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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MOHAMMAD RAFI OMARI,
Petitioner,

v.

JOHN MATTOS, *et al.*,
Respondents.

Case No. 2:26-cv-00252-APG-BNW

**Federal Respondents' Response to
Petition for Writ of Habeas Corpus
(ECF No. 1)**

Federal Respondents, through undersigned counsel, hereby respond to Petitioner Mohammad Omari's Petition for Writ of Habeas Corpus. The petition should be denied for the reasons stated below in the memorandum of points and authorities.

Memorandum of Points and Authorities

I. INTRODUCTION

Based on the language in the petition, Federal Respondents' interpretation of the basis for the Petitioner's writ is rooted in the distinctions between 8 USC § 1225(b) and § 1226(a) framework. This case fits squarely into the framework of mandatory detention under § 1225(b). See *Jennings v. Rodriguez*, 583 U.S. 281, 138 S. Ct. 830 (2018); see also, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019).

As relevant here, Congress enacted what is now 8 U.S.C. § 1225, which requires the detention of any alien "who is an applicant for admission" and defines that term to encompass any "alien present in the United States who has not been admitted" following

inspection by immigration authorities. 8 U.S.C. § 1225(a), (b)(1), (b)(2)(A). Specifically, under § 1225(b)(1)(iii)(II) aliens that are described are such that have not been admitted or paroled, who have not shown to the satisfaction of an immigration officer that they have been present in the United States for 2-years continuously. There is no dispute that Petitioner is an “applicant for admission” under Section 1225(a), because he entered the United States without admission or parole at the San Ysidro, California port of entry in November 2023 and was apprehended by Customs and Border Patrol agents the same day in close proximity to the international border. ECF No. 1, p. 2; *see also* Notice to Appear, I-213, collectively attached as **Exhibit A**. This clear statutory text means that Petitioner is not entitled to a bond hearing and potential release. Petitioner was placed into full removal proceedings rather than expedited removal but remains subject to mandatory detention.¹ An alien, like the respondent, “who tries to enter the country illegally is treated as an ‘applicant for admission.’” *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (quoting INA § 235(a)(1), 8 U.S.C. § 1225(a)(1)). Applicants for admission who are placed into removal proceedings are detained under § 1225(b) and are ineligible for bond for the duration of their removal proceedings. *Jennings*, *See also Matter of Q. Li*.

II. STATUTORY FRAMEWORK

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

¹ *See Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) (holding that “[a]n alien who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond. Such an alien must be detained until his removal proceedings conclude, unless he is granted parole.”)

1 the United States (whether or not at a designated port of arrival and including an alien who
2 is brought to the United States after having been interdicted in international or United States
3 waters) shall be deemed for purposes of this chapter an applicant for admission. 8 U.S.C.
4 § 1225(a)(1) (emphasis added). “All aliens ... who are applicants for admission or otherwise
5 seeking admission or readmission to or transit through the United States” are required to
6 “be inspected by [an] immigration officer[.]” *Id.* § 1225(a)(3). The inspection by the
7 immigration officer is designed to determine whether the alien may be lawfully “admitted”
8 to the country or, instead, must be referred to removal proceedings.

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

12 Section 1225(b)(1) provides for so-called “expedited removal proceedings,” *Dep’t of*
13 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which apply to a subset of
14 aliens — those who (1) are “arriving in the United States,” or who (2) have “not been
15 admitted or paroled into the United States” and have “not affirmatively shown, to the
16 satisfaction of an immigration officer, that the alien has been physically present in the
17 United States continuously for the 2-year period immediately prior to the date of the
18 determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, the
19 immigration officer shall “order the alien removed from the United States without further
20 hearing or review unless the alien indicates either an intention to apply for asylum ... or a
21 fear of persecution.” *Id.* § 1225(b)(1)(A)(i). In that event, the alien “shall be detained
22 pending a final determination of credible fear or persecution and, if found not to have such
23 fear, until removed.” *Id.* § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). An alien
24 processed for expedited removal who does not indicate an intent to apply for a form of relief
25 from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see*
26 8 C.F.R. § 235.3(b)(2)(iii).

27 Section 1225(b)(2) is a “catchall provision that applies to all applicants for admission
28 not covered by [subsection (b)(1)].” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It

1 requires that those aliens be detained pending Section 240 removal proceedings:

2 Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for
3 admission, if the examining immigration officer determines that an alien seeking admission
4 is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a
5 proceeding under section 1229a of this title [Section 240]. 8 U.S.C. § 1225(b)(2)(A)
6 (emphasis added).² See 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention
7 mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention
8 of aliens throughout the completion of applicable proceedings and not just at the moment
9 those proceedings begin”).

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

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

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

1 either “continue to detain the arrested alien” or release the alien on bond or conditional
2 parole. *Id.* § 1226(a)(1)-(2).³

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

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

19 **III. STANDARD OF REVIEW**

20 In a petition for a writ of habeas corpus, the petitioner is challenging the legality of
21 his restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show
22 the confinement is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941). Specifically,
23 here, Petitioner challenges his temporary civil immigration detention pending his removal
24 proceeding.

25 Judicial review of immigration matters, including detention issues, is limited. *I.N.S.*
26 *v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525

27
28 ³ Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

1 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo v. Bell*, 430
2 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow Sun Wong*,
3 426 U.S. 88, 101 n.21 (1976) (“the power over aliens is of a political character and therefore
4 subject only to narrow judicial review”). The Supreme Court has thus “underscore[d] the
5 limited scope of inquiry into immigration legislation,” and “has repeatedly emphasized that
6 over no conceivable subject is the legislative power of Congress more complete than it is
7 over the admission of aliens.” *Fiallo*, 430 U.S. at 792 (internal quotation omitted); *Matthews*
8 *v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

9 The plenary power of Congress and the Executive Branch over immigration
10 necessarily encompasses immigration detention, because the authority to detain is elemental
11 to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United*
12 *States ex rel. Mezei*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to
13 expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's
14 political departments largely immune from judicial control.”); *Carlson v. Landon*, 342 U.S.
15 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong*
16 *Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be
17 vain if those accused could not be held in custody pending the inquiry into their true
18 character, and while arrangements were being made for their deportation.”); *Demore v. Kim*,
19 538 U.S. 510, 531 (2003) (“Detention during removal proceedings is a constitutionally
20 permissible part of that process.”).

21 **IV. FACTUAL AND PROCEDURAL BACKGROUND**

22 Petitioner is a citizen of Afghanistan and was not in possession of valid immigration
23 documents allowing him to be or remain in the United States legally. See Exhibit A.
24 Petitioner entered the United States on or about November 21, 2023, without inspection by
25 U.S. Immigration Officers by illegally crossing the U.S.-Mexico international border and
26 U.S. Border Patrol arrested Petitioner at or near the San Ysidro, California port of entry.
27 See Exhibit A. The basis for ICE charges was that Petitioner made no claim as to being a
28 United States Citizen or a Legal Permanent Resident, is an alien present in the United

States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. See Exhibit A. At the time of entry and arrest, petitioner was served with an NTA and was released from custody due to lack of bed space. Exhibit A. On January 27, 2026, Petitioner Mohammad Omari (“Petitioner”) was encountered by Enforcement and Removal Operations (ERO) in Salt Lake City, Utah at his regularly scheduled check in. Exhibit A. He was detained pursuant to 8 U.S.C. § 1225(b)(2) and remains detained pending the resolution of his immigration proceedings. Petitioner has not requested bond before an Immigration Judge since being detained.

V. ARGUMENT

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

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

1. The Plain Language of Section 1225(b)(2) Mandates the Detention of the Petitioner Who is an Applicant for Admission.

Section 1225(a) defines “applicant for admission” to encompass an alien who either “arrives in the United States” or who is “present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). And “admission” under the INA means not physical entry, but lawful entry after inspection by immigration authorities. 8 U.S.C. § 1101(a)(13)(A). Thus, an alien who enters the country without permission is and remains an applicant for admission, regardless of the duration of the alien’s presence in the United States or the alien’s distance from the border.

In 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

1 is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1125(b)(2)(A)
 2 (emphasis added). The statute’s use of the term “shall” makes clear that detention is
 3 mandatory, *see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998),
 4 and the statute makes no exception for the duration of the alien’s presence in the country or
 5 where in the country he is located. Therefore, the statute’s plain text mandates that DHS
 6 detain all “applicants for admission” who do not fall within one of its exceptions.

7 Petitioner falls squarely within the statute. To be sure, Petitioner is an “alien . . . who
 8 arrives in the United States”, “present in the United States,” and there is no dispute that he
 9 has “not been admitted.” 8 U.S.C. § 1225(a). Petitioner admitted that he has entered
 10 without an inspection the United States in November 2023. ECF No. 1, p. 2. Moreover,
 11 Petitioner cannot — and did not — establish that he is “clearly and beyond a doubt entitled
 12 to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Therefore, Petitioner is appropriately detained
 13 and “shall be detained for a proceeding under [8 U.S.C. § 1229a].”

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

16 There is no denial that Petitioner (and others like him) are “applicants for
 17 admission” under Section 1225(b)(2). Petitioner has neither referenced nor pointed out, that
 18 he is anything else but an applicant for admission under Section 1225(b)(2). The statute
 19 itself makes clear that an alien who is an “applicant for admission” *is* necessarily “seeking
 20 admission.” Moreover, an alien like Petitioner, who is identified by immigration authorities
 21 as one who unlawfully crossed the international border, and who does not choose to depart
 22 from the United States voluntarily, is “seeking admission” under any interpretation of that
 23 phrase. Here, the Petitioner entered the United States without an inspection. He was then
 24 initially encountered shortly after his illegal entry and processed for immigration
 25 proceedings.

26 Section 1225(b)(2) requires the detention of an “applicant for admission, if the
 27 examining officer determines that [the] alien *seeking admission* is not clearly and beyond a
 28 doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory

1 text and context show that being an “applicant for admission” is a means of “seeking
 2 admission” — no additional affirmative step is necessary. In other words, every “applicant
 3 for admission” is inherently and necessarily “seeking admission,” at least absent a choice to
 4 pursue voluntary withdrawal or voluntary departure.

5 Section 1225(a) provides that “[a]ll aliens ... who are applicants for admission *or*
 6 *otherwise* seeking admission or readmission ... shall be inspected.” 8 U.S.C. § 1225(a)(3)
 7 (emphasis added). The word “[o]therwise” means “in a different way or manner[.]” *Texas*
 8 *Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015)
 9 (quoting Webster’s Third New International Dictionary 1598 (1971)); *see also Att’y Gen. of*
 10 *United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds*
 11 *Tobacco Co.*, 839 F.3d 958, 963–64 (11th Cir. 2016) (en banc) (“or otherwise” means “the
 12 first action is a subset of the second action”); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482–
 13 83 (7th Cir. 2019). Being an “applicant for admission” is thus a particular “way or manner”
 14 of seeking admission, such that an alien who is an “applicant for admission” *is* “seeking
 15 admission” for purposes of Section 1252(b)(2)(A). No separate affirmative act is necessary.
 16 *See Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) (“[M]any people who are not
 17 *actually* requesting permission to enter the United States in the ordinary sense are
 18 nevertheless deemed to be ‘seeking admission’ under the immigration laws”).

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

1 “seeking admission” to the United States.

2 None of this is to say, however, that “seeking admission” has no meaning beyond
3 “applicant for admission.” As Section 1225(a)(3) shows, being an “applicant for admission”
4 is only *one* “way or manner” of “seeking admission,” not the exclusive way. For example,
5 lawful permanent residents returning to the United States are not “applicants for admission”
6 because they are already admitted, but they still may be “seeking admission.” *See* 8 U.S.C.
7 § 1103(A)(13)(C). But for purposes of Section 1225(b)(2) and its regulation of “applicants for
8 admission,” the statute unambiguously provides that an alien who is an “applicant for
9 admission” is “seeking admission,” even if the alien is not engaged in some separate,
10 affirmative act to obtain lawful admission.

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

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

25 Even if “seeking admission” required some separate affirmative conduct by the alien,
26 an applicant for admission who attempts to avoid removal from the United States, rather
27 than trying to voluntarily depart, is by any definition “seeking admission.” Section
28 1225(b)(2)(A) applies to an alien who is present in the United States unlawfully, even for

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

16 Here, Petitioner entered the United States without inspection and is in removal
17 proceedings, subject to mandatory detention. A contrary view would make mandatory
18 detention turn on the fortuity happenstance of when an alien attempts to prove
19 admissibility. *See United States v. Wilson*, 503 U.S. 329, 334 (1992) (courts must not "presume
20 lightly" that statute's application will turn on "arbitrary" issue of timing). Aliens subject to
21 Section 1225(b)(2) must prove admissibility at two stages — first, at the time of inspection, 8
22 U.S.C. § 1225(b)(2)(A); and second, during Section 240 removal proceedings if the alien
23 cannot show admissibility "clearly and beyond a doubt" at the time of inspection, *id.*
24 § 1229a(c)(2)(A) (alien has "burden of establishing that [he] is clearly and beyond a doubt
25 entitled to be admitted"). Petitioner has failed to meet these two stages. There is "no reason
26 why Congress would desire" the applicability of something so significant as mandatory
27 detention "to depend on the timing" of when an alien attempts to show admissibility,
28 *Wilson*, 503 U.S. at 334 — particularly given how susceptible that rule is to manipulation by

1 the alien.

2 To be sure, the Laken Riley Act's application to aliens who are inadmissible under
 3 §1182(a)(6)(A) — for being “present ... without being admitted or paroled” — overlaps with
 4 Section 1225(b)(2)(A). Both statutes mandate detention of “applicants for admission” who
 5 fall within the specified grounds of inadmissibility. But again, “[r]edundancies are common
 6 in statutory drafting,” and are “not a license to rewrite or eviscerate another portion of the
 7 statute contrary to its text.” *Barton*, 590 U.S. at 223. That is particularly true here, where this
 8 portion of the Laken Riley Act overlaps with Section 1225(b)(2)(A) even under *Petitioner's*
 9 reading, which recognizes that applicants for admission who are “seeking admission” must
 10 be detained under Section 1225(b)(2)(A). See *Microsoft Corp. v. I4I Ltd. P'ship*, 564 U.S. 91,
 11 106 (2011) (“the canon against superfluity assists only where a competing interpretation
 12 gives effect to every clause and word of a statute”).

13 **A. A Growing Body of Well-Reasoned and Persuasive Authority Supports the**
 14 **Federal Respondents' Legal Positions Including the Recent Fifth Circuit Court**
 15 **of Appeals Decision in *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899**
(5th Cir. 2026).

16 In the recent decision on February 6, 2026, from the Fifth Circuit Court of Appeals,
 17 *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026) the Court ruled,
 18 “unadmitted aliens apprehended anywhere in the United States are ineligible for release on
 19 bond, regardless of how long they have resided inside the United States.” *Id.* at 9 (quoting
 20 *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216). See *Buenrostro-Mendez v. Bondi*, 2026 U.S.
 21 App. LEXIS 3899 (5th Cir. 2026). In *Buenrostro-Mendez* the court stated, “The Supreme
 22 Court has said, Section 1225(b)(2) operates as a “catchall provision that applies to all
 23 applicants for admission not covered by [subsection (b)(1)].” *Jennings v. Rodriguez*, 583 U.S.
 24 281, 287, 138 S. Ct. 830, 837 (2018). Section 1225(b)(2) does not include any exception that
 25 permits the government to release detained aliens on bond.” *Id.* at 7. In *Buenrostro-Mendez*
 26 the court explained, “unlike § 1225(b), § 1226(a)(2)(A) permits, but does not require, the
 27 Attorney General to release detained aliens on “bond of at least \$1,500 with security
 28 approved by, and containing conditions prescribed by, the Attorney General.” See also 8

1 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19. Because § 1226 is not limited to applicants
2 for admission, it also covers numerous grounds of deportability, including for admitted
3 aliens who overstay or violate the terms of their visas, engage in conduct that renders them
4 removable, or were improperly admitted. Not all aliens detained under § 1226(a) are
5 eligible for release on bond. If an alien has committed one of the criminal offenses
6 enumerated in § 1226(c), he loses his bond eligibility. 8 U.S.C. § 1226(c)(1)(A)-(E). The
7 Laken Riley Act, enacted in 2025, expanded § 1226(c) by adding new bases for ineligibility
8 for bond. *See* 8 U.S.C. § 1226(c)(1)(E). Aside from being ineligible for bond, aliens covered
9 by § 1226(c) also may not be granted parole under 8 U.S.C. § 1182(d)(5)(A).” *Id.* at 8. In
10 *Buenrostro-Mendez*, the court emphasized that 8 U.S.C. § 1225(b)(2)(A) requires detention
11 without eligibility for bond of individuals like Petitioner who entered the U.S. without
12 being admitted and stated “The statute unambiguously provides for mandatory
13 detention. *See* 8 U.S.C. § 1225(b)(2)(A) (providing that aliens “*shall* be detained”) (emphasis
14 added); *see also Jennings*, 583 U.S. at 302, 138 S. Ct. at 845 (“§§1225(b)(1) and
15 (b)(2) *mandate* detention of aliens throughout the completion of applicable proceedings and
16 not just until the moment those proceedings begin.”) (emphasis added). And “neither §
17 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.” *Jennings*, 583
18 U.S. at 297, 138 S. Ct. at 842. *Id.* at 11-12.

19 In *Buenrostro-Mendez* the court explained how 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C.
20 § 1226(a) operate and overlap by stating, “It is true that § 1226 applies to aliens in the
21 United States. That it does so, however, does not preclude § 1225 from also applying to
22 such aliens. As the government acknowledges, the two provisions overlap. Accordingly, for
23 petitioners to find support in *Jennings*, they must overread the Supreme Court's language. In
24 particular, they seem to infer that when the Supreme Court specified that § 1226 applies to
25 aliens inside the United States, it implied that § 1225 does not apply to such aliens. But this
26 is the exact sort of language-parsing inquiry that the Supreme Court has cautioned lower
27 courts against. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74, 143 S. Ct. 1142,
28

1 1155 (2023) ("[T]he language of an opinion is not always to be parsed [like the] language of
2 a statute." (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341, 99 S. Ct. 2326, 2332 (1979)).
3 Moreover, even if this court should conduct a granular analysis of the language in *Jennings*,
4 doing so supports the government's interpretation. In claiming that the Supreme Court's
5 pronouncement that § 1225(b) applies to aliens who are seeking admission supports their
6 interpretation, the petitioners inexplicably assume that the Supreme Court understood
7 "seeking admission" in the same way that petitioners do. It demonstrably did not.
8 Elsewhere in *Jennings*, the Supreme Court explained that "§ 1225(b) applies to aliens
9 seeking entry into the United States ('applicants for admission' in the language of the
10 statute)." *Jennings*, 583 U.S. at 297, 138 S. Ct. at 842. That language supports the
11 government's contention that "applicants for admission" are according to the statute
12 seeking entry or admission. And it suggests that when the Supreme Court described § 1225
13 as applying to aliens "seeking admission," it understood that to mean aliens who, like the
14 petitioners here, are present in the United States without admission." *Id.* at 20-22. In
15 *Buenrostro-Mendez*, the court addressed the issue of government's longstanding practice
16 which allowed illegal resident aliens who are present without being admitted, to seek
17 release on bond under § 1226(a) instead of detaining them pursuant to § 1225(b)(2)(A) and
18 explained, "While that is true, the government's past practice has little to do with the
19 statute's text. The text says what it says, regardless of the decisions of prior
20 Administrations. Years of consistent practice cannot vindicate an interpretation that is
21 inconsistent with a statute's plain text. *See, e.g., Pereira v. Sessions*, 585 U.S. 198, 204, 138 S.
22 Ct. 2105, 2111 (2018). In *Pereira*, the court considered whether notices to appear for
23 removal proceedings under 1229(a) had to specify the time and place of removal
24 proceedings. *Id.* at 202, 138 S. Ct. at 2110. Despite 21 years during which the government
25 consistently served notices to appear that omitted time and place information, the court
26 rejected the government's practice based on the text of § 1229(a). *Id.* at 205, 209, 138 S. Ct.
27 at 2111, 2114. The same approach is appropriate here. Regardless of the government's past
28

1 practice and regardless of Congress's silence on § 1225(b)(2)(A), the text controls.” Id. at
 2 22.

3 *Buenrostro-Mendez* applies to this case, since Petitioner entered the U.S. without
 4 inspection and is an applicant for admission who is lawfully mandatorily detained under §
 5 1225(b)(2)(A) and is not subject to discretionary detention under 8 U.S.C. § 1226(a).

6 Although *Buenrostro-Mendez* is not a case from the Ninth Circuit Court of Appeals, it is a
 7 very recent Circuit Court of Appeals decision, which is cited as persuasive authority that
 8 squarely addresses the issues involving 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a)
 9 and supports the Federal Respondents’ position.

10 In addition, the United States notes the following recent decisions, each of which
 11 concludes that, when properly interpreted and applied, the governing statutes support the
 12 Federal Respondents’ position in this case: *Chavez v. Noem*, No. 25-02325, 2025 WL
 13 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351
 14 (D. Neb. Sept. 30, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *1
 15 (E.D. Wis. Oct. 30, 2025); *Barrios Sandoval v. Acuna*, No. 25-01467, 2025 WL 3048926
 16 (W.D. La. Oct. 31, 2025); *Silva Oliveira v. Patterson*, No. 25-01463, 2025 WL 3095972
 17 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 25-00168, 2025 WL 3131942 (E.D.
 18 Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, 1:25-cv-00177 (N.D. Tex. 2025); *Montoya*
 19 *Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Altamiro*
 20 *Ramos v. Lyons*, 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Cortes Alonzo*
 21 *v. Noem*, No. 1:25-cv-01519, 2025 WL 3208284, at *1 (E.D. Cal. Nov. 17, 2025).

22 **b. Under *Loper Bright*, the Statute Controls, Not Prior Agency Practices.**

23 Any argument that prior agency practice supports applying § 1226(a) to Petitioner is
 24 unavailing because under *Loper Bright*, the plain language of the statute and not prior
 25 practice controls. In overturning *Chevron*, the Supreme Court recognized that courts often
 26 change precedents and “correct[] our own mistakes” *Loper Bright Enterprises*, 603 U.S. at
 27 411 (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)).
 28 *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens

1 Fishery Conservation and Management Act that itself predated IIRIRA by twenty years.
2 *Loper Bright Enterprises*, 603 U.S. at 380. Thus, longstanding agency practice carries little, if
3 any, weight under *Loper Bright*. The weight given to agency interpretations “must always
4 ‘depend upon their thoroughness, the validity of their reasoning, the consistency with
5 earlier and later pronouncements, and all those factors which give them power to
6 persuade.’” *Loper Bright Enterprises*, 603 U.S. at 432–33 (quoting *Skidmore*, 323 U.S. at 140
7 (cleaned up)).

8 The BIA’s recent decision in *Matter of Q. Li* includes thorough reasoning. *Matter of Q.*
9 *Li*, 29 I&N Dec. 66. In *Q. Li*, the BIA analyzed the statutory text applicable Supreme Court
10 interpretations, and prior BIA holdings regarding § 1225. *Id.* at 66–71. It highlights that an
11 alien, like the Petitioner, who tries to enter the United States illegally is treated as a
12 “applicant for admission” *Id.* at 68 (citing *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020)).
13 An “applicant for admission” is defined, in relevant part, as an alien ‘who arrives in the
14 United States’ [w]hether or not at a designated port of arrival.’” *Id.* (Quoting 8 U.S.C. §
15 1225(a)(1)). The BIA goes on to distinguish aliens detained under § 1226(a) and § 1225(b)
16 by detailing that aliens who arrive in the United States who are detained under § 1225(b)(1)
17 or (b)(2) are not eligible for bond because both provisions “mandate detention for
18 applicants for admission until certain proceedings have concluded.” *Id.* (Quoting *Jennings*,
19 583 U.S. at 298).

20 To be sure, “when the best reading of the statute is that it delegates discretionary
21 authority to an agency,” the Court must “independently interpret the statute and effectuate
22 the will of Congress.” *Loper Bright Enterprises*, 603 U.S. at 395. But “read most naturally, §§
23 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain
24 proceedings have concluded.” *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does
25 not support a position that the plain language mandates detention under § 1226(a) given
26 that the Petitioner was originally apprehended at the international border.

27 ///

28 ///

1 **c. Petitioner's Temporary Detention Does Not Offend Due Process.**

2 As mentioned above, Congress broadly crafted “applicants for admission” to include
3 undocumented aliens present within the United States like Petitioner. *See* 8 U.S.C. §
4 1225(a)(1). And Congress directed aliens like the Petitioner to be detained during their
5 removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 (“Read most
6 naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until
7 certain proceedings have concluded.”). In so doing, Congress made a legislative judgment to
8 detain undocumented aliens during removal proceedings, as they — by definition — have
9 crossed borders and traveled in violation of United States law. As explained above, that is
10 the prerogative of the legislative branch serving the interest of the government and the
11 United States.

12 The Supreme Court has recognized this profound interest. *See Shaughnessy*, 345 U.S.
13 at 210 (“Courts have long recognized the power to expel or exclude aliens as a fundamental
14 sovereign attribute exercised by the Government's political departments largely immune
15 from judicial control.”). And with this power to remove aliens, the Supreme Court has
16 recognized the United States' longtime Constitutional ability to detain those in removal
17 proceedings. *Carlson*, 342 U.S. at 538 (“Detention is necessarily a part of this deportation
18 procedure.”); *Wong Wing*, 163 U.S. at 235 (“Proceedings to exclude or expel would be vain
19 if those accused could not be held in custody pending the inquiry into their true character,
20 and while arrangements were being made for their deportation.”); *Demore*, 538 U.S. at 531
21 (“Detention during removal proceedings is a constitutionally permissible part of that
22 process.”); *Jennings*, 583 U.S. at 286 (“Congress has authorized immigration officials to
23 detain some classes of aliens during the course of certain immigration proceedings.
24 Detention during those proceedings gives immigration officials time to determine an alien's
25 status without running the risk of the alien's either absconding or engaging in criminal
26 activity before a final decision can be made.”).

27 In another immigration context (aliens already ordered removed awaiting their
28 removal), the Supreme Court has explained that detaining these aliens less than six months

1 is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this
 2 presumptive constitutional limit has been subsequently distinguished as perhaps
 3 unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court
 4 explained Congress was justified in detaining aliens during the entire course of their removal
 5 proceedings who were convicted of certain crimes. *Demore*, 538 U.S. at 513. In that case,
 6 similar to undocumented aliens like Petitioner, Congress provided for the detention of
 7 certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court
 8 emphasized the constitutionality of the “definite termination point” of the detention, which
 9 was the length of the removal proceedings.⁴ *Id.* at 512.⁵ In light of Congress’s interest in
 10 dealing with illegal immigration by keeping specified aliens in detention pending the
 11 removal period, the Supreme Court dispensed of any Due Process concerns without
 12 engaging in the “*Mathews v. Eldridge* test” *See id. generally.*

13 Likewise, in the case at bar, Petitioner’s temporary detention pending his removal
 14 proceedings does not violate Due Process. Petitioner has been detained for approximately
 15 one month with upcoming hearing before an Immigration Judge on March 17, 2026, where
 16 his final hearing on the merits of his I-589 will be heard and his *process* continues to unfold.
 17 *See* Exhibit A. Resolution is forthcoming. Petitioner’s ample available process in his current
 18 removal proceedings demonstrate no lack of Procedural Due Process — nor any deprivation
 19 of liberty “sufficiently outrageous” required to establish a Substantive Due Process claim.
 20 *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244
 21 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001).

24 ⁴ “In contrast, because the statutory provision at issue in this case governs detention of
 25 deportable criminal aliens *pending their removal proceedings*, the detention necessarily serves
 26 the purpose of preventing the aliens from fleeing prior to or during such proceedings.
 27 Second, while the period of detention at issue in *Zadvydas* was ‘indefinite’ and ‘potentially
 28 permanent,’ *id.*, at 690–691, 121 S.Ct. 2491, the record shows that § 1226(c) detention not
 only has a definite termination point, but lasts, in the majority of cases, for less than the 90
 days the Court considered presumptively valid in *Zadvydas*.”

⁵ In 2018, the Court again highlighted the significance of a “definite termination point” for
 detention of certain aliens pending removal. *See Jennings*, 583 U.S. at 304.

1 Congress simply made the decision to detain him pending removal which is a
2 “constitutionally permissible part of that process.” *See Demore*, 538 U.S. at 531.

3 In this case, Petitioner, who is present in the United States without admission or
4 parole, is an applicant for admission in INA § 240 removal proceedings and is therefore
5 detained pursuant to 8 U.S.C. § 1225. As discussed above, his detention is mandatory and
6 the IJ does not have jurisdiction to issue a bond. As history has revealed, the BIA issued its
7 precedential decision in *Q. Li*, in which it ruled that Immigration Judges lacked jurisdiction
8 to grant bonds to illegal aliens like the Petitioner, those who are apprehended shortly after
9 crossing the international border illegally. The United States is aware of prior rulings in this
10 District and others rejecting these arguments, but the United States respectfully maintains
11 Petitioner has not been deprived of Due Process in light of the aforementioned precedent.

12 **d. Request for EAJA Fees Should be Denied.**

13 Petitioner seeks attorney’s fees and costs pursuant to § 2412 of the Equal Access for
14 Justice Act (“EAJA”), which allows fee-shifting in civil actions by or against the United
15 States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504,
16 and fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioner cannot obtain
17 fees in this case under 5 U.S.C. § 504 since that provision excludes administrative
18 immigration proceedings. *Ardestani v. I.N.S.*, 502 U.S. 129 (1991). His only recourse for fees
19 is pursuant to § 2412(d)(1)(A), which provides, subject to exceptions not relevant here, that
20 in an action brought by or against the United States, a court must award fees and expenses
21 to a prevailing non-government party “unless the court finds that the position of the United
22 States was substantially justified or that special circumstances make an award unjust.” 28
23 U.S.C. § 2412(d)(1)(A).

24 Here, Petitioner’s request is premature because he is not a prevailing party. Second,
25 even if Petitioner were to prevail in this case, the Federal Respondents’ position asserted in
26 this Response is substantially justified because other courts have found the arguments
27 presented herein to be persuasive and that DHS can lawfully detain, under the mandatory
28

1 detention provisions of 8 U.S.C. § 1225, other petitioners who are similarly situated to this
2 Petitioner.

3 As described above, the United States District Court for the District of Nebraska
4 and the United States District Court for the Southern District of California have both
5 issued decisions holding that, under the plain language of § 1225(a)(1), aliens present in the
6 United States who have not been admitted are “applicants for admission” and are thus
7 subject to the mandatory detention provisions of “applicants for admission” under §
8 1225(b)(2). *See Vargas Lopez*, 802 F. Supp. 3d 1132; *Chavez*, 801 F. Supp. 3d 1133. Because
9 other federal judges have found persuasive the positions advanced by the Federal
10 Respondents in this case, the Federal Respondents’ position is substantially justified. *See*
11 *Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that the district
12 court did not abuse its discretion, in finding that the United States’ position was
13 substantially justified for purposes of EAJA, where different judges disagreed about the
14 proper reading of the statute and the case involved an issue of first impression). Because the
15 United States’ position in this case is substantially justified, Petitioner’s request for
16 attorney’s fees under EAJA cannot prevail.

17 VI. CONCLUSION

18 For the foregoing reasons, Federal Respondents respectfully request that the Court
19 deny the Petition for Writ of Habeas Corpus.

20 Respectfully submitted this 27th day of February 2026.

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23 SIGAL CHATTAH
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