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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JACQUELINE ANTONIA MACONEL-  
ARGUELLO,

Petitioner,

v.

CHRISTOPHER CHESTNUT, ET AL.,

Respondents.<sup>1</sup>

CASE NO. 1:25-CV-01588-KES-EPG

OPPOSITION TO PETITION FOR WRIT OF  
HABEAS CORPUS

<sup>1</sup> The Court should dismiss all respondents other than the Warden of the California City ICE Processing Center because the only proper respondent to a habeas petition is the custodian having immediate custody of the petitioner. *See* 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024).

# TABLE OF CONTENTS

|             |                                                                                                                                                                                 |           |
|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>I.</b>   | <b>INTRODUCTION.....</b>                                                                                                                                                        | <b>1</b>  |
| <b>II.</b>  | <b>FACTUAL BACKGROUND.....</b>                                                                                                                                                  | <b>1</b>  |
| <b>III.</b> | <b>STATUTORY &amp; REGULATORY FRAMEWORK.....</b>                                                                                                                                | <b>2</b>  |
| <b>A.</b>   | <b>Pre-IIRIRA, Aliens Unlawfully Present in the United States Had<br/>    Preferential Treatment.....</b>                                                                       | <b>2</b>  |
| <b>B.</b>   | <b>IIRIRA Eliminated This Preference and Mandated Detention of<br/>    Applicants for Admission.....</b>                                                                        | <b>3</b>  |
| <b>C.</b>   | <b>DHS Concluded That § 1225(b)(2) Requires Detention of All<br/>    Applicants for Admission.....</b>                                                                          | <b>6</b>  |
| <b>IV.</b>  | <b>LEGAL ANALYSIS .....</b>                                                                                                                                                     | <b>7</b>  |
| <b>1.</b>   | <b>Petitioner Is an Applicant for Admission under §1225(a) .....</b>                                                                                                            | <b>7</b>  |
| <b>2.</b>   | <b>Petitioner’s Detention is Mandatory Under the Plain Language of<br/>    § 1225(b)(2). .....</b>                                                                              | <b>8</b>  |
| <b>3.</b>   | <b>Petitioner Has Not Clearly Shown that the Due Process Clause<br/>    Requires a Bond Hearing Under the Circumstances.....</b>                                                | <b>14</b> |
| <b>4.</b>   | <b>Even if Petitioner clearly shows she is entitled to preliminary<br/>    relief, that relief should be the provision of a bond hearing—not<br/>    immediate release.....</b> | <b>15</b> |

# TABLE OF AUTHORITIES

## CASES

|                                                                                                        |                |
|--------------------------------------------------------------------------------------------------------|----------------|
| <i>Alvarez-Garcia v. Ashcroft</i> ,<br>378 F.3d 1094 (9th Cir. 2004) .....                             | 9              |
| <i>Angov v. Lynch</i> ,<br>788 F.3d 893 (9th Cir. 2015) .....                                          | 16             |
| <i>Barton v. Barr</i> ,<br>590 U.S. 222 (2020) .....                                                   | 12             |
| <i>Bowen v. Massachusetts</i> ,<br>487 U.S. 879 (1988) .....                                           | 18             |
| <i>Cortes Alonzo v. Noem</i> ,<br>No. 25-01519, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025) .....        | 10, 11, 13, 14 |
| <i>Demore v. Kim</i> ,<br>538 U.S. 510 (2003) .....                                                    | 15             |
| <i>Dep't of Homeland Sec. v. Thuraissigian</i> ,<br>591 U.S. 103 (2020) .....                          | passim         |
| <i>Diaz v. Garland</i> ,<br>53 F.4th 1189 (9th Cir. 2022) .....                                        | 14, 15         |
| <i>Doe v. Andrews</i> ,<br>1:25-cv-00333-JLT-HBK, 2025 WL 3280777 (E.D. Cal. Nov. 25, 2025) .....      | 13             |
| <i>Doe v. Garland</i> ,<br>109 F.4th 1188 (9th Cir. 2024) .....                                        | 1              |
| <i>Guerrier v. Garland</i> ,<br>18 F.4th 304 (9th Cir. 2021) .....                                     | 17             |
| <i>Guzman v. Tippy</i> ,<br>130 F.3d 64 (2d Cir. 1997) .....                                           | 18             |
| <i>Hing Sum v. Holder</i> ,<br>602 F.3d 1092 (9th Cir. 2010) .....                                     | 2, 3           |
| <i>Hose v. I.N.S.</i> ,<br>180 F.3d 992 (9th Cir. 1999) .....                                          | 2              |
| <i>Javier Ceja Gonzalez v. Noem</i> ,<br>No. 25-02054, 2025 WL 2633187 (C.D. Cal. Aug. 13, 2025) ..... | 16             |

|    |                                                                                 |           |
|----|---------------------------------------------------------------------------------|-----------|
| 1  | <i>Jennings v. Rodriguez,</i>                                                   |           |
| 2  | 583 U.S. 281 (2018).....                                                        | passim    |
| 3  | <i>Keo v. Warden of the Mesa Verde ICE Processing Center,</i>                   |           |
| 4  | No. 24-00919, 2025 WL 1029392 (E.D. Cal. Apr. 7, 2025) .....                    | 15        |
| 5  | <i>Lalani v. Perryman,</i>                                                      |           |
| 6  | 105 F.3d 334 (7th Cir. 1997) .....                                              | 18        |
| 7  | <i>Landon v. Plasencia,</i>                                                     |           |
| 8  | 459 U.S. 21 (1982).....                                                         | 2, 16, 18 |
| 9  | <i>Lepe v. Andrews,</i>                                                         |           |
| 10 | No. 25-01163, 2025 WL 2716910 & n.5 (E.D. Cal. Sept. 23, 2025) .....            | 9, 10     |
| 11 | <i>Lexecon Inc. v. Milberg Weiss Bershad Hynes &amp; Lerach,</i>                |           |
| 12 | 523 U.S. 26 (1998).....                                                         | 8         |
| 13 | <i>Little Sisters of the Poor Saints Peter &amp; Paul Home v. Pennsylvania,</i> |           |
| 14 | 591 U.S. 657 (2020).....                                                        | 8         |
| 15 | <i>Loper Bright Enters. v. Raimondo,</i>                                        |           |
| 16 | 603 U.S. 369 (2024).....                                                        | 13        |
| 17 | <i>Marchese v. Shearson Hayden Stone, Inc.,</i>                                 |           |
| 18 | 822 F.2d 876 (9th Cir. 1987) .....                                              | 12        |
| 19 | <i>Martinez v. Att’y General of U.S.,</i>                                       |           |
| 20 | 693 F.3d 408 (2012).....                                                        | 3         |
| 21 | <i>Matter of Lemus-Losa,</i>                                                    |           |
| 22 | 25 I. & N. Dec. 734 (BIA 2012) .....                                            | 7, 9, 10  |
| 23 | <i>Matter of M-S,</i>                                                           |           |
| 24 | 27 I. & N. Dec. 509 (2019) .....                                                | 12        |
| 25 | <i>Matter of Q. Li,</i>                                                         |           |
| 26 | 29 I. & N. Dec. 66 (BIA 2025) .....                                             | 8         |
| 27 | <i>Matter of Yajure Hurtado,</i>                                                |           |
| 28 | 29 I. & N. Dec. 216 (BIA 2025) .....                                            | passim    |
|    | <i>Morales v. Trans World Airlines, Inc.,</i>                                   |           |
|    | 504 U.S. 374 (1992).....                                                        | 8         |
|    | <i>Nishimuru Ekiu v. United States,</i>                                         |           |
|    | 142 U.S. 651 (1892).....                                                        | 2, 17     |

|    |                                                              |            |
|----|--------------------------------------------------------------|------------|
| 1  | <i>Niz-Chavez v. Garland</i> ,                               |            |
| 2  | 593 U.S. 155 (2021).....                                     | 13         |
| 3  | <i>Nken v. Holder</i> ,                                      |            |
| 4  | 556 U.S. 418 (2009).....                                     | 15         |
| 5  | <i>Pena v. Hyde</i> ,                                        |            |
| 6  | No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025) ..... | 11         |
| 7  | <i>Peyton v. Rowe</i> ,                                      |            |
| 8  | 391 U.S. 54 (1968).....                                      | 18         |
| 9  | <i>Rodriguez Vazquez v. Bostock</i> ,                        |            |
| 10 | 779 F. Supp. 3d 1239 (W.D. Wash. 2025).....                  | 1          |
| 11 | <i>Rumsfeld v. Padilla</i> ,                                 |            |
| 12 | 542 U.S. 426 (2004).....                                     | 1          |
| 13 | <i>Shaughnessy v. United States ex rel. Mezei</i> ,          |            |
| 14 | 345 U.S. 206 (1953).....                                     | 16, 17     |
| 15 | <i>Singh v. Holder</i> ,                                     |            |
| 16 | 638 F.3d 1196 (9th Cir. 2011) .....                          | 14         |
| 17 | <i>Torres v. Barr</i> ,                                      |            |
| 18 | 976 F.3d 918 (9th Cir. 2020) .....                           | 3, 12      |
| 19 | <i>United States ex rel. Knauff v. Shaughnessy</i> ,         |            |
| 20 | 338 U.S. 537 (1950).....                                     | 14, 16, 18 |
| 21 | <i>United States v. Gambino-Ruiz</i> ,                       |            |
| 22 | 91 F.4th 981 (9th Cir. 2024) .....                           | 12         |
| 23 | <i>United States v. Woods</i> ,                              |            |
| 24 | 571 U.S. 31 (2013).....                                      | 10         |
| 25 | <i>Waldman Pub. Corp. v. Landoll, Inc.</i> ,                 |            |
| 26 | 43 F.3d 775 (2d Cir. 1994).....                              | 15         |
| 27 | <b>STATUTES</b>                                              |            |
| 28 | 5 U.S.C. § 704.....                                          | 18         |
|    | 8 U.S.C. § 1101(a)(13) (1994).....                           | 2          |
|    | 8 U.S.C. § 1101(a)(13)(A).....                               | 3          |
|    | 8 U.S.C. § 1125(b)(2)(A).....                                | 8          |

|    |                                    |               |
|----|------------------------------------|---------------|
| 1  | 8 U.S.C. § 1127.....               | 6             |
| 2  | 8 U.S.C. § 1182(d)(5)(A).....      | 5             |
| 3  | 8 U.S.C. § 1225(a) .....           | 8, 9          |
| 4  | 8 U.S.C. § 1225(a)(1).....         | passim        |
| 5  | 8 U.S.C. § 1225(a)(3).....         | 7, 8, 10      |
| 6  | 8 U.S.C. § 1225(a)-(b) (1995)..... | 2             |
| 7  | 8 U.S.C. § 1225(b) .....           | 6, 7, 13      |
| 8  | 8 U.S.C. § 1225(b)(2) .....        | 1, 6          |
| 9  | 8 U.S.C. § 1225(b)(2)(A).....      | passim        |
| 10 | 8 U.S.C. § 1226.....               | 5, 13         |
| 11 | 8 U.S.C. § 1226(a) .....           | 6, 10, 12, 16 |
| 12 | 8 U.S.C. § 1226(c)(1)(E).....      | 6             |
| 13 | 8 U.S.C. § 1229(a)(1).....         | 13            |
| 14 | 8 U.S.C. § 1229a.....              | 7, 13         |
| 15 | 8 U.S.C. §§ 1225(b)(1)-(2) .....   | 4             |
| 16 | 8 U.S.C.A. § 1226(c) .....         | 12            |
| 17 | 8 U.S.C § 1225.....                | 12, 17        |
| 18 | 28 U.S.C. § 2242.....              | 1             |
| 19 | U.S.C. § 1182(d)(5)(A).....        | 5             |
| 20 | U.S.C. § 1225(b)(2)(A).....        | 13            |
| 21 | <b>REGULATIONS</b>                 |               |
| 22 | 8 C.F.R. § 235.5(b)(4)(ii).....    | 4             |
| 23 | 8 C.F.R. § 253.3(b)(1)(ii).....    | 5             |
| 24 |                                    |               |
| 25 |                                    |               |
| 26 |                                    |               |
| 27 |                                    |               |
| 28 |                                    |               |

**I. INTRODUCTION**

Respondents oppose the Petition for Writ of Habeas Corpus filed by Petitioner, on the grounds that Petitioner, as an arriving noncitizen who is present in the United States without admission, is mandatorily detained during removal proceedings, as provided by 8 U.S.C. § 1225(b)(2).<sup>2</sup> As such, Petitioner is ineligible for immediate release or the bond or custody hearing she requests. Respondents therefore request that the Court dismiss the Petition or, in the alternative, deny the Petition for the reasons stated herein

**II. FACTUAL BACKGROUND**

Petitioner is a native and citizen of Nicaragua who, on or about October 4, 2022, entered the United States without admission or parole. Declaration of Deportation Officer Patrick Cruz ¶ 5. United States Customs and Border Patrol apprehended Petitioner and processed her for expedited removal. *Id.* On October 7, 2022, Petitioner was issued an Interim Notice Authorizing Parole after being found eligible for enrollment into the alternative to detention program. *Id.* at ¶ 7. ICE informed Petitioner that parole is entirely within the discretion of ICE and can be terminated at any time and for any reason. *Id.*

On December 13, 2022, Petitioner was issued a Notice to Appear and placed into removal proceedings in immigration court, as an alien present without admission or parole and as an alien not in possession of suitable travel documents, and charged with removability under sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act. *Id.* at ¶ 8. On January 14, 2025, the Immigration Judge found Petitioner removable from the United States, notwithstanding the pending application for relief from removal. *Id.* at ¶ 9.

On October 28, 2025, Petitioner appeared at at Intense Supervision Appearance Program office for her scheduled check-in and was taken into custody. *Id.* at ¶ 10. Petitioner's next immigration court hearing is scheduled for January 14, 2026. *Id.* at ¶ 11. Petitioner remains detained at the California City ICE Processing Center under INA § 235(b)(2).

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<sup>2</sup> Petitioner incorrectly asserts that she is detained under Section 1226(a). The government alerts the Court to the fact that the district court's order in *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025) (addressing the applicability of section 1225(b)(2)) has been appealed to the Ninth Circuit on an expedited basis and appears to be set for argument on the February 2026 calendar (Ninth Circuit Docket No. 25-6842)).

### III. STATUTORY & REGULATORY FRAMEWORK

“The power to admit or exclude [non-citizens] is a sovereign prerogative.” *Dep’t of Homeland Sec. v. Thuraissigian*, 591 U.S. 103, 139 (2020) (alteration omitted) (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)); *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991) (“Control over immigration is a sovereign prerogative.”). “[T]he Constitution gives ‘the political department of the government’ plenary authority to decide which [non-citizens] to admit.” *Id.*, quoting *Nishimuru Ekiu v. United States*, 142 U.S. 651, 659 (1892)); see also *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) (“To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.”).

#### A. Pre-IIRIRA, Aliens Unlawfully Present in the United States Had Preferential Treatment

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*, 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.” *Id.*

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.

*Id.* (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. IIRIRA Eliminated This Preference and Mandated Detention of 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*, 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,” *Thuraissigiam*, 591 U.S. at 109-113, 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*, 583 U.S. at 287. It requires that those aliens be detained pending Section 240 removal proceedings:

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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 [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added). *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 ... 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 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).<sup>3</sup>

Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for) aliens who (1) are

<sup>3</sup> Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

1 inadmissible because they are physically present in the United States without admission or parole, have  
2 committed a material misrepresentation or fraud, or lack required documentation; and (2) are “charged  
3 with, arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which  
4 constitute the essential elements of” certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

5 **C. DHS Concluded That § 1225(b)(2) Requires Detention of All Applicants for Admission**

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

10 On July 8, 2025, DHS revisited its legal position on detention and release authorities and issued  
11 interim guidance that brought the Executive’s practices in line with the statute’s plain text. Specifically,  
12 DHS concluded that all aliens who enter the country without being admitted or who otherwise arrive in  
13 the United States without proper documentation are “subject to detention under INA § 235(b) [8 U.S.C.  
14 § 1225(b)] and may not be released from ICE custody except by INA § 212(d)(5) parole.” As a result,  
15 the “only aliens eligible for a custody determination and release on recognizance, bond, or other  
16 conditions under the INA § 236(a) [8 U.S.C. § 1226(a)] are aliens admitted to the United States and  
17 chargeable with deportability under INA § 237 [8 U.S.C. § 1127].”

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

21 Aliens ... who surreptitiously cross into the United States remain  
22 applicants for admission until and unless they are lawfully inspected and  
23 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.”

24 29 I. & N. Dec. at 228; *see also id.* at 225 (“Immigration Judges lack authority to hear bond  
25 requests or to grant bond to aliens ... who are present in the United States without admission”).

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27 ///

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IV. LEGAL ANALYSIS

A. Petitioner's Detention Is Mandated by Statute

1. Petitioner Is an Applicant for Admission under §1225(a)

The statute defines an “applicant for admission” as “[a]n 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.” 8 U.S.C. § 1225(a)(1). Thus, the statute identifies two categories of aliens: (1) those “present in the United States who ha[ve] not been admitted”; and (2) those “who arrive[] in the United States . . . whether or not at a designated port of arrival.” *Id.* The statute expressly treats a person in *either* category as an “applicant for admission.” *Id.*; *see also Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) (“Congress has defied the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission”).

Applicants for admission must be inspected by immigration officers to determine whether they can be admitted to the United States under immigration laws. 8 U.S.C. § 1225(a)(3); *Jennings*, 583 U.S. at 287. 8 U.S.C. §1225(b) governs the detention of “applicants for admission” during their removal proceedings. Applicants for admission fall into three categories. The first two categories consist of: (1) arriving aliens who are inadmissible because they lack proper entry documents or have falsified/misrepresented their entry documents; and (2) those aliens who have not established to the satisfaction of an immigration officer that they have been physically present in the United States for two years or more. Aliens that fall into either one of these two categories: (a) are subject to expedited removal; and (b) are subject to mandatory detention during the expedited removal process. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV).<sup>4</sup>

The third category of applicants for admission—applicable here—consists of those aliens who are “seeking admission” and who an immigration officer has determined are “not clearly and beyond a doubt entitled to be admitted.” *See* 8 U.S.C. § 1225(b)(2)(A). Aliens who fall within this third category

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<sup>4</sup> If an alien who is subject to an expedited removal order establishes a credible fear of persecution in his home country, the alien is then moved to the standard removal proceeding (a removal proceeding under 8 U.S.C. § 1229a), but the alien is still subject to mandatory detention under section 1225(b)(1) during that standard removal proceeding.

are eligible for standard removal proceedings, but they are nevertheless subject to mandatory detention during their standard removal proceedings. *Id.*; *Jennings*, 583 U.S. at 299 (stating that aliens subject to section 1225(b)(1) and aliens subject to section 1225(b)(2) are both subject to mandatory detention for the duration of removal proceedings); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (stating that “for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299).

**2. Petitioner’s Detention is Mandatory Under the Plain Language of § 1225(b)(2).**

Although § 1226(a) “conceivably applies to all aliens” in removal proceedings, a different section – section 1225 – governs the detention of a specific subset who are “applicants for admission.” *See* 8 U.S.C. § 1225(a); *Altamirano Ramos v. Lyons*, \_\_\_ F. Supp. 3d \_\_\_, No. 25-09785, 2025 WL 3199872, at \*6 (C.D. Cal. Nov. 12, 2025) (applying “the ‘commonplace’ principle of statutory interpretation that ‘the specific governs the general.’”) (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992)). 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), and the statute makes no exception for the duration of the alien’s presence in the country or where in the country he is located. Therefore, the statute’s plain text mandates that DHS detain all “applicants for admission” who do not fall within one of its exceptions.

Petitioner falls squarely within the statutory definition. She was “present in the United States,” and there is no dispute that she has “not been admitted.” 8 U.S.C. § 1225(a). Moreover, Petitioner cannot—and did not—establish that she is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Thus, the unambiguous language of Section 1225(b)(2) required DHS to detain Petitioner, who was present in the United States without admission. *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.”). Any contrary reading would disregard the clear text and subvert Congress’s manifest purposes in adopting Section 1225(b)(2)(A).

Section 1225 defines “applicant for admission” to include “[a]n alien present in the United States who has not been admitted.” *Id.* § 1225(a)(1). This definition adopts the longstanding “entry fiction” doctrine, under which “an alien who is physically present but has not been lawfully admitted into the country is ‘legally considered to be detained at the border and hence as never having effected entry into this country.’” *Altamirano Ramos*, 2025 WL 3199872, at \*7 (quoting *Alvarez-Garcia v. Ashcroft*, 378 F.3d 1094, 1097 (9th Cir. 2004)); *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) (“Congress has defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission[.]”).<sup>5</sup>

Section 1225(b)(2)(A) does not only apply to noncitizens arriving at U.S. ports of entry or who recently entered the United States. That type of argument would supply a new definition of “applicant for admission” that is contrary to the text and purpose of § 1225 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”). *See Yajure Hurtado*, 29 I. & N. Dec. at 220 (holding that “the INA require[s] that all applicants for admission, even those . . . who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings”); *see also id.* at 221 (rejecting the contention “that because [a] noncitizen has been residing in the interior of the United States for almost 3 years . . . , he cannot be considered as ‘seeking admission’ as the phrase is used in . . . 8 U.S.C. § 1225(b)(2)(A)”).

To be sure, this Court has previously declined to follow *Yajure Hurtado*. *See Lepe v. Andrews*, No. 25-01163, 2025 WL 2716910, at \*4 & n.5 (E.D. Cal. Sept. 23, 2025). This Court reasoned that *Yajure Hurtado*’s holding was contrary to the plain meaning of § 1225(b)(2)(A), disregarded the

<sup>5</sup> Indeed, by stating that a noncitizen present in the United States without admission “shall be *deemed*” to be an applicant for admission, *see* 8 U.S.C. § 1225(a)(1) (emphasis added), the statute acknowledges the “unconventional” usage of the term consistent with the “entry fiction” doctrine. *Deem*, *Black’s Law Dictionary* (11th ed. 2019) (“To treat (something) as if (1) it were really something else, or (2) it has qualities that it does not have.”).

1 relationship between §§ 1225 and 1226, made the Laken Riley Act's amendment to § 1226(c)  
2 superfluous, and was inconsistent with "prior statutory interpretation and practice." *See id.*  
3 Respectfully, however, these points do not withstand scrutiny and should be reconsidered. *See, e.g.,*  
4 *Altamirano Ramos*, 2025 WL 3199872, at \*4 (reconsidering this reasoning because, "after additional  
5 research and analysis, the court has concluded that Petitioner is subject to mandatory detention under  
6 § 1225(b)(2)(a), and that Petitioner is not eligible for a bond hearing under 8 U.S.C. § 1226(a)"); *see*  
7 *also Cortes Alonzo v. Noem*, No. 25-01519, 2025 WL 3208284, at \*3 (E.D. Cal. Nov. 17, 2025)  
8 (reaching the same conclusion).

9 *First*, the fact that § 1225(b)(2)(A) refers to an "applicant for admission" as also "an alien  
10 seeking admission" does not purport to require that a noncitizen be "'actively' seeking admission" to the  
11 United States in order to be subject to mandatory detention. *Contra Lepe*, 2005 WL 2716910, at \*4–5.  
12 Indeed, the phrases "applicant for admission" and "seeking admission" are merely the noun- and verb-  
13 forms of the same concept. *Altamirano Ramos*, 2025 WL 3199872, at \*5 ("Petitioner is 'seeking  
14 admission' because the statute treats an alien who is 'an applicant for admission' as someone who is,  
15 legally speaking, 'seeking admission.'"); *see Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 138 F.4th  
16 1102, 1119 (9th Cir. 2025) (explaining that § 1225(a)(1), which defines "applicant for admission," is  
17 "solely about people *seeking admission* to the country" (emphasis added)); *see also Jennings v.*  
18 *Rodriguez*, 583 U.S. 281, 297 (2018) ("As noted, § 1225(b) applies primarily to aliens *seeking entry* into  
19 the United States ("applicants for admission" in the language of the statute)." (emphasis added)).

20 The general equivalence of these phrases is confirmed in other sections of the INA. *See, e.g.,*  
21 8 U.S.C. § 1225(a)(3) ("All aliens . . . *who are applicants for admission or otherwise seeking admission*  
22 . . . shall be inspected by immigration officers." (emphasis added)); *Altamirano Ramos*, 2025 WL  
23 3199872, at \*5 ("The use of the phrase 'or otherwise' suggests that 'seeking admission' is an appositive,  
24 *i.e., 'a word or phrase that is synonymous with what precedes it.'*" (quoting *United States v. Woods*,  
25 571 U.S. 31, 45 (2013))). That is why the "unconventional" meaning of "applicant for admission" in  
26 § 1225(a)(1) carries over to the verb-form "seeking admission" in the statutory scheme. *Matter of*  
27 *Lemus-Losa*, 25 I & N Dec. at 743 (noting that "many people who are not *actually* requesting  
28 permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking

admission' under the immigration laws"): *id.* at 743 n.6 (noting the phrase "seeks admission," like "applicant for admission," is a "term of art"); *accord Cortes Alonzo*, 2025 WL 3208284, at \*4.

*Second*, the Supreme Court's prefatory overview of §§ 1225 and 1226 in *Jennings* did not limit the application of § 1225 to "the Nation's borders and ports of entry." *Contra Lepe*, 2005 WL 2716910, at \*6. Neither the existence nor the significance of any geographic distinction between §§ 1225 and 1226 was at issue in *Jennings*, where the Court only addressed whether the text of either section required periodic bond hearings. *See* 583 U.S. at 297, 302–03; *Cortes Alonzo*, 2025 WL 3208284, at \*4 ("Reliance on *Jennings* . . . also appears debatable."). The fact that some parts of § 1225 discuss activities at the border and ports of entry does not preclude § 1225's application to noncitizens who are present in the United States without admission, as made clear by the text of § 1225(a)(1) itself. *See, e.g., Pena v. Hyde*, No. 25-11983, 2025 WL 2108913, at \*1–3 (D. Mass. July 28, 2025) (holding that a noncitizen who was never admitted but lived in the United States and was later detained after a traffic stop "remain[ed] an applicant for admission" and "his continued detention [was] therefore authorized by § 1225(b)(2)(A)"); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) ("The power to admit or exclude aliens is a sovereign prerogative; the Constitution gives the political department of the government plenary authority to decide which aliens to admit; and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted. This rule would be meaningless if it became inoperative as soon as an arriving alien set foot on U. S. soil." (cleaned up)).

Indeed, as the court in *Altamirano Ramos* explained, importing some geographical or temporal distinction between §§ 1225 and 1226 "creates difficult and improper line drawing exercises for courts and is inconsistent with the entry fiction doctrine." 2025 WL 3199872, at \*7. For example:

[I]f § 1225(a) is interpreted as applying only to aliens at the border (despite no support in the text for that limitation), then where does the statute's application end? One mile from the border? Twenty-five miles? And how quickly must the alien be apprehended before the statute no longer applies? Within one hour? One day? One week? The statute does not address those difficult questions (because it is not temporally or geographically limited and instead applies to *any* alien who is "present in the United States who has not been admitted").

1 *Id.* (quoting 8 U.S.C. § 1225(a)(1)). Those questions, moreover, “are not only difficult”— “they are also  
 2 not for the courts to answer” because “they are questions ‘for the political department of the  
 3 government,’ which has ‘plenary authority to decide which aliens to admit’ and the ‘procedures to be  
 4 followed’ in that admission.” *Id.* at \*8 (quoting *Thuraissigiam*, 591 U.S. at 139, 140).

5 At bottom, *Yajure Hurtado* correctly holds that the distinction between §§ 1225 and 1226 is not  
 6 the location where a noncitizen is found or the duration of their presence in the United States. Rather,  
 7 applying § 1225 instead of § 1226 turns on whether the noncitizen was admitted to the United States at  
 8 the time of entry. 29 I. & N. Dec. at 218–19; *see also Matter of M-S-*, 27 I. & N. Dec. 509, 516 (2019)  
 9 (explaining that “section 235 [8 U.S.C. § 1225] (under which detention is mandatory) and section 236(a)  
 10 [8 U.S.C. § 1226(a)] (under which detention is permissive) can be reconciled only if they apply to  
 11 different classes of aliens”). This interpretation comports with the IIRIRA, which “added § 1225(a)(1)”  
 12 to “ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical  
 13 presence in the country, are placed on equal footing in removal proceedings under the INA—in the  
 14 position of an ‘applicant for admission.’” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020); *see United*  
 15 *States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024) (refusing “to interpret the INA in a way that  
 16 would in effect repeal that statutory fix” in the IIRIRA).

17 Third, “the fact that section 236(c) of the INA, 8 U.S.C.A. § 1226(c), mandates detention of a  
 18 subset of the category of aliens” per the Laken Riley Act “that are also subject to mandatory detention  
 19 under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), is not a basis on which to determine  
 20 that section 235(b)(2)(A) is null and void.” *Yajure Hurtado*, 29 I. & N. Dec. at 222. Rather,  
 21 “redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure,  
 22 sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of  
 23 the shortcomings of human communication.” *Barton v. Barr*, 590 U.S. 222, 239 (2020). And it is  
 24 unsurprising that the Laken Riley Act made “doubly sure” that a subset of noncitizens was subject to  
 25 mandatory detention by amending § 1226(c), given that the former Immigration and Naturalization  
 26 Service had long ignored the plain text of § 1225(a)(1) and the IIRIRA mandating such detention. *See*  
 27 *Yajure Hurtado*, 29 I. & N. Dec. at 225 n.6 (citing 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)); *see also*  
 28 *Marchese v. Shearson Hayden Stone, Inc.*, 822 F.2d 876, 878 (9th Cir. 1987) (courts “presume that

1 Congress was aware of the existing administrative regulations and interpretations”); *Cortes Alonzo*,  
2 2025 WL 3208284, at \*4 (observing that the Laken Riley Act “was passed before the new interpretation  
3 of § 1225 was issued,” and the Act “could not therefore ‘perform the work’ of the expansive reading of  
4 § 1225 because that work had not yet been done”).

5 *Finally*, although the “longstanding practice of the government” can “inform [a court’s]  
6 determination of what the law is,” this interpretive crutch is proper only where the meaning of a statute  
7 is “doubtful and ambiguous.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385–86 (2024). Here,  
8 §§ 1225(a)(1) and 1225(b)(2)(A) are not doubtful and ambiguous. They are “clear and explicit in  
9 requiring mandatory detention of all aliens who are applicants for admission, without regard to how  
10 many years the alien has been residing in the United States without lawful status.” *Yajure Hurtado*,  
11 29 I. & N. Dec. at 226. Whether immigration judges previously ignored this clear statutory command is  
12 of no moment. *See Niz-Chavez v. Garland*, 593 U.S. 155, 159, 169 (2021) (rejecting “the government’s  
13 practice of issuing documents labeled notices to appear that failed to include the time and place for the  
14 alien’s removal hearing” because the practice, even though longstanding and formalized in regulations,  
15 was contrary to the statutory text of 8 U.S.C. § 1229(a)(1) and the IIRIRA).

16 To reiterate, to interpret 8 U.S.C. § 1225(b)(2)(A) as not applying to all applicants for admission  
17 would render it meaningless. As explained above, Congress expanded 8 U.S.C. § 1225(b) in 1996 to  
18 apply to a broader category of aliens, including those aliens who crossed the border illegally. IIRIRA  
19 § 302. There would have been no need for Congress to make such a change if 8 U.S.C. § 1226 was  
20 meant to apply to aliens present without admission. Thus, 8 U.S.C. § 1226 does not have any controlling  
21 impact on the directive in 8 U.S.C. § 1225(b)(2)(A) that “if the examining immigration officer  
22 determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the  
23 alien shall be detained for a proceeding under [8 U.S.C. § 1229a].” 8 U.S.C. § 1225(b)(2)(A).

24 The government recognizes that this Court and many others have held against the government on  
25 this issue, but believes that the analysis set forth in *Alonzo v. Noem*, \_\_\_ F.3d \_\_\_, 2025 WL 3208284  
26 (E.D. Cal. Nov. 17, 2025), as well as *Doe v. Andrews*, 1:25-cv-00333-JLT-HBK, 2025 WL 3280777  
27 (E.D. Cal. Nov. 25, 2025) (Findings and Recommendations) is the correct one.

3. **Petitioner Has Not Clearly Shown that the Due Process Clause Requires a Bond Hearing Under the Circumstances**

In *Mathews v. Eldridge*, the Supreme Court held that the “identification of the specific dictates of due process generally requires consideration of three distinct factors.” 424 U.S. 319, 334–35 (1976). They 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.* at 335.

The Supreme Court, however, has never used this balancing test to divine the due-process requirements for immigration detention. *Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (“[T]he Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*.” (citations omitted)); *id.* at 1214 (“In resolving familiar immigration-detention challenges, the Supreme Court has not relied on the *Mathews* framework.”) (Bumatay, J., concurring). This is particularly unsurprising for noncitizens in Petitioner’s situation because, according to longstanding precedent, noncitizens who were not admitted into the United States have “only those rights regarding admission that Congress has provided by statute,” and “the Due Process Clause provides nothing more.” *Thuraissigiam*, 591 U.S. at 140; *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) (“Whatever the procedure authorized by Congress is, it is due process . . . .”); *see Cortes Alonzo*, 2025 WL 3208284, at \*5 (holding that, if a bond hearing is not required by § 1225, then the failure to provide one to an “applicant for admission” cannot be a violation of due process); *Altamirano Ramos*, 2025 WL 3199872, at \*5 (same).

In any event, even if the *Mathews* test applied here, Petitioner has not clearly shown that the test requires a bond hearing.

First, although a noncitizen’s private interest in “freedom from prolonged detention” is “unquestionably substantial,” *Singh v. Holder*, 638 F.3d 1196, 1208 (9th Cir. 2011), the same cannot be said for freedom from all detention itself. Petitioner has been detained for several weeks pending removal proceedings, and the Supreme Court and this Court have repeatedly upheld mandatory

detention during removal proceedings against due-process challenges, even where removal proceedings are prolonged. *Demore v. Kim*, 538 U.S. 510, 530–31 (2003); *Keo v. Warden of the Mesa Verde ICE Processing Center*, No. 24-00919, 2025 WL 1029392, at \*8 (E.D. Cal. Apr. 7, 2025) (holding that the mandatory detention of a lawful permanent resident for 22 months during removal proceedings was constitutional, and no bond hearing was required, because the removal proceedings had a “definite termination point” and the petitioner’s detention was not indefinite (citing *Jennings*, 583 U.S. 304; *Demore*, 538 U.S. at 527, 538)).

*Second*, Petitioner has not clearly shown that a bond hearing would decrease the risk of her being erroneously deprived of her liberty. As noted, Petitioner must concede she is an “applicant for admission,” there is no evidence that she “is not clearly and beyond a doubt entitled to be admitted” to the United States, and it thus appears that she is subject to mandatory detention. 8 U.S.C. §§ 1225(a)(1), (b)(2)(A).

*Finally*, “the government clearly has a strong interest in preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (quoting *Demore*, 538 U.S. at 518). And, “[t]hrough detention, the government likewise seeks to ‘increas[e] the chance that, if ordered removed, the aliens will be successfully removed.’” *Id.* (quoting *Demore*, 538 U.S. at 528); *see also Nken v. Holder*, 556 U.S. 418, 436 (2009) (“There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable . . . permits and prolongs a continuing violation of United States law.”). In addition, “[t]he risk of a detainee absconding also inevitably escalates as the time for removal becomes more imminent.” *Rodriguez Diaz*, 53 F.4th at 1208.

**4. Even if Petitioner clearly shows she is entitled to preliminary relief, that relief should be the provision of a bond hearing—not immediate release.**

As discussed, Petitioner has failed to clearly show that she is entitled to a bond hearing, as it appears that she is subject to mandatory detention under § 1225(b)(2)(A). But even if the Court determines that Petitioner should receive a bond hearing, the proper course is to order that such hearing occur—not immediate release from custody. *See Waldman Pub. Corp. v. Landoll, Inc.*, 43 F.3d 775, 785 (2d Cir. 1994) (“Injunctive relief should be narrowly tailored to fit specific legal violations.”); *see*

1 *also, e.g., Javier Ceja Gonzalez v. Noem*, No. 25-02054, 2025 WL 2633187, at \*6 (C.D. Cal. Aug. 13,  
2 2025) (ordering the government to “release Petitioners or, in the alternative, provide each Petitioner with  
3 an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven  
4 (7) days of this Order”).

5 Petitioner wrongly argues that she has a constitutional right to additional process, including a  
6 pre-re-detention hearing. Here, Petitioner was never admitted to the United States—she was intercepted  
7 after entering the United States without inspection and was deemed inadmissible due to lack of  
8 documentation. For immigration law purposes, she is treated as being stopped at the border, even though  
9 she has been physically present within the United States since 2022.. This carries significant  
10 implications for the contours of Petitioner’s due process rights. An alien who has not effected a legal  
11 entry, *i.e.*, has not been admitted into the United States, is only entitled to “[w]hatever the procedure  
12 authorized by Congress is.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)  
13 (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)); *see also*  
14 *Thuraissigiam*, 591 U.S. at 140 (an alien detained after unlawful entry “has only those rights regarding  
15 admission that Congress has provided by statute”); *Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015)  
16 (for “those . . . who have never technically ‘entered’ the United States . . . procedural due process is  
17 simply whatever the procedure authorized by Congress happens to be”) (cleaned up). This makes sense,  
18 since an alien seeking initial admission to the United States requests a privilege and has no constitutional  
19 rights regarding his application. *Landon*, 459 U.S. at 33-34.

20 The Supreme Court has explained that applicants for admission lack any constitutional due  
21 process rights with respect to admission aside from the rights provided by statute: “[w]hatever the  
22 procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned,”  
23 *Mezei*, 345 U.S. at 212, and “it is not within the province of any court, unless expressly authorized by  
24 law, to review [that] determination,” *Knauff*, 338 U.S. at 537. The Supreme Court reaffirmed “[its]  
25 century-old rule regarding the due process rights of an alien seeking initial entry” in *Thuraissigiam*,  
26 explaining that an individual who illegally crosses the border—like Petitioner—is an applicant for  
27 admission and “has only those rights regarding admission that Congress has provided by statute.”  
28 *Thuraissigiam*, 591 U.S. at 139-40.

1 As explained by the Supreme Court, “[w]hen an alien arrives at a port of entry—for example, an  
2 international airport—the alien is on U.S. soil, but the alien is not considered to have entered the  
3 country.” *Id.* Stated further, “aliens who arrive at ports of entry—even those paroled elsewhere in the  
4 country for years pending removal—are ‘treated’ for due process purposes ‘as if stopped at the border.’”  
5 *Id.* (quoting *Mezei*, 345 U.S. at 215). The Supreme Court held that this same “threshold” rule applies to  
6 individuals, like Petitioner, who are apprehended after trying “to enter the country illegally” because by  
7 statute, such individuals are also defined as applicants for admission. *Id.* at 139-40. Treating such an  
8 individual in a more favorable manner than an individual arriving at a port of entry would “create a  
9 perverse incentive to enter at an unlawful rather than a lawful location” and therefore the Supreme Court  
10 rejected the argument that an individual who “succeeded in making it 25 yards into U.S. territory before  
11 he was caught” should be entitled to additional constitutional protections. *Id.* at 140.

12 Instead, applying the “century-old rule regarding the due process rights of an alien seeking initial  
13 entry[,]” the Court explained that aliens arrested after crossing the border illegally, such as Petitioner,  
14 have “only those rights regarding admission that Congress has provided by statute.” *Id.* at 140. The  
15 Court was clear: “the Due Process Clause provides nothing more” than the procedural protections set  
16 forth in 8 U.S.C. § 1225 that allow an individual to seek protection from removal if he fears return to his  
17 home country and also seek parole from the agency. *Id.*

18 The Supreme Court’s decision in *Thuraissigiam* is instructive. In relevant part, *Thuraissigiam*  
19 concerned a due process challenge raised by an alien apprehended 25 yards from the border, which he  
20 crossed illegally. 591 U.S. at 139. DHS detained and processed him for expedited removal because he  
21 lacked valid entry documents. *Id.* at 114. An asylum officer then determined that Thuraissigiam lacked a  
22 credible fear of persecution. *Id.* Thuraissigiam petitioned for a writ of habeas corpus, asserting a fear of  
23 persecution and requesting another opportunity to apply for asylum. *Id.*

24 In its decision, the Supreme Court delineated the boundaries of due process claims that can be  
25 made by applicants for admission. Specifically, the Court held that for such aliens stopped at the border,  
26 “the decisions of executive or administrative officers, acting within powers expressly conferred by  
27 Congress, are due process of law.” *Id.* at 131 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660  
28 (1892)); *see also Guerrier v. Garland*, 18 F.4th 304, 313 (9th Cir. 2021) (“In concluding that

1 *Thuraissigiam*'s due process rights were not violated, the Supreme Court emphasized that the due  
2 process rights of noncitizens who have not 'effected an entry' into the country are coextensive with the  
3 statutory rights Congress provides.").

4 In short, because Petitioner is an inadmissible applicant for admission seeking initial entry into  
5 this country, she therefore "requests a privilege and has no constitutional rights regarding his  
6 application[.]" See *Landon*, 459 U.S. at 32; *Knauff*, 338 U.S. at 542 ("At the outset we wish to point out  
7 that an alien who seeks admission to this country may not do so under any claim of right."). Instead,  
8 Petitioner has "only those rights regarding admission that Congress has provided by statute." See  
9 *Thuraissigiam*, 591 U.S. at 140. That is, Petitioner is entitled only to the protections set forth by statute  
10 and "the Due Process Clause provides nothing more." *Id.*; cf. *Guzman v. Tippy*, 130 F.3d 64, 66 (2d Cir.  
11 1997) (the rights of excluded aliens "are determined by the procedures established by Congress and not  
12 by the due process protections of the Fifth Amendment").

13 **B. Petitioner Cannot Succeed Under the Administrative Procedure Act**

14 Petitioner argues that Respondents violated the APA by arbitrarily and capriciously revoking her  
15 parole and detaining her. (ECF 1 at 25). The Administrative Procedure Act ("APA") provides for  
16 judicial review only of agency actions "for which there is no other adequate remedy in a court." 5 U.S.C.  
17 § 704. Here, because a writ of habeas corpus provides the petitioner an adequate remedy to her detention  
18 challenge, suit under the APA is precluded. "Congress did not intend the general grant of review in the  
19 APA to duplicate existing procedures for review of agency action," *Bowen v. Massachusetts*, 487 U.S.  
20 879, 903 (1988); see also *Lalani v. Perryman*, 105 F.3d 334, 337 (7th Cir. 1997) ("Thus, the APA is not  
21 a useful tool for aliens challenging immigration decisions."). Habeas corpus, the "symbol and guardian  
22 of individual liberty," *Peyton v. Rowe*, 391 U.S. 54, 58 (1968), has long provided such a remedy, and  
23 petitioner cannot dispute that such an adequate remedy exists for her to challenge her detention.

24 Dated: December 12, 2025

ERIC GRANT  
United States Attorney

26 By: /s/ TARA AMIN  
27 TARA AMIN  
Assistant United States Attorney