

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

SELVIN DAGOBERTO FLORES-BERRIOS

Petitioner,

V.

KRISTI NOEM, Secretary, U.S. §
Department of Homeland Security; TODD §
LYONS, Acting Director, U.S. Immigration §
and Customs Enforcement; MARCOS §
CHARLES, Acting Executive Associate §
Director, ICE and Removal Operations; §
PAMELA BONDI, U.S. Attorney General; §
Warden, IAH Secure Adult Detention §
Facility §

Respondents.

Case No. 9:25-cv-00302-MJT-CLS

FEDERAL RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

Table of Contents

STAUTORY FRAMEWORK 4

I. The Pre-IIRIRA Framework Gave Preferential Treatment to Aliens Unlawfully Present in the United States. 4

II. IIRIRA Eliminated the Preferential Treatment of Aliens Unlawfully Present in the United States and Mandated Detention of all “Applicants for Admission.” 5

III. The BIA Concluded That Section 1225(b)(2) Requires Detention of All Applicants For Admission...... 9

FACTUAL BACKGROUND 10

ARGUMENT..... 10

I. Section 1252(b)(2) Mandates Detention of Aliens, Like Petitioner, Who Are Present in the United States Without Having Been Lawfully Admitted......11

A. The Plain Language of Section 1225(b)(2) Mandates Detention of Applicants for Admission......11

B. Attempts to Limit the Applicability of Section 1225(b)(2) Fail. 12

C. Petitioner’s Mistaken Interpretation of Section 1225’s Applicability Subverts Congressional Intent...... 18

D. Persuasive Authority From Other Courts Supports Federal Respondents’ Interpretation. 20

II. Petitioner’s Due Process Claim is Without Merit. 21

CONCLUSION 24

TABLE OF AUTHORITIES

Cases

<i>Armstrong v. Exceptional Child Ctr., Inc.</i> , 575 U.S. 320, 329 (2015)	15
<i>Att’y Gen. of United States v. Wynn</i> , 104 F.4th 348	13
<i>Barton v. Barr</i> , 590 U.S. 222	16
<i>Cabanas v. Bondi</i> , No. 4:25-CV-04830, 2025 WL 3171331	20
<i>Carlson v. Landon</i> , 342 U.S. 524	11, 22, 23
<i>Chavez v. Noem</i> , No. 3:25-CV-02325, 2025 WL 2730228	20
<i>Demore v. Kim</i> , 538 U.S. 510	11, 21, 22, 23
<i>DHS v. Thuraissigiam</i> , 591 U.S. 103	7, 19
<i>Garibay-Robledo v. Noem</i> , No. 1:25-CV-00177	21
<i>Henry Schein, Inc. v. Archer & White Sales, Inc.</i> , 586 U.S. 63	15
<i>Hing Sum v. Holder</i> , 602 F.3d 1092	4, 5, 6
<i>Hose v. I.N.S.</i> , 180 F.3d 992	5
<i>Kaplan v. Tod</i> , 267 U.S. 228	19
<i>King v. Burwell</i> , 576 U.S. 473	18, 19
<i>Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach</i> , 523 U.S. 26	12
<i>Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania</i> , 591 U.S. 657	11
<i>Martinez v. Att’y General of U.S.</i> , 693 F.3d 408	5
<i>Matter of Lemus-Losa</i> , 25 I. & N. Dec. 734	13
<i>Matter of Yajure Hurtado</i> , 29 I. & N. Dec. 216	passim
<i>Mejia Olalde v. Noem</i> , 2025 WL 3131942	11, 14, 15
<i>New York State Dep’t of Soc. Servs. v. Dublino</i> , 413 U.S. 405	18
<i>Pena v. Hyde</i> , 2025 WL2108913	20
<i>Pereira v. Sessions</i> , 585 U.S. 198	15
<i>Rimini St., Inc. v. Oracle USA, Inc.</i> , 586 U.S. 334	16
<i>Sandoval v. Acuna</i> , No. 6:25-CV-01467, 2025 WL 3048926	20
<i>Shaughnessy v. United States ex rel. Mezei</i> , 345 U.S. 206	19, 22
<i>Silva v. Bondi et al.</i> , 9:25-cv-00251	20
<i>Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.</i> , 576 U.S. 519	13
<i>The Yamataya v. Fisher</i> , 189 U.S. 86	19
<i>Torres v. Barr</i> , 976 F.3d 918	6
<i>United States v. Bronstein</i> , 849 F.3d 1101	16
<i>United States v. Wilson</i> , 503 U.S. 329	18
<i>Vargas Lopez v. Trump</i> , No. 8:25-CV-00526, 2025 WL 2780351	20
<i>Walker v. Johnston</i> , 312 U.S. 275	10
<i>Wong Wing v. United States</i> , 163 U.S. 228	11, 22

Statutes

28 U.S.C. § 2241	10
8 C.F.R. § 235.5	7
8 U.S.C. § 1101	4, 6, 11
8 U.S.C. § 1103	14
8 U.S.C. § 1182	8, 9
8 U.S.C. § 1225	passim
8 U.S.C. § 1227	9
8 U.S.C. § 1229	18
Illegal Immigration Reform and Immigration Responsibility Act.....	passim
Immigration and Nationality Act	passim
Laken Riley Act	9

Other Authorities

Webster's New World College Dictionary 69 (4th ed.)	13, 14
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Kristi Noem, Todd Lyons, Marcos Charles, and Pamela Bondi (hereinafter “Federal Respondents”) submit this response to Petitioner’s Petition for Writ of Habeas Corpus.¹

INTRODUCTION

Before 1996, the federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings. Congress passed the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”) specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry.

As relevant here, Congress enacted what is now 8 U.S.C. § 1225, which requires the detention of any alien “who is an applicant for admission” and defines that term to encompass any “alien present in the United States who has not been admitted” following inspection by immigration authorities. 8 U.S.C. § 1225(a), (b)(2)(A). The statute makes no exception for how far into the country the alien traveled or how long the alien managed to evade detection. Unless the Secretary exercises the narrow and discretionary parole authority, mandatory detention is the rule for aliens who have never been lawfully admitted.

Petitioner is an “applicant for admission” under Section 1225(a). That provision specifically provides that any “alien present in the United States who has not been admitted ... shall be deemed for purposes of this chapter an applicant for admission.” § 1225(a)(1). Petitioner

¹ The respondents here do not include the warden of the IAH Polk Secure Adult Detention Facility. The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

entered the country without inspection, was never “admitted,” and thus remains an “applicant for admission.” Accordingly, he is subject to mandatory detention.

Petitioner’s interpretation of Section 1225 is contrary to the plain statutory text and would reimpose the same perverse regime that IIRIRA was meant to eliminate—requiring the detention of aliens who present at a port of entry as the law requires but authorizing the release of those aliens who enter the United States in violation of law. This Court should not endorse such a backwards outcome, particularly one that is so plainly subversive of congressional intent.

Petitioner’s due process claim fails as well. Given that the United States Supreme Court has allowed mandatory detention in immigration cases, any due process analysis is entirely derivative of the resolution of the threshold statutory issue. A finding that Section 1225 governs Petitioner’s detention therefore requires dismissal of any due process claim.

STAUTORY FRAMEWORK

I. 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, 222–23 (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*, 602 F.3d at 1099.

At the time, the INA “provided for two types of removal proceedings: deportation hearings 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)).

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”).

II. IIRIRA 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). The 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., at 226 (emphasis added); *Hing Sum*, 602 F.3d at 1100.²

IIRIRA effected these changes through 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

² IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both proceedings into “removal proceedings.” *Hurtado*, 29 I. & N. Dec. at 223.

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, 109–13 (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, the alien *shall be detained* for a proceeding under section 1229a of this title.

8 U.S.C. § 1225(b)(2)(A) (emphasis added).³ 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 aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin”).

While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA grants DHS discretion to exercise its parole authority to temporarily 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 alien.” *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that “the purposes of such parole ... have been served,” the “alien 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 aliens generally (versus applicants for admission specifically). See 8 U.S.C. § 1226. This is the only provision that governs the detention of aliens 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, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a). Detention under this provision is

³ Subsection (b)(2) does not apply to (1) aliens subject to expedited removal, (2) crewmen, (3) 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).

generally discretionary: The Attorney General “may” either “continue to detain the arrested alien” or release the alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2).⁴

That “default rule,” however, does not apply to certain criminal aliens 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” classes of criminal aliens—those who are inadmissible or deportable because the alien (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).⁵ These aliens must be detained “when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.” *Id.*

III. The BIA Concluded That Section 1225(b)(2) Requires Detention of All Applicants For Admission.

For many years after IIRIRA, immigration judges treated aliens 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.

In *Hurtado*, the BIA adopted an interpretation that moved away from the prior approach and brought detention practices in line with the plain text of the statute. The Board concluded

⁴ Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

⁵ Congress 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) aliens 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).

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").

FACTUAL BACKGROUND

Petitioner is a native and citizen of El Salvador. ECF No. 1-2, at 1. He entered the United States illegally in March 2021 as an unaccompanied minor. ECF No. 1, ¶ 34; ECF No. 1-2, at 1. He was not admitted or paroled. ECF No. 1-2, at 1. Accordingly, he was charged with removability subject to Section 212 (a)(6)(A)(i) of the INA. *Id.* He was released and received approval of an I-360 Petition for Special Immigrant Juvenile Status. ECF No. 1, ¶ 36; ECF No. 1-3, at 1.

Petitioner was recently detained, is currently in custody at the IAH Secure Adult Detention Facility, and is in removal proceedings. ECF No. 1, ¶ 1, 8, 39. His next hearing before the Immigration Judge is currently scheduled for December 3, 2025. EOIR Automated Case Information, <https://acis.eoir.justice.gov/en/caseInformation> (last visited November 21, 2025).

ARGUMENT

In a petition for a writ of habeas corpus, the petitioner is challenging the legality the restraint or imprisonment. *See* 28 U.S.C. § 2241.⁶ The burden is on the petitioner to show that the confinement is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286 (1941). When it

⁶ Petitioner styles his pleading as a petition for a writ of habeas corpus as well as a complaint for declaratory and injunctive relief. However, the latter must be on a separate instrument. *See* LR CV-65.

comes to detention during removal proceedings, it is well-taken that the authority to detain is elemental to the authority to deport, as “[d]etention is necessarily a part of th[e] deportation procedure.” *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see 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.”). As the U.S. Supreme Court has stated, “[d]etention during removal proceedings is a constitutionally permissible part of that process.” *Demore v. Kim*, 538 U.S. 510, 531 (2003). In this case, Petitioner is properly detained because Section 1225(b)(2) mandates detention, and his detention does not violate any constitutional restrictions.

I. Section 1252(b)(2) Mandates Detention of Aliens, 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 aliens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the alien has been in the United States or how far from the border they ventured. That unambiguous language resolves this case. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) (“Our analysis begins and ends with the text.”).

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). “Admission” under the INA does not mean physical entry, but rather 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, 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 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. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998). Thus, the statute’s plain text mandates that DHS detain all “applicants for admission” who do not fall in one of its exceptions.

Petitioner wrongly contends that Section 1225 does not apply to him. He squarely fits within the statute’s definition of an “applicant for admission.” He is “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 establish that he is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Therefore, he “shall be detained for a proceeding under [8 U.S.C. § 1229a].”

B. Attempts to Limit the Applicability of Section 1225(b)(2) Fail.

Petitioner does not—and cannot—dispute that he is an “applicant for admission” under the plain language of Section 1225(b)(2). Even so, Federal Respondents recognize that other courts, in nonbinding decisions, have distinguished Section 1225(b)(2) on different grounds. These conclusions are not correct and should not be followed here.

1. Section 1225(b)(2)’s Reference to Aliens “Seeking Admission” Does Not Narrow Its Scope.

Attempting to ignore the plain language of Section 1225, some litigants, and courts, have pointed to language elsewhere in the provision that refers to aliens who are “seeking admission.” To avoid potential redundancy, courts have construed the latter phrase to limit mandatory

detention to aliens who take affirmative steps to gain legal admission to the United States. That analysis is wrong and should not be adopted.

The statute itself makes clear that an alien who is an “applicant for admission” *is* necessarily “seeking admission.” Moreover, an alien 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 he could only remain in the United States by gaining admission.

First, Section 1225(b)(2) requires the detention of an “applicant for admission, if the examining officer determines that [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 statutory text and context show that being an “applicant for admission” is a means of “seeking admission.” 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 “[a]ll aliens ... 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). Being an “applicant for admission” is thus a “way or manner” of seeking admission, such that an alien 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”). An alien who is “applying” for admission to the United States (*i.e.*, an “applicant for admission”) is “seeking admission” to the United States. That’s true even when the alien has been physically present in the country for many years, as that alien 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 an alien 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 an alien who is an “applicant for admission” is “seeking admission,” even if the alien 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 aliens 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 U.S. 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”).

Second, “seeking admission” is not rendered redundant merely because it does not have an independent meaning when used in Section 1225(b)(2)(A). As explained, “applicant for admission” covers a subset of aliens “seeking admission.” The phrase “in the case of an alien who is an applicant for admission,” offset at the beginning of Section 1225(b)(2)(A), thus modifies and narrows the scope of the remaining language—“if the examining immigration officer determines that an alien seeking admission is not . . . entitled to be admitted, the alien shall be detained.” The structure of the provision indicates that any 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.

Also, “[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). “The Court has often recognized that sometimes the better overall reading of a statute contains some redundancy.” *Id.* As such, “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) (“That principle [drafters 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.

Third, even if “seeking admission” required some separate affirmative conduct by the alien, 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 an alien who is present in the United States unlawfully, even for years. Although the alien may not have been affirmatively seeking admission during those years of illegal presence, Section 1225(b)(2) is not concerned with the alien’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 alien’s admissibility. 8 U.S.C. § 1225(b)(2)(A). At *that* point, the alien 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 an alien 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 alien 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 provide even further support. Congress made clear that any “alien 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 aliens “who are applicants for admission or *otherwise* seeking admission,” *Id.* § 1225(a)(3), makes clear that all applicants for admission are seeking admission. Accordingly, an alien’s presence in the United States without lawful admission is *itself* an act of seeking admission, whether that alien is present in southern Texas or western Nebraska.

Here, Petitioner entered the United States without admission or inspection. That is not in dispute. Additionally, Petitioner, despite having the option to leave, has chosen to attempt to stay in the United States and is therefore “seeking admission.”

A contrary view would make mandatory detention turn on the fortuity happenstance of when an alien 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). 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. 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.

C. Petitioner’s Mistaken Interpretation of Section 1225’s Applicability Subverts Congressional Intent.

Petitioner’s proposed interpretation is not only textually baseless; it also subverts IIRIRA’s express goal of eliminating preferential treatment for aliens who enter the country unlawfully. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to result “that Congress designed the Act to avoid”); *New York State Dep’t of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) (“We cannot interpret federal statutes to negate their own stated purposes.”).

One of IIRIRA’s express objectives was to dispense with the perverse pre-1996 regime under which aliens who entered the United States unlawfully were given “equities and privileges in immigration proceedings that [were] not available to aliens who present[ed] themselves for inspection” at the border, including the right to secure release on bond. House Rep. at 225. Petitioner’s interpretation would restore the regime Congress sought to discard: It would require

detention for those who present themselves for inspection at the border in compliance with law, yet grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years until an involuntary encounter with immigration authorities. That is *exactly* the “perverse incentive to enter” unlawfully that IIRIRA sought to eradicate. *Thuraissigiam*, 591 U.S. at 140. This Court should reject any interpretation that is so transparently subversive of Congress’s stated objective. *King*, 576 U.S. at 492.

Federal Respondents’ reading, by contrast, not only adheres to the statute’s text and congressional intent, but it also brings the statute in line with the longstanding “entry fiction” that courts have employed for well over a century to avoid giving favorable treatment to aliens who have not been lawfully admitted. Under that doctrine, all “aliens who arrive at a port of entry ... are treated for due process purposes as if stopped at the border,” and that also includes aliens “paroled elsewhere in the country for years pending removal” who have developed significant ties to the country. *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)).

For example, *Kaplan v. Tod*, 267 U.S. 228 (1925), held that an alien who was paroled for nine years into the United States was still “regarded as stopped at the boundary line” and “had gained no foothold in the United States.” *Id.* at 230; *see also Mezei*, 345 U.S. at 214–15. The “entry fiction” thus prevents favorable treatment of aliens who have not been admitted—including those who have “entered the country clandestinely.” *The Yamataya v. Fisher*, 189 U.S. 86, 100 (1903). IIRIRA sought to implement that same principle with respect to detention. The Federal Respondents’ reading is true to that purpose; and Petitioner’s interpretation subverts it.

D. Persuasive Authority From Other Courts Supports Federal Respondents' Interpretation.

In the absence of controlling authority, the Court should look to those decisions that have applied the plain language of the INA and found aliens like the Petitioner subject to mandatory detention under § 1225(b)(2). Several district courts have adopted the BIA's interpretation in *Hurtado*, and more are likely to follow. *See Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025).⁷

Federal Respondents acknowledge that there are district court decisions that hold to the contrary, including from the Eastern District of Texas. *See Carlos v. Bondi*, 9:25-cv-00249-MJT-CLS (E.D. Tex. Nov. 21, 2025); *Cantarero v. Bondi*, 9:25-cv-00250-MJT-CLS (E.D. Tex. Nov. 20, 2025). However, it bears mention that (1) these decisions are not binding, and (2) *Hurtado* should more weight considering the BIA's subject-matter expertise on the matter and the thoroughness of its analysis.

Recently, district courts in the Fifth Circuit have also followed *Hurtado*'s reasoning in denying habeas relief. *See Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331, *4 (S.D. Tex. Nov. 13, 2025) (“[t]he statutory definition of *applicant for admission* is broad and, indeed, so broad that Petitioner doesn't dispute that she is such a person. []. That factual determination itself resolves the question as to whether § 1225(b)(2)(A) applies”); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, *6 (W.D. La. Oct. 31, 2025) (“to conclude that an alien who has unlawfully entered the United States and managed to remain in the country for a sufficient

⁷ At least one court has, albeit in a different context, adopted the Federal Respondents' position here that an alien who long ago entered the country illegally is still considered an “applicant for admission.” *See Pena v. Hyde*, 2025 WL2108913 (D. Mass. July 28, 2025) (stating that Brazilian national who entered illegally in 2005 “remains an applicant for admission” in 2025).

period of time is entitled to a bond hearing, while those who seek lawful entry and submit themselves for inspection are not, not only conflicts with the unambiguous language of the governing statutes, but would also seemingly undermine the intent of Congress in enacting the IIRIRA”); *Garibay-Robledo v. Noem*, No. 1:25-CV-00177, ECF No. 9, at 1, 5 (N.D. Tex. Oct. 24, 2025) (attached as Exhibit A) (“the plain language of the mandatory-detention provision weighs heavily against the petitioner’s assertion that he is subject only to discretionary detention,” and arguments to the contrary “flatly contradict[] the statute’s plain language and the history of legislative changes enacted by Congress”). Federal Respondents urge the Court to follow such opinions. Their textually faithful analysis critically assesses the statutory question.

II. Petitioner’s Due Process Claim is Without Merit.

Petitioner flatly claims that detention without a bond redetermination hearing violates his right to due process. ECF No. 1, ¶ 50. However, because Petitioner is subject to mandatory detention pursuant to Section 1225(b)(2), he has received all process that is due.

The U.S. Supreme Court has upheld the constitutionality of other statutes mandating detention without bond hearings in immigration proceedings. In *Demore v. Kim*, the Court upheld the constitutionality of 8 U.S.C. § 1226(c), which mandates detention during removal proceedings without access to bond hearings. 538 U.S. 510, 522 (2018). In reaching this conclusion, the Court recognized “detention during deportation proceedings as a constitutionally valid aspect of the deportation process.” *Id.* at 523. The Court found support for this conclusion in earlier cases where it had rejected aliens claims that they “were entitled to be released from detention if they did not pose a flight risk” and where the aliens did receive an individualized finding of dangerousness. *Id.* at 524. Later, in *Jennings v. Rodriguez*, the U.S. Supreme Court upheld Sections 1225(b)(1) and (b)(2) despite the fact that they mandate detention during certain

proceedings and that they do not impose a limit on the length of detention or require periodic bond hearings. 583 U.S. 281, 297 (2018).

Even under *Mathews v. Eldridge*, 424 U.S. 319 (1976), the factors weigh against finding a due process violation. In *Mathews*, 424 U.S. at 335, the Supreme Court set forth a three-part test to determine whether civil detention violates a detainee’s due process rights. The factors considered are: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.*

The Government possesses a substantial interest in this matter. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.”). The power to remove aliens brings with it the constitutional power to detain them while that process plays out. *Carlson*, 342 U.S. at 328 (“Detention is necessarily part of this deportation procedure.”).⁸ Given the substantial interest the Government possesses in this area, the Government interest factor weighs strongly against

⁸ *See also Jennings*, 583 U.S. at 286 (“Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during those proceedings gives immigration officials time to determine an alien’s status without running the risk of the alien’s either absconding or engaging in criminal activity before a final decision have been made.”); *Demore*, 528 U.S. at 531 (Detention during removal proceedings is a constitutionally permissible part of the process.”); *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 inquiry into their true character, and while arrangements were being made for their deportation.”).

finding a due process violation if Petitioner is subject to mandatory detention without a bond hearing.

The first *Matthews* factor, regarding the Petitioner's interest, also fails to support Petitioner. In *Demore*, the Supreme Court recognized that “[i]n the exercise of its broad powers over immigration and naturalization, Congress regularly makes rules that would be unacceptable if applied to its citizens.” 538 U.S. at 521 (quoting *Matthews v. Diaz*, 426 U.S. 67, 79–80 (1976)). Analysis of the Petitioner's private interest must therefore account for the fact that the Supreme Court has never held that noncitizens have a constitutional right to be released from custody during removal proceedings and, in fact, has held the opposite. *Id.* at 530; *Carlson*, 342 U.S. at 538.

Moreover, the private interest in this case is not the interest in being free from detention but rather being free from detention *in the United States*. If Petitioner merely sought freedom from physical detention, he would agree to deportation. In truth, he seeks to protect a right to be at liberty *in the United States*. But he does not have that right during his removal proceedings. Accordingly, the private interest factor does not support Petitioner's due process argument.

Finally, the second factor—the risk of erroneous deprivation of the Petitioner's private rights—also fails to support an argument that Petitioner has been denied due process. Petitioner is subject to mandatory detention under Section 1225. His detention does not depend on his dangerousness or risk of flight. The lack of a hearing to evaluate these factors does not increase the likelihood of erroneous deprivation because Petitioner *shall* be detained regardless of his dangerousness or flight risk. *See* 8 U.S.C. § 1225(b)(2).

CONCLUSION

Petitioner is lawfully detained pending removal proceedings, and he does not claim any immigration status that would entitle him to immediate release from custody. The Court should deny this petition.

Respectfully submitted,

JAY R. COMBS
UNITED STATES ATTORNEY

/s/ L. Frank Coan, Jr.

L. Frank Coan, Jr.
Assistant United States Attorney
Bar No. 170966 (Georgia)
110 N. College, Suite 700
Tyler, Texas 75702
(903) 590-1400
(903) 590-1439 Fax
frank.coan@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2025, a true and correct copy of the foregoing document was filed electronically with the court and has been sent to counsel of record via the court's electronic filing system.

/s/ L. Frank Coan, Jr.

L. Frank Coan, Jr.
Assistant United States Attorney