U.S. Department of Justice

United States Attorney
Eastern District of New York

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February 6, 2026

BY ECF
Honorable Diane Gujarati
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Imran Ali v. Charles, et al.*, Civ. No. 26-578 (Gujarati, J.)

Dear Judge Gujarati:

This Office represents Respondents (or "government") in the above-captioned case in which Petitioner Imran Ali ("Petitioner"), an alien in removal proceedings, filed a petition for a writ of habeas corpus on February 2, 2026 challenging his detention by U.S. Immigration and Customs Enforcement ("ICE"). *See* Dkt. No. 1, Petition ("Pet."). The Court then issued an order requiring Respondents to show cause why the petition should not be granted. The legal issues presented concern the statutory authority for ICE's detention of Petitioner and whether Petitioner is entitled to a bond hearing.

I. Relevant Facts

A. Petitioner Unlawfully Crosses the Border And Is Placed In Removal Proceedings

On or about September 11, 2024, Petitioner unlawfully entered the United States without inspection at or near Lukeville, Arizona and was encountered by a Border Patrol agent. *See* Declaration of Jonathan Quizphi ("Decl."), ¶ 2. Petitioner was initially processed for expedited removal and then issued a Notice to Appear ("NTA"), placing him into removal proceedings. *Id.* ¶¶ 2-3. The NTA charged him as removable pursuant to Immigration and Nationality Act ("INA") §212(a)(6)(a)(i), 8 U.S.C. § 1182(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled and INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I) an alien who at the time of application for admission is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document. *Id.* ¶ 3. On November 29, 2024, Petitioner was released from custody on interim parole under 8 U.S.C. § 212(d)(5)(A) (8 U.S.C. § 1182(d)(5)(A). *See Id.* ¶ 4, Ex. C. His parole was valid for one year beginning from November 29, 2024. *Id.* He was not then, and has not since, been admitted. Decl. ¶ 7.

B. ICE Detains Petitioner Pursuant to 8 U.S.C. § 1225(b)(2)(A)

On December 30, 2025, Petitioner was arrested by ICE at 26 Federal Plaza in New York, New York. *Id.* 5. Petitioner is detained at the Brooklyn Metropolitan Detention Center ("MDC"). Petitioner is being detained by ICE under 8 U.S.C. § 1225(b)(2)(A).

II. Petitioner's Habeas Petition

Petitioner argues that the mandatory detention provision of 8 U.S.C. § 1225(b)(2) does not apply to him because he had already physically entered the United States and had been present in the United States. *See* Pet. ¶ 94. He claims that he is being detained in violation of the detention and arrest prerequisites of 8 U.S.C. §§ 1226 and 1357, to which he claims he is subject. *Id.* 84-87. Petitioner claims that his detention without a custody hearing or prior notice violates due process. *See* Pet. ¶¶ 96-03. In his prayer for relief, Petitioner, in relevant part, asks that the Court issue a writ of habeas corpus ordering his release within 24 hours. *See* Pet. at 29 (Prayer for Relief).

III. The Court's Decision in *Diallo*

On November 12, 2025, this Court issued a decision in *Diallo v. Maldonado*, a habeas case challenging whether an alien who was never lawfully admitted, but who had previously been released from custody and was present in the country, is subject to mandatory detention under Section 1225, or instead subject to detention under Section 1226(a), which permits bond. *Diallo v. Maldonado*, No. 25-CV-05740, 2025 WL 3158295, at *1 (E.D.N.Y. Nov. 12, 2025).

The Court concluded that it need not resolve the statutory interpretation question of whether Section 1225 or Section 1226(a) applied because, even assuming that Section 1225 applied, the petitioner's detention violated the Due Process clause. *Id.* at *3. In particular, the Court noted that Diallo had previously been released from custody after he was initially apprehended in December 2023 and, based on the fact of that release, concluded that release would have to have been parole under 8 U.S.C. § 1182(d)(5)(A) because that is the sole statutory authority under which an alien subject to Section 1225 may be released. *Id.* at *4-5 (citing *Savane v. Francis*, No. 25-CV-06666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Woods, J.)).[1] The Court further concluded that termination of parole requires written notice to the alien and an individualized assessment as to whether parole should be terminated. *Id.* citing 8 C.F.R. 212.5(e)(2)(i) and *Savane*, 2025 WL 2774452, at *8. Because those procedures were not provided, the Court conclude that Diallo's detention violated his Fifth Amendment's procedural due process rights and granted the petition. *Id.* at *5.

IV. Discussion

Respondents respectfully submit the Court's decision in *Diallo* does not control this action, for two reasons. First, the record in *Diallo* reflected that that petitioner had previously been released on his own recognizance, not granted parole under Section 1182(d)(5). *See Diallo*, 2025 WL 3148295, at *1. Thus Respondents respectfully submit that the Court erred in concluding that the government was required to follow the procedures for revoking Section 1182(d)(5) parole with respect to Diallo. *See generally Cruz-Miguel v. Holder*, 650 F.3d 189, 191, 194, 198 (2d Cir. 2011)

[1] Notably, in *Arana v. Arteta*, No. 1:26-CV-240-GHW, 2026 WL 279786, at *1 (S.D.N.Y. Feb. 3, 2026), Judge Woods recently distinguished his prior decision in *Savane* by noting that it was "explicitly cabined to the particular record and question presented in that case," concluded that *Savane* did not control *Arana*, and, in large part, agreed with the government's statutory interpretation arguments as to the application of Section 1225, as further set forth below.

(describing the difference between humanitarian parole under Section 1182(d)(5(A) on the one hand and conditional parole (i.e., release on recognizance), on the other hand).

Second, and significantly for the present action, Petitioner in this case *was* paroled under Section 1182(d)(5) on November 29, 2024, but that parole was explicitly limited in duration to one year, expiring on November 29, 2025. *See* Decl., Ex. C. Discretionary parole terminates automatically at the expiration of the period for which it is granted, and no new written notice is required. 8 C.F.R. § 212.5(e)(1)(ii). After discretionary parole expires, the alien is restored to the status that he or she had at the time of parole, and any further inspection or hearing shall be conducted under 8 U.S.C. §§ 1225 or 1229a [INA §§ 235 or 240]. 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(e)(2)(i). Thus, no notice or other procedures were required following the automatic termination of Petitioner's parole in November 2025 and prior to his redetention approximately one month later.

Petitioner's detention under Section 1225 is lawful, and Petitioner's arguments to the contrary, including based on his physical presence in the United States, are unavailing.

A. The Text of Section 1225 Contains No Border or Geographic Limitation and Covers Applicants for Admission "Present in the United States"

In enacting the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208 § 302, div. C, 110 Stat. 3009-546 (1996), Congress made numerous changes to the text of the INA. Specifically, as codified at 8 U.S.C. § 1225(a), Congress eliminated a prior distinction between presence and entry, and instead promulgated that "an alien *present* in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission" (emphasis added). Further, Congress defined "admission" with a new modifier: "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). Thus, whereas previously the INA had separated aliens who had "enter[ed]" from aliens who were being inspected at a port of entry, under IIRIRA, Congress "group[ed] together" as "applicants for admission," who receive "the same treatment," all "aliens who have not yet entered" with "aliens who are already present in the United States but did not enter lawfully." *See Xiaoquan Chen v. Almodovar, et al.*, No. 25-cv-8350, 2025 WL 3484855, at *5 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.) ("*Xiaoquan Chen*"), *appeal filed*, 25-3169; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025).

Also codified at § 1225(a)(3), Congress defines "applicants for admission" as a subset of persons "seeking admission." *See* 8 U.S.C. § 1225(a)(3) ("[a]ll aliens . . . who are applicants for admission *or otherwise* seeking admission . . . shall be inspected by immigration officers"). (emphasis added). None of this is to say, however, that "seeking admission" has no meaning beyond "applicant for admission." As § 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" but they still may be "seeking an admission" in some circumstances. *See* 8 U.S.C. § 1103(a)(13)(C).

The statute here makes no exception for the duration of the alien's presence in the country

or how far the alien's incursion into the country. Congress knows how to limit the scope of a statute when it wants to. For instance, § 1225(b)(1)(A), for detention related to expedited removals, is explicitly limited by Congress to an alien "who is arriving in the United States." Likewise, § 1225(b)(1)(A)(iii) is limited to an alien who cannot show that he has been physically present in the United States "continuously for the 2-year period immediately prior." There is no such limitation on § 1225(b)(2)(A) detentions. Section 1225, instead, requires mandatory detention of applicants for admission who are not clearly and beyond a doubt entitled to admission, regardless of how long an alien has been unlawfully present in the United States or the alien's distance from the border. *See* 8 U.S.C. § 1225(b)(2)(A). The text of § 1225 places under its ambit those present and not admitted, and such text is where this Court's "analysis" should "begin[] and end[]." *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020).

Thus, an alien who enters the country without inspection and admission *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. *See Mejia Olalde v. Noem*, 2025 WL 3131942, at *2-3 (E.D. Mo. Nov. 10, 2025). In turn, § 1225(b)(2) mandates detention pending removal proceedings of aliens who are applicants for admission if the "alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A).

Here, Petitioner falls squarely within the statutory definition. Petitioner was "present in the United States" when he was arrested and has "not been admitted." Further, Petitioner, who is in removal proceedings, has not established that he is "clearly and beyond a doubt entitled to be admitted." Petitioner "shall," therefore, "be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

Multiple courts, including in this Circuit, have endorsed this plain application of the statutory text.[2] In *Yinxiao Chen v. Almodovar, et al.*, No. 25-cv-9670, 2026 WL 100761, * 1 (S.D.N.Y. Jan. 14, 2026) ("*Yinxiao Chen*"); the Honorable John P. Cronan denied a habeas petition, finding that the text, structure, and context of § 1225(b)(2)(A) confirm that statute covers aliens present in the United States who have not been lawfully admitted into the country. *Id.* at *8-*14. There, as here, the petitioner surreptitiously entered the United States without inspection or legal documents, soon thereafter was arrested and later released, served with a Notice to Appear for removal proceedings, and recently re-detained under 8 U.S.C. § 1225(b)(2)(A). *See Yinxiao Chen*, 2026 WL 100761 at *5-6.

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[2] Respondents acknowledge that a larger number of non-binding court decisions across the country have rejected Respondents' statutory construction. *See e.g.*, *Guerrero*, 2025 WL 3214787, n. 3 (listing some cases). However, as recently explained by the Hon. John L. Sinatra, Jr., W.D.N.Y., "[t]he fact that more district courts nevertheless have decided this issue differently from this Court is neither binding nor persuasive." *Candido v. Bondi, et al.*, 25-cv-867, 2025 WL 3484932 at *2 (Dec. 4, 2025). Respondents respectfully note that the government has affirmatively appealed the grant of a habeas petition in *Cunha v. Moniz*, 25-cv-6532 (W.D.N.Y. Nov. 25, 2025) (concluding, *inter alia*, that Section 1226(a), not Section 1225(b)(2)(A), applied), *notice of appeal filed*, No. 25-3141. The Second Circuit has granted the government's motion to expedite that appeal; briefing is scheduled to be completed by March 3, 2026.

With respect to the text of § 1225(b)(2)(A), Judge Cronan held that § 1225(a)(1) "'deem[s]'" an "applicant for admission" "'[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 ...).'" *See id.* at *8 (emphasis supplied in *Yinxiao Chen*). Given that the detention authority in § 1225(b)(2)(A) covers "an alien who is an applicant for admission," Judge Cronan held, it follows that "[p]ut together, Section 1225(b)(2)(A) initially reaches situations concerning noncitizens . . . present in the United States who have not gained lawful entry into the country after inspection and authorization by an immigration officer." *Id.*

Judge Cronan also showed that other district courts erred in holding that the § 1225(b)(2)(A) detention authority covers only the purported subset of applicants for admission who are "seeking admission" through affirmative steps towards lawful admission. *See Yinxiao Chen*, 2026 WL 100761, at *8-*10. As Judge Cronan held, aliens "seeking admission" are not a subset of "applicants for admission" but rather the opposite is true: "Section 1225 itself expressly treats applicants for admission as among those seeking admission." *See id.* at *9 (citing § 1225(a)(3), (5)). Judge Cronan concluded that such other district court holdings "introduce[] more questions to the statute than answers." *Yinxiao Chen*, 2026 WL 100761, at *9. "The answer," Judge Cronan determined, "is the one that Congress has already provided throughout Section 1225: an applicant for admission is 'seeking admission,' even when that noncitizen is 'present in the United States' without having 'been admitted.'" *Id.*

Similarly, in *Xiaoquan Chen*, 2025 WL 3484855, the alien entered the United States without having been admitted, was released, and remained in the country unlawfully for two years until he was recently detained pursuant to § 1225(b)(2)(A). The Honorable Mary Kay Vyskocil dismissed the habeas petition, holding that "under the plain language" of § 1225(b)(2)(A), the petitioner was subject to mandatory detention pending the resolution of his removal proceedings. *Xiaoquan Chen*, 2025 WL 3484855 at *4. Judge Vyskocil reasoned that "[t]here is no support in statutory text, precedent, or legislative history for the conclusion that Section 1225(b)(2) does not apply to aliens who are 'already here' after having illegally entered the country." *Id.* at *5-7; *see also Liang v. Almodovar*, No. 25-cv-9322, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) (Vyskocil, J.); (denying petition on substantially similar grounds as in *Chen*, 2025 WL 3484855); *Candido*, 2025 WL 3484932 at *2) (finding detention under § 1225(b)(2)(A) was proper for alien present unlawfully for two decades without having been admitted, noting that "[t]he fact that more district courts . . . have decided this issue differently from this court is neither binding nor persuasive");[3]

[3] *See also, e.g. Diaz v. Noem*, No. 25-cv-3008, 2026 WL 309938 (N.D. Tex. Feb. 5, 2026) (Starr, J.); *Guevara v. Easterwood*, No. 26-cv-789, 2026 WL 278924 (D. Minn. Feb. 3, 2026) (Traynor, J.); *Guillermo N. v. Bondi*, 26-258, 2026 WL 272403 (D. Minn. Feb. 2, 2026); *Gomez v. Daley*, 25-cv-150. 2026 WL 252496 (E.D. Ky, Jan. 30, 2026) (Meredith, J.); *Morales v. Noem*, -- F. Supp. 3d --, 2026 WL 236307 (Sd. Fl. Jan. 29, 2026) (Singhal, J.); *Lopez v. Director of Enforcement Operations*, -- F. Supp. 3d --, 2026 WL 261938 (S.D. Fl. Jan. 26, 2026); *Parra v. Secretary, DHS*, No. 25-cv-1116, 2026 WL 21243 (M.D. Fl. Jan. 5, 2026) (Dudek, J.); *Rodriguez v. Jeffreys*, No. 8:25CV714, 2025 WL 3754411 (D. Neb. Dec. 29, 2025) (Buescher, J.); *Zuniga v. Lyons*, -- F. Supp. --, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025) (Hendrix, J.); *Montoya v.* Holt, No. CIV-25-01231, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025) (Dishman, J); *A.M. v. Joyce*, No. 2:25-

accord Matter of Yajure Hurtado, 29 I&N Dec. 216, 218 (BIA 2025) ("[t]he inspection, detention, and removal of aliens who have not been admitted is governed by section 235 of the INA, 8 U.S.C. § 1225."). *Accord, Arana*, 2026 WL 279786, at *3-5 (Woods, J.) (explaining that the court "finds persuasive the cogent interpretation of the INA's grants of detention authority articulated by Judge Vyskocil in [*Xiaoquan Chen*]").

In *Weng v. Genalo, et al.*, No. 25-cv-9595, 2026 WL 194248, *4 (S.D.N.Y. Jan. 23, 2026), the Honorable Jennifer H. Rearden reasoned that "[r]eading the phrases 'applicant for admission' and 'seeking admission' as synonymous ... 'maintains the dichotomy prescribed by Congress...by distinguishing between those who effectuate a lawful entry (even if later found removable) and thus are subject to Section 1226, and those who illegally entered and are statutorily deemed to be applications for admission subject to Section 1225.'"

Respondents' reading also does not violate the canon against surplusage. *See, e.g., Sarmiento Guerrero v. Noem*, No. 25-CV-5881, 2025 WL 3214787, at *3-4 (E.D.N.Y. Nov. 18, 2025) (Komitee, J.) (concluding that terms "seeking admission" and "applicant for admission" must have different meanings). First, as Judge Cronan held, § 1225 expressly treats applicants for admission as among those seeking admission in two different places. *Yinxiao Chen*, 2026 WL 100761 at *9. Second, Section 1225(a)(3) 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). "Otherwise'" means 'in a different way or manner.'" *Texas Dept. of Hous. & Cmty Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *Yinxiao Chen*, 2026 WL 100761 at *9 ("Put differently, noncitizens seeking admission may be a broader category than applicants for admission, but not a narrower one, as that category already includes applicants for admission under the statute"). Being an "applicant for admission" is thus a particular "way or manner" of seeking admission, such that any alien who is an "applicant for admission" *is* "seeking admission" for purposes of Section 1252(b)(2)(A). However, being an "applicant for admission" is not the

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CV-00615, 2025 WL 3706922 (D. Me. Dec. 22, 2025) (Walker, J.); *Calderon Lopez v. Lyons*, No. 1:25-CV-226, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025) (Hendrix, J.); *E.R.J.B. v. Wofford*, No. 1:25-CV-01843, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025) (Shubb, J.); *Cruz Rodriguez v. Olson*, No. 1:25-CV-12961, 2025 WL 3672856 (N.D. Ill. Dec. 17, 2025) (Pacold, J.); *Padilla v. Galovich*, No. 25-CV-865, 2025 WL 3640960 (W.D. Wis. Dec. 16, 2025) (Peterson, J.); *Coronado v. Sec'y, DHS*, No. 1:25-CV-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) (Cole, J.); *P. B. v. Bergami*, No. 3:25-CV-02978, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025) (O'Connor, J.); *Garcia v. U.S. Attn'y Gen.*, No. 2:25-CV-1053, 2025 WL 3537592 (M.D. Fla. Dec. 10, 2025) (Dudek, J.); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.); *Melgar v. Bondi*, No. 8:25CV555, 2025 WL 3496721 (D. Neb. Dec. 5, 2025) (Buescher, J.); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.); *Cruz v. Noem*, No. 8:25-CV-02566, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) (Blumenfeld Jr., J.); *Suarez v. Noem*, No. 1:25-CV-00202, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025) (Divine, J.); *Duenas Garcia v. ICE*, No. 2:25-cv-1004, 2025 WL 3277163 (M.D. Fla. Nov. 25, 2025) (Dudek, J.); *Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) (Eskridge, J.); *Alves de Andrade v. Patterson*, No. 25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025) (Joseph, J.).

exclusive way of "seeking admission." For example, lawful permanent residents returning to the United States are not "applicants for admission" but are deemed to be "seeking admission" in some circumstances, *e.g.*, if they "ha[ve] been absent from the United States for a continuous period in excess of 180 days." *See* 8 U.S.C. § 1103(A)(13)(C).

Moreover, "nothing in the text of Section 1225 or the logic of the immigration system supports a ruling that 'seeking admission' is an *additional requirement* for mandatory detention" for coverage by § 1225. *Xiaoquan Chen*, 2025 WL 3484855 at *5. Such a conclusion would create the "perverse" incentive for an alien present here but not admitted to wait and not "do[] something" towards admission, lest he trigger mandatory detention under § 1225. *Id.* (restricting mandatory detention to those taking active steps to gain admission would "establish a perverse incentive in which an alien becomes subject to harsher treatment only upon actively seeking 'lawful' status"). That, however, "is not the system defined by Section 1225," which, by Congressional design, "groups together for the same treatment aliens arriving at the border and aliens who are present illegally in the United States." *Id.* At bottom, the decisions holding § 1226(a) applicable to an alien present inside the United States prior to their detention have not addressed a critical issue: "How does a court determine when a present but unadmitted alien is no longer an 'applicant for admission' or 'seeking admission?'" *Montoya*, 2025 WL 3733302, at *2 (W.D. Okla). *Montoya* elaborated:

> Is two years of unadmitted residence long enough? Three? How far must an alien travel from the border? 50 miles? 100? If an alien has been in the interior a short time but resides far away from the border, can the distance make up for a short duration? Or, if an alien lives close to the border but resides in the country for decades, can the time period make up for the short distance?

Id. The BIA has asked a similar question: "If [an alien] is not admitted to the United States . . . but he is not 'seeking admission[,]' . . . then what is his legal status?" *See Matter of Hurtado*, 29 I. & N. at 221.

It is Congress that has delineated when an alien "seeking admission" is, and is not, an "applicant for admission." Neither the duration of an alien's unlawful presence in the United States nor his distance from the border alters the legal reality that an "applicant for admission" is "seeking admission." *Chen*, 2025 WL 3484855, at *5 (finding that the concerns and arguments about surplusage are misplaced).

B. Imposing a Border Limitation Onto § 1225 Subverts Congressional Intent

An interpretation of the INA that applies § 1225 only at or near the border, and which concludes that it cannot apply to those who are present in the country unlawfully but not near the border, subverts Congress's express goal when it passed IIRIRA 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 [applicable a]ct 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.").

Before 1996, aliens who attempted to enter the United States by presenting for inspection

at a port of entry received less process and were subject to more restrictions than aliens who entered surreptitiously by crossing the border unlawfully. Specifically, under the pre-1996 scheme, aliens at a port of entry who could not demonstrate entitlement to admission were placed in "exclusion proceedings" and were subject to mandatory detention without the possibility of bond. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025); *see* 8 U.S.C. §§ 1225(a) (1995)-(b) (1995), 1226(a) (1995); *see Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). In contrast, an alien who evaded inspection and physically entered the United States was placed in "deportation" proceedings and taken into custody under an arrest warrant but could request bond. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1252(a)(1) (1995); *Hurtado*, 29 I. & N. Dec. at 223; *Hing Sum*, 602 F.3d at 1100. Thus, whether an alien had physically entered the United States or not – defined at that time as "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994) – "dictated what type of [immigration] proceeding applied" and whether the alien would be detained pending those proceedings. *Hing Sum*, 602 F.3d at 1099.

The pre-1996 INA framework had "unintended and undesirable consequence[s]." *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 (3d Cir. 2012)); *see Hing Sum*, 602 F.3d at 1100 (similar). "[A]liens 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 (internal quotations omitted)

Petitioner's statutory interpretation does not address the way it would restore the regime Congress sought to discard: it would require detention for those who present themselves for inspection at the border, yet grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years or even decades. That is exactly the "perverse incentive to enter" unlawfully that IIRIRA sought to eradicate. *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020); *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020). Such a rule "flies in the face of Congress' decision codified in the IIRIRA, to change the immigration system that had turned on whether "an alien [was] already here," and enact new laws for removal proceedings that focused on *lawful admission* in contrast to physical entry." *Xiaquan Chen*, 2025 WL 3484855, at *5.

C. Supreme Court Precedent Supports, Not Undermines, Respondents' Interpretation of § 1225

Recent Supreme Court precedent does not undermine, and indeed supports, Respondents' position. *See, e.g.*, *Jennings v. Rodriguez*, 583 U.S. 281 (2018) and *DHS v. Thuraissigiam*, 591 U.S. 103 (2020).

Jennings involved detention of a U.S. lawful permanent resident who was detained pursuant to § 1226 pending removal following a criminal conviction. 583 U.S. 281. The Supreme Court was tasked with reviewing a Ninth Circuit decision that applied constitutional avoidance to "impos[e] an implicit 6-month time limit on an alien's detention" under §§ 1225(b) and 1226 and found that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did *not* delineate the precise groups of aliens subject to § 1225(b) or § 1226(a). More specifically,

the Supreme Court did *not* hold that §1225(b) applies *only* to persons seeking entry to the United States. Instead, the Court held that § 1225(b) "applies *primarily* to aliens seeking entry into the United States," *id.* at 297 (emphasis added), which is consistent with Respondents' position that § 1225(b) also applies, *inter alia*, to persons who have not been admitted to the United States but have been physically present in the United States. *See Yinxiao Chen*, 2026 WL 100761, at **8-12; *Alves de Andrade*, 2025 WL 3252707, at *6. Even more significantly, *Jennings* defined "applicant for admission" in a manner consistent with Respondents' position: "an alien who 'arrives in the United States,' or *'is present' in this country but 'has not been admitted', is treated as 'an applicant for admission.'*" *Jennings*, 583 U.S. at 287 (emphasis added). And, consistent with Respondents' reading, the Supreme Court recognized in its description of § 1225(b) that "Section 1225(b)(2) .... serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1)." *Id.* at 287; *see also Yinxiao Chen*, 2026 WL 100761 ("Any broader reading of that language to support Chen's position is misplaced. Supreme Court opinions should not be read to decide issues not squarely presented or even raised to the Court, as the case [was in *Jennings*]"). Nothing in *Jennings* displaces the statute's plain text and the manifest congressional purpose.

Respondents further respectfully submit that the entry-fiction doctrine set forth in *Thuraissigiam* supports their position. The doctrine is consistent with Respondents' interpretation of the statute and legislative history. There, the Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry" in *Thuraissigiam*, 591 U.S. at 139-40. Aliens like Petitioner who are permitted entry into the United States pending their removal are 'treated' for due process purposes *'as if stopped at the border.'*" *Thuraissigiam*, 591 U.S. at 139 (emphasis added). Under this precedent, Petitioner's physical presence in the country is irrelevant, and he should be treated as if stopped at the border, and thus subject to § 1225 mandatory detention.

V. Conclusion

For the foregoing reasons, Respondents respectfully request that the Court deny this habeas petition. Thank you for the Court's time and attention to this matter.

Respectfully submitted,

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