *Att’y Gen. of*
28 *United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds*

1 *Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) (“or otherwise” means “the first
2 action is a subset of the second action”); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th
3 Cir. 2019). Being an “applicant for admission” is thus a particular “way or manner” of
4 seeking admission, such that an alien who is an “applicant for admission” is “seeking
5 admission” for purposes of Section 1225(b)(2)(A). No separate affirmative act is necessary.
6 See *Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 (BIA 2012) (“[M]any people who are not
7 actually requesting permission to enter the United States in the ordinary sense are nevertheless
8 deemed to be ‘seeking admission’ under the immigration laws”).

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

20 None of this is to say, however, that “seeking admission” has no meaning beyond
21 “applicant for admission.” As Section 1225(a)(3) shows, being an “applicant for admission”
22 is only *one* “way or manner” of “seeking admission,”—not the exclusive way. For example,
23 lawful permanent residents returning to the United States are not “applicants for admission”
24 because they are already admitted, but they still may be “seeking admission.” See 8 U.S.C.
25 § 1103(A)(13)(C). But for purposes of Section 1225(b)(2) and its regulation of “applicants for
26 admission,” the statute unambiguously provides that an alien who is an “applicant for
27 admission” is “seeking admission,” even if the alien is not engaged in some separate
28 affirmative act to obtain lawful admission.

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

7 2. An argument that “seeking admission” must have independent meaning when
8 used in Section 1225(b)(2)(A), lest it be redundant with the phrase “applicant for admission”
9 is to no avail. The canon against surplusage is not an absolute rule. *Rimini St., Inc. v. Oracle*
10 *USA, Inc.*, 586 U.S. 334, 346 (2019). “Redundancies are common in statutory drafting—
11 sometimes in a congressional effort to be doubly sure, sometimes because of congressional
12 inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human
13 communication.” *Barton v. Barr*, 590 U.S. 222, 223 (2020). Thus, “[t]he Court has often
14 recognized that sometimes the better overall reading of a statute contains some redundancy.”
15 *Id.* For that reason, “the surplusage cannon ... must be applied with statutory context in
16 mind,” *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017), and “redundancy in
17 one portion of a statute is not a license to rewrite or eviscerate another portion of the statute
18 contrary to its text.” *Barton*, 590 U.S. at 223.

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

1 3. Even if “seeking admission” required some separate affirmative conduct by the
2 alien, an applicant for admission who attempts to avoid removal from the United States
3 rather than trying to voluntarily depart, is by any definition “seeking admission.”

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

20 Here, Petitioner Jacobo-Ramirez opted to remain in removal proceedings, rather than
21 depart the country. ECF No. 1, ¶ 52–56. And Petitioner Guevara-Alcantar not only is in
22 removal proceedings but also has a pending U-Visa application. *Id.* ¶ 60–64. These facts bring
23 Petitioners squarely within the scope of § 1225(b)(2)(A) because both Petitioners are “seeking
24 admission” by virtue of their efforts to obtain admission to the United States.

25 A contrary view would make mandatory detention turn on the fortuity happenstance
26 of when an alien attempts to prove admissibility. *See United States v. Wilson*, 503 U.S. 329,
27 334 (1992) (courts must not “presume lightly” that statute’s application will turn on
28 “arbitrary” issue of timing). Aliens 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 alien cannot show admissibility “clearly and beyond a doubt” at the time of inspection, *id.* § 1229a(c)(2)(A) (alien has “burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted”). The required showing is the same—but on the lower court’s reading, detention is required only of aliens 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 an alien attempts to show admissibility, *Wilson*, 503 U.S. at 334—particularly given how susceptible that rule is to manipulation by the alien.

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

Any argument that prior agency practice applying § 1226(a) to Petitioners is unavailing because under *Loper Bright*, the plain language of the statute and not prior practice controls. *Yajure-Hurtado*, 29 I. & N. Dec. at 225–26. In overturning *Chevron*, the Supreme Court recognized that courts often change precedents and “correct[] our own mistakes” *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380. Thus longstanding agency practice carries little, if any, weight under *Loper Bright*. The weight given to agency interpretations “must always ‘depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.’” *Loper Bright Enterprises*, 603 U.S. at 432–33 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)).

Petitioners point to 62 Fed. Reg. at 10323, where the agency provided no analysis of its reasoning. To be sure, “when the best reading of the statute is that it delegates discretionary authority to an agency,” the Court must “independently interpret the statute and effectuate the will of Congress.” *Loper Bright Enterprises*, 603 U.S. at 395. But “read most naturally, §§

1 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings
2 have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does not support
3 Petitioners’ position that the plain language mandates detention under § 1226(a).

4 **III. Petitioners’ APA Claim Fails as a Matter of Law**

5 Petitioners’ challenge under the Administrative Procedure Act (“APA”), 5 U.S.C.
6 §§ 701–706 fails for multiple independently sufficient reasons: (1) Petitioners’ claim is
7 barred by jurisdiction-stripping provisions of the INA; (2) Petitioners’ APA claim is an
8 impermissible attempt to repackage a collateral attack on their detention, which cannot
9 avoid the INA’s jurisdiction-channeling provisions; (3) DHS’s interpretation of 8 U.S.C. §
10 1225(b)(2) is fully consistent with the unambiguous text of the statute and therefore cannot
11 be arbitrary, capricious, or contrary to law; and (4) the challenged agency action is one
12 “committed to agency discretion by law” and therefore not reviewable.

13 As a threshold matter, the APA does not itself grant jurisdiction. 5 U.S.C. § 702;
14 *Califano v. Sanders*, 430 U.S. 99, 105 (1977) (“[A]n Act of Congress . . . persuades us that
15 the better view is that the APA is not to be interpreted as an implied grant of subject-matter
16 jurisdiction to review agency actions.”). It applies only where another statute does not
17 preclude judicial review. 5 U.S.C. § 701(a)(1).

18 Here, multiple provisions of the INA expressly foreclose APA review, as outlined in
19 Section III of Respondents’ Response to the Petition, ECF No. 39, Petitioners cannot avoid
20 the INA’s jurisdiction-channeling provisions by relabeling a detention challenge as an APA
21 claim. Courts reject such efforts. *See Jennings*, 583 U.S. at 294–95 (holding that claims
22 challenging “the decision to detain [an alien] in the first place” fall within § 1252(b)(9) and
23 cannot be reframed as APA actions). The APA challenges presented in the Petition and
24 Petitioner’s Motion for Partial Summary Judgment are nothing more than a repackaged
25 objection to DHS’s determination that Petitioners fall under § 1225(b)(2), designed to
26 circumvent the channeling provisions of §§ 1252(a)(5) and (b)(9). Congress required such
27 challenges to be made in the administrative removal process and, if appropriate, through a
28 petition for review—not an APA action in district court.

1 Assuming *arguendo* that jurisdiction exists to review DHS's application of 8 U.S.C. §
2 1225, an agency cannot, by definition, act arbitrarily when it aligns its practice with
3 unambiguous statutory text. Where Congress has spoken clearly, the agency must follow
4 the statute and it lacks discretion to adopt a contrary policy. Because here Congress has
5 spoken clearly, DHS may not add extra-statutory limitations; as the Supreme Court has
6 explained, "[o]ur analysis begins and ends with the text." *Little Sisters*, 591 U.S. at 676.

7 Petitioners take issue with DHS's alleged change in policy and practice of applying
8 mandatory detention pursuant to § 1225(b)(2) to Petitioners and the class members they
9 represent. ECF No. 1, ¶ 83. But even if DHS's 2025 Interim Guidance constitutes a change
10 in policy, it does not violate the APA because an agency may change course as long as the
11 new policy is permissible under the statute and the agency provides a reasoned explanation.
12 See *FCC v. Fox Television Stations*, 556 U.S. 502, 513–516 (2009). "To be sure, the
13 requirement that an agency provide reasoned explanation for its action would ordinarily
14 demand that it display awareness that it *is* changing position." *Id.* An agency may not, for
15 example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the
16 books." *Id.* "[O]f course the agency must show that there are good reasons for the new
17 policy . . . [b]ut it need not demonstrate to a court's satisfaction that the reasons for the new
18 policy are *better* than the reasons for the old one; it suffices that the new policy is
19 permissible under the statute, that there are good reasons for it, and that the
20 agency *believes* it to be better, which the conscious change of course adequately indicates."
21 *Id.* at 517.

22 Here, § 1225(a)(1) unambiguously defines an "alien present in the United States
23 who has not been admitted" as an "applicant for admission." And § 1225(b)(2)(A)
24 mandates that such aliens "shall be detained" pending § 1229a proceedings. DHS's 2025
25 Interim Guidance merely brought practice into compliance with the plain statutory text.
26 Because DHS's 2025 Interim Guidance faithfully implements statutory commands, it is by
27 definition, not arbitrary. See *FCC* 556 U.S. at 513-516. Further, DHS's 2025 Interim
28 Guidance reflects that DHS was conscious that the guidance was a change of course and

1 thus DHS inherently believed it to be better than the prior practice.⁶ Specifically, the 2025
2 Interim Guidance stated that it “serve[d] as notice that DHS, in coordination with the
3 Department of Justice (DOJ), ha[d] *revisited its legal position* on detention and release
4 authorities.”⁷

5 In the event the the Court were to find that the foregoing does not sufficiently
6 provide a reasoned explanation for the change of course, which it certainly does, the BIA’s
7 decision in *Hurtado* satisfies this requirement. In *Hurtado*, the BIA applied its specialized
8 expertise in immigration detention law, the very subject Congress charged it with
9 administering. Its decision addressed the interplay between §§ 1225 and 1226 in detail,
10 relying on statutory text, legislative history, and decades of experience resolving custody
11 questions. The BIA’s reasoning is thorough and well supported as it carefully explained
12 why noncitizens who entered without inspection remain “applicants for admission” under
13 § 1225(a)(1), and why reclassifying them under § 1226(a) would create statutory issues and
14 undermine congressional intent. Finally, the BIA’s decision explained how its
15 interpretation is consistent with Supreme Court precedent, including *Jennings*, which
16 recognized that detention under § 1225(b) is mandatory. Thus, the Federal Respondents
17 have provided a well-reasoned explanation regarding why DHS’s 2025 Interim Guidance
18 was necessary, as the correct application and enforcement practice of § 1225.

19 Finally, Petitioners challenge action that has been committed to agency discretion
20 by law and it therefore is not reviewable. The APA excludes review of matters “committed
21 to agency discretion by law.” 5 U.S.C. § 701(a)(2). “An agency’s decision [regarding]
22 enforcement action is presumed immune from judicial review under § 701(a)(2).” *Heckler v.*
23 *Chaney*, 470 U.S. 821, 821 (1985). “Such a decision has traditionally been ‘committed to
24 agency discretion,’ and it does not appear that Congress in enacting the APA intended to
25

26 ⁶ See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for
27 Admission, [https://www.aila.org/ice-memo-interim-guidance-regarding-detention-](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission)
[authority-for-applications-for-admission](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission) (last visited Dec. 2, 2025).

28 ⁷ *Id.*

1 alter that tradition.” *Id.* “Accordingly, such a decision is unreviewable unless Congress has
2 indicated an intent to circumscribe agency enforcement discretion, and has provided
3 meaningful standards for defining the limits of that discretion.” *Id.*

4 Here, Congress mandated detention of applicants for admission and granted DHS
5 narrow, discretionary parole authority. 8 U.S.C. §§ 1182(d)(5), 1225(b)(2). ICE’s internal
6 instructions implementing the mandatory-detention scheme involve quintessential
7 enforcement discretion—precisely the type of administrative judgment courts cannot review
8 *See Heckler v. Chaney*, 470 U.S. 821, 831–35 (1985). Petitioners’ APA challenge seeks exactly
9 the type of judicial supervision that *Chaney* forbids: second-guessing how DHS interprets and
10 applies the detention statutes in individual enforcement contexts.

11 **IV. Incorporation By Reference of Government’s Prior Response**

12 In the interest of preserving arguments in the record, the Federal Respondents hereby
13 incorporate by reference Federal Respondents’ Response to the Petition, ECF No. 39, as
14 though fully set forth herein. For the reasons set forth in ECF No. 39 as well as above, the
15 Court should deny Plaintiff’s Motion for Partial Summary Judgment.

16 **CONCLUSION**

17 For these reasons, the Court should deny Plaintiffs’ Motion for Partial Summary
18 Judgment.

19 Respectfully submitted this 3rd day of March 2026.

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27
28