

**FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG DIVISION**

ERICK LEONEL CRISTAL CUMES,

Petitioner,

**Civil Action No. 1:26-CV-00056
(KLEEH)**

v.

TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of Homeland Security; TODD BLANCHE, Acting United States Attorney General; JOHN RIFE, Field Office Director, Philadelphia Field Office, United States Immigration and Customs Enforcement; in their official capacities,

Respondents.

RESPONSE TO AMENDED PETITION AND MOTION

NOW COME the Respondents Todd Lyons, Acting Director of Immigration and Customs Enforcement (“ICE”); Markwayne Mullin, Secretary of U.S. Department of Homeland Security (“DHS”); Todd Blanche, Acting United States Attorney General; and John Rife, Field Office Director for ICE in Philadelphia (“Respondents”), by and through counsel by way of a limited appearance,¹ and submit this brief pursuant to this Court’s Order [Doc. 13].

I. STATEMENT OF THE FACTS AND BACKGROUND OF THE IMMIGRATION AND NATIONALITY ACT

A. Relevant Facts

The Petitioner is Erick Leonel Cristal Cumes, a native and citizen of Guatemala, 

¹ The undersigned appears for a limited purpose of responding to the pending motion and petition [Docs. 3 and 6] and preserves all defenses set forth in Rule 12(b)(2)-(7), including lack of personal jurisdiction, improper venue, insufficient process, insufficient service of process, and failure to join a necessary party. See Fed. R. Civ. P. 12(h); *Davenport v. Ralph N. Peters & Co.*, 386 F.2d 199, 204 (4th Cir. 1967).

 Declaration of Deportation Officer Foster, ¶ 3-5 Attachment B. He entered the U.S. without inspection on an unknown date at an unknown place. *Id.* He was not previously detained by immigration authorities.

On May 28, 2026, at approximately 1100 hours a Search Warrant was executed, and Petitioner was soon apprehended by Immigration and Customs Enforcement (ICE)/Enforcement and Removal Operations (ERO) at the Don Patron Mexican Restaurant in Weston, West Virginia at 506 Market Place Mall, Weston, West Virginia 26452. Foster Declaration, ¶ 6. At approximately 1200 hours, a transport with Petitioner in custody left Weston, WV, and drove directly to 3000 Sidney Street, Suite 100, Pittsburgh, PA 15203. Foster Declaration, ¶¶ 7-8. Based on undersigned's review, the first approximately sixty-three (63) miles of the trip are made in West Virginia, at which point I-79 crosses into Pennsylvania, and the next sixty-eight (68) miles take place in Pennsylvania. The transport carrying Petitioner arrived at 3000 Sidney Street, Suite 100, Pittsburgh, PA 15203 at 1400 hours. Given the distance and times, the transport would have crossed into Pennsylvania no later than 1315 hours.

Later on May 28, 2026, he was transferred to Moshannon Valley Processing Center in Philipsburg, Pennsylvania. Foster Declaration, ¶ 12. On May 28, 2026, the Petitioner was issued and served with a Notice to Appear alleging violations of INA §§ 212(a)(6)(i) and 212(a)(7)(A)(i)(II). Foster Declaration, ¶ 13, Exhibit A. On June 5, 2026, Petitioner's Counsel filed an entry of appearance with the Immigration Court. Foster Declaration, ¶ 14, Exhibit F. On June 8, 2026, he had his first master calendar hearing where he appeared with counsel. The Petitioner appeared, with counsel, for a second master calendar hearing before that same court on June 15, 2026. Foster Declaration, ¶ 16, Exhibit C. The Petitioner is scheduled to appear for an individual hearing on July 7, 2026. Foster Declaration, ¶ 17, Exhibit D.

Based on information from the Clerk for the Northern District of West Virginia, Petitioner's original petition was filed on May 28, 2026 at 1350 hours. Thus, the Petition was filed when Petitioner was no longer in the Northern District of West Virginia. As of today, Petitioner remains detained at Moshannon Valley Processing Center in Pennsylvania as an alien present in the United States who has not been admitted or paroled. Foster Declaration, ¶ 12, Exhibit A.

B. Relevant Statutory Framework

1. The pre-IIRIRA framework gave preferential treatment to aliens who unlawfully entered and were present in the United States.

The Immigration and Nationality Act (INA), as amended, contains a comprehensive framework governing the regulation of aliens, including proceedings for the removal of aliens who unlawfully enter the United States or are otherwise removable and requirements for when the Executive is obligated to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether the alien presented at a port of entry or evaded inspection and entered the United States. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 498 (5th Cir. 2026) (citing *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-24 (BIA 2025)); see also *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010). "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 [immigration] proceeding applied" and whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at 1099.²

At the time, the INA provided for two types of removal proceedings: deportation hearings and exclusion hearings. *Vartelas v. Holder*, 566 U.S. 257, 261 (2012). An alien who arrived at

² Aliens who arrive at a port of entry have physically "entered" the United States, but under the longstanding "entry fiction" doctrine, "aliens who arrive at ports of entry ... are 'treated' for due process purposes as if stopped at the border." *DHS v. Thuraissigiam*, 591 U.S. 103, 139 (2020).

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.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. 223; *see also* 8 U.S.C. §§1225(a)-(b), 1226(a) (1994). In contrast, an alien who evaded inspection and physically entered the United States would be placed in deportation proceedings. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223; *see also Vartelas*, 566 U.S. at 261. Aliens in deportation proceedings, unlike those in exclusion proceedings, “were entitled to request release on bond.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. §1252(a)(1) (1994)).

Thus, the INA’s prior framework distinguishing between aliens based on “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.

Matter of Yajure Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y General of U.S.*, 693 F.3d 408 (3d Cir. 2012)); *Hing Sum*, 602 F.3d at 1100 (similar); H.R. Report (“House Rep.”) No. 104-469, at 225 (1996) (“[I]llegal 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”).

2. IIRIRA eliminated the preferential treatment of aliens who unlawfully entered the United States and mandated detention of “applicants for admission.”

Congress discarded that prior regime through enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). IIRIRA added §1225 to “ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical 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 touchstone both of whether an alien is subject to inadmissibility or deportability grounds of removal and whether the alien is subject to mandatory detention pending removal proceedings. 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 no longer distinguish between aliens based on whether they dutifully presented to an immigration officer or instead managed to evade detection and enter the country without permission. Instead, the “pivotal factor in determining an alien’s status” is “whether or not the alien has been *lawfully* admitted.” House Rep. at 225 (emphasis added); *see also Hing Sum*, 602 F.3d at 1100 (similar); *Matter of Yajure Hurtado*, 29 I&N Dec. at 223.

Additionally, IIRIRA also eliminated the exclusion/deportation dichotomy and consolidated both sets of proceedings into “removal proceedings.” *Matter of Yajure Hurtado*, 29 I&N Dec. at 223. Nonetheless, IIRIRA retained burdens of proof for aliens in removal proceedings akin to those for excludable and deportable aliens: Under 8 U.S.C. §1229a(c)(2)(A), an alien who is “applicant for admission” must establish that he is “clearly and beyond a doubt entitled to be admitted” and “not inadmissible,” while the Department has “the burden of establishing by clear and convincing evidence that, in the case of an alien who has been admitted to the United States, the alien is deportable.” 8 U.S.C. §1229a(c)(3)(A).

IIRIRA effected these changes through several provisions codified in §1225. Section 1225(a) codifies Congress’s decision to make lawful “admission,” rather than physical entry, the benchmark. 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). Moreover, “[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.” 8 U.S.C. §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 immigration proceedings. As part of inspection, “[a]n applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intention of the applicant in seeking admission to the United States” *Id.* §1225(a)(5). Section 1225 also allows an “alien applying for admission” to “at any time ... withdraw the application for admission” and “depart immediately from the United States.” *Id.* §1225(a)(4).

In Section 1225(b), IIRIRA provided for expedited and non-expedited removal 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 “expedited removal proceedings,” *DHS v. Thuraissigiam*, 591 U.S. 103, 109-13 (2020), which may be applied to a subset of certain aliens—those who (1) are “arriving in the United States,” or (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.” 8 U.S.C. §1225(b)(1)(A)(i). In that event, the alien “shall be detained pending a final determination of credible fear of persecution

and, if found not to have such fear, until removed.” 8 U.S.C. §1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. §235.3(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for asylum or a fear of persecution or who is determined not to have a credible fear is likewise detained until removed. *See* 8 U.S.C. §1225(b)(1)(A)(i), (B)(iii)(IV); 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 [§1225(b)(1)].” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).³ It requires that those aliens be detained pending removal proceedings:

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 1229a of this title.

8 U.S.C. §1225(b)(2)(A) (emphasis added); *see also* 8 C.F.R. §235.3(b)(1)(ii) (mirroring §1225(b)(2)’s detention mandate); *Jennings*, 583 U.S. at 302 (holding that §1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin”).

While §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 an admission of the alien.” *Id.*; *see also Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that “the purposes of such parole ... have been served,” the “alien shall ... be returned to the custody from which he was paroled” and be “dealt with in the same manner as

³ Section 1225(b)(2)(A) also does not apply to (1) crewmen or (2) stowaways. 8 U.S.C. §1225(b)(2)(B). In addition, the Executive has discretion to return aliens who have arrived on land from a contiguous territory to that territory pending removal proceedings. *Id.* §1225(b)(2)(C).

that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A).

In Section 1226, IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (not “applicants for admission” specifically). *See* 8 U.S.C. §1226. This provision governs the detention of aliens who were admitted to the country but later become deportable—for example, admitted aliens who overstay or otherwise violate the terms of their visas. 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.” 8 U.S.C. §1226(a). Detention under this provision is generally discretionary. The arrested alien “may” either “continue to [be] detain[ed]” or “may” be released on bond or conditional parole. 8 U.S.C. §1226(a)(1)-(2).⁴ DHS makes the initial custody determination. 8 C.F.R. §236.1(d)(1). The alien may seek custody redetermination (a bond hearing) before an immigration judge and can appeal an immigration judge’s custody determination to the Board of Immigration Appeals (“Board”). 8 C.F.R. §§236.1(c)(8), (d), 1003.19, 1236.1(d)(1).

That “default rule” of discretionary detention does not apply to certain criminal aliens. *Jennings*, 583 U.S. at 288; *see also* 8 U.S.C. §1226(c). Section 1226(c) provides that “[t]he Attorney General shall take into custody” certain classes of criminal aliens—those who are inadmissible or deportable because the alien (1) “committed” certain offenses delineated in 8 U.S.C. §§1182 and 1227; or (2) engaged in terrorism-related activities. *Nielsen v. Preap*, 586 U.S. 392, 398-99 (2019). Such aliens may be released only if DHS determines “that release of the alien from custody is necessary” to protect a witness to a “major criminal activity” or a similar person, and then only if the alien “will not pose a danger” to public safety and is not a flight risk. 8 U.S.C. §1226(c)(4).

⁴ Conditional parole under §1226(a) is distinct from parole under §1182(d)(5)(A). *See Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023); *Matter of Castillo-Padilla*, 25 I. & N. Dec. 257, 259-63 (BIA 2010); *see also Ortega-Cervantes v. Gonzalez*, 501 F.3d 1111, 1116 (9th Cir. 2007).

Congress recently amended §1226(c) through the Laken Riley Act, Pub. L. No. 119-1, §2, 139 Stat. 3 (2025), which additionally limits release from detention on parole for criminal aliens who (1) are inadmissible because they are physically present in the United States without admission or parole, 8 U.S.C. §1182(a)(6)(A), have committed a material misrepresentation or fraud, 8 U.S.C. §1182(a)(6)(C), or lack required documentation, 8 U.S.C. §1182(a)(7); and (2) are “charged with, ... arrested for, ... convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of” certain listed offenses. 8 U.S.C. §1226(c)(1)(E).

3. The Government applies §1225(b)(2)(A) to require detention of all applicants for admission pending removal proceedings.

For many years after IIRIRA, DHS and most immigration judges treated aliens who entered the United States without admission as being subject to discretionary detention under 8 U.S.C. §1226(a), rather than mandatory detention under 8 U.S.C. §1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 225 n.6. Until last year, however, the Board had not issued any precedential opinion on the appropriate detention authority for such individuals.

In July 2025, DHS “revisited its legal position on detention and release authorities” and issued interim guidance that brought the Executive’s practices in line with the statute’s plain text. Todd M. Lyons, Acting Director of U.S. Immigration and Customs Enforcement, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025), *available at* <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applicants-for-admission> (last visited May 16, 2026). Specifically, DHS concluded that “applicants for admission are subject to mandatory detention under [8 U.S.C. §1225(b)] and may not be released from DHS custody except by ... parole under 8 U.S.C. §1182(d)(5).” *Id.* As

a result, the “only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under [8 U.S.C. §1226(a)] are aliens admitted to the United States and chargeable with deportability under [8 U.S.C. §1227].” *Id.*

In *Matter of Yajure Hurtado*, the Board concluded that §1225(b)(2)’s mandatory detention regime applies to all aliens who entered the United States without inspection and admission:

Aliens ... who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an “admission.”

29 I&N Dec. at 228. Thus, under controlling Board precedent, immigration judges “lack authority to hear bond requests or to grant bond to aliens ... who are present in the United States without admission.” *Id.* at 225.

II. SUMMARY OF ARGUMENT

First, the Court should transfer the Petition. Petitioner was not detained in this district at the time his petition was filed. Under a straightforward application of 28 U.S.C. § 2241(a) and *Padilla v. Rumsfeld*, 542 U.S. 426 (2004), this Court thus lacks habeas jurisdiction over this action. The Court should thus dismiss the petition without prejudice so that Petitioner can refile in his district of confinement—the Western District of Pennsylvania—or transfer this case to that district under § 1404(a), with the Respondents’ consent.

As to the merits of the Petition, the INA’s plain language requires DHS to detain Petitioner, who is present in the United States without admission. This Court should follow the Fifth and Eighth Circuits in applying 8 U.S.C. § 1225(b)(2) as written. *See Buenrostro-Mendez*, 166 F.4th 520-21; *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026) and reject the Second, Sixth, and Eleventh Circuits’ contrary decisions. *See Cunha v. Freden*, 2026 WL 1146044 (2d Cir. April 28, 2226); *Lopez-Campos v. Raycraft*, 2026 WL 1283891 (6th Cir. May 11, 2026); *Alvarez v. Warden*.

Federal Detention Center Miami, 2026 WL 1243395 (11th Cir. May 6, 2026); *see Castañon-Nava v. U.S. Dep't of Homeland Sec.*, — F.4th —, 2026 WL 1223250 (7th Cir. 2026) (J. Lee individual opinion).

Section 1225 deems all aliens who are “present in the United States” without admission to be “applicants for admission,” and it mandates that all such applicants for admission—except for those otherwise exempted—“shall be detained” during their removal proceedings. 8 U.S.C. §1225(a)(1), (b)(2)(A). Detention is mandatory, regardless of the duration of the alien’s presence in the United States, the alien’s distance from the border when apprehended, or the affirmative acts he takes to secure lawful admission.

The phrase “seeking admission” in §1225(b)(2) does not undermine the government’s reading. An alien who is an “applicant for admission” is necessarily “seeking admission.” *See* 8 U.S.C. §1225(a)(3). No additional, affirmative act is needed. This statutory construction is consistent with the everyday meaning of the terms—as a matter of plain English, a person who is *applying* for something is necessarily *seeking* it. This reading does not render the term “seeking admission” redundant; every term or phrase has independent meaning. Even if there were redundancy, “[r]edundancies are common in statutory drafting,” and “[r]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text.” *Barton v. Barr*, 590 U.S. 222, 223 (2020).

Nor do the statute’s titles and headings limit §1225(b)(2)(A)’s detention mandate to aliens arriving in the country since a statute’s title “cannot limit the plain meaning of the text.” *Brotherhood of R.R. Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 528-29 (1947). This is especially true where a statute, like §1225, covers a range of subjects and its headings are not meant as a comprehensive summary of its content. In any event, Petitioner is still “seeking

admission” by virtue of his pending application with the Immigration Court and also by forgoing the option to voluntarily depart with the ultimate objective of obtaining admission.

The government’s reading of §1225(b)(2) does not render §1226 superfluous. Section 1226(c)’s mandatory detention provisions, including as amended by the Laken Riley Act, govern a significant swath of aliens who are *not* covered by §1225(b)(2)—for example, admitted aliens who overstayed visas and are deportable. The mere fact that the provisions overlap is not a basis for rewriting §1225(b)(2)’s clear text. Even as to the areas of overlap, §1226(c) does considerable independent work by prohibiting release on parole of those aliens to which it applies.

A contrary reading of the statute would reimpose the same illogical regime that IIRIRA sought to eliminate—requiring the detention of aliens who present at a port of entry as the law requires but authorizing the release of those aliens who enter the United States in violation of law and make *no effort* to prove admissibility. The Court should not endorse a reading of the statute which rewards those who purposefully evade and flout the immigration laws and authorities, particularly where the consequence of such an interpretation subvert congressional intent.

The government’s interpretation of §1225(b)(2) is consistent with *Jennings*, 583 U.S. at 287, which did not address the scope of §1225 and §1226’s detention authority. Even so, *Jennings* characterized §1225(b)(2) consistent with the government’s interpretation as “a catchall provision that applies to all applicants for admission not covered by §1225(b)(1).” *Id.* at 287.

III. ARGUMENT

A. Improper Venue and Lack of Jurisdiction

1. Venue is Improper and this Court Lacks Habeas Jurisdiction.

The Supreme Court has made clear that in “core” habeas petitions—*i.e.*, petitions like the instant one that challenges the petitioner’s present physical confinement—the petitioner must

file the petition in the district in which he is confined (*i.e.*, the district of confinement) and name his warden as the respondent. *Rumsfeld v. Padilla*, 542 U.S. 426, 437 (2004). In *Padilla*, the Supreme Court described habeas petitions challenging a petitioner's present physical confinement (*i.e.*, detention) as "core" habeas petitions. *Id.* at 445. For review of such "core" petitions, "jurisdiction lies in only one district: the district of confinement." *Id.* at 443; *see also Trump v. J.G.G.*, 145 S. Ct. 1003, 1005-06 (2025). Accordingly, "[w]henver a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement."⁵ *Id.* at 447; *see also id.* at 443 (explaining that "[t]he plain language of the habeas statute thus confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement").

In embracing the "immediate custodian" rule, the Supreme Court explained that limiting a district court's jurisdiction to issue a writ to custodians within their jurisdiction "serves the important purpose of preventing forum shopping by habeas petitioners." *Padilla*, 542 U.S. at 447 (observing that the result of disregarding the immediate custodian rule "would be rampant forum shopping, district courts with overlapping jurisdiction, and the very inconvenience, expense, and embarrassment Congress sought to avoid when it added the jurisdictional limitation [in 1867]").

Although *Padilla* addressed a habeas petition outside of the immigration context, the Fourth Circuit has readily applied *Padilla*'s holding and logic to non-penal—and even non-

⁵ In adopting the "immediate custodian" rule, the Supreme Court rejected the "legal reality of control" standard and held that legal control does not determine the proper respondent in a habeas petition that challenges present physical confinement. *See Padilla*, 542 U.S. at 437-39; *see also id.* at 439 ("In challenges to present physical confinement, we reaffirm that the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent").

physical—confinement. *Kanai v. McHugh*, 638 F.3d 251, 255 (4th Cir. 2011) (applying *Padilla* to habeas petition of conscientious objector who was refused a discharge); accord *Fisher v. Unknown*, No. 23-7069, 2024 U.S. App. LEXIS 31953, at *2 (4th Cir. Dec. 17, 2024) (applying *Padilla* to a petition filed by a civilly-committed petitioner). “A habeas petitioner who is physically confined must name this ‘immediate custodian’ as the habeas respondent, and must file the habeas petition in the ‘district of confinement.’” *Kanai*, 638 F.3d at 255. (quoting *Padilla*, 542 U.S. at 446-47). “In that circumstance, the ‘district of confinement’ necessarily is the location of *both* the habeas petitioner and the immediate custodian.” *Id.* (emphasis added); accord *United States v. Little*, 392 F.3d 671, 676 (4th Cir. 2004). As such, courts in this circuit have readily applied *Padilla*’s analysis to habeas petitions in the immigration context. *See, e.g., Deng v. Crawford*, No. 2:20-cv-199, 2020 U.S. Dist. LEXIS 205715, at *9 (E.D. Va. Sep. 30, 2020), *R&R adopted*, 2020 U.S. Dist. LEXIS 203209 (E.D. Va. Oct. 30, 2020); *Wamala v. U.S. ICE*, No. 3:19-cv-00067-FDW, 2019 U.S. Dist. LEXIS 211589, at *2 (W.D.N.C. Dec. 7, 2019); *Tairou v. Cannon*, No. 1:19-674-JFA-SVH, 2019 U.S. Dist. LEXIS 71819, at *2 (D.S.C. Apr. 5, 2019), *R&R adopted*, 2019 U.S. Dist. LEXIS 71460 (D.S.C. Apr. 29, 2019); *Kaisam v. Lynch*, No. JKB-16-2809, 2016 U.S. Dist. LEXIS 106711, at *2 (D. Md. Aug. 10, 2016); *Mi Hui Lu v. Lynch*, No. 1:15-cv-1100-GBL-MSN, 2015 U.S. Dist. LEXIS 164670 (E.D. Va. Dec. 7, 2015) (“The Immediate Custodian Rule Applies To A Habeas Petition Filed By An Individual Detained During Immigration Proceedings.” (emphasis removed)); *see also Romero v. Evans*, 280 F. Supp. 3d 835, 842-43 (E.D. Va. 2017), *rev’d on other grounds sub nom., Johnson v. Guzman Chavez*, 594 U.S. 523, 532 (2021). Recently, the Ninth Circuit “affirm[ed] the application of the immediate custodian and district of confinement rules to core habeas petitions filed pursuant to 28 U.S.C. § 2241, including those filed by immigrant detainees.” *Doe v. Garland*, 109 F.4th

1188, 1199 (9th Cir. 2024).

The Fourth Circuit recognizes an exception, which is when the immediate custodian is unknown. *United States v. Moussaoui*, 382 F.3d 453, 465 (4th Cir. 2004). Petitioner relies on the fact that he claims broadly in the petition that efforts were undertaken to ascertain Petitioner's location through various means. Petitioner alleges that documentation confirming these efforts can be provided, but these were not provided with the Amended Petition, and thus Respondent cannot meaningfully evaluate them. Further, unlike *Suri* there are no allegations of some type of clandestine methods or district shopping. *Suri v. Trump*, No. 25-1560, 2025 WL 1806692, at *4 (4th Cir. July 1, 2025). Instead, Petitioner was taken from the Northern District of West Virginia, where, to undersigned's knowledge, there is no ICE Detention Facility (*see* <https://www.ice.gov/detention-facilities>), promptly to the Western District of Pennsylvania—an adjacent district, where he remains.

Further, in the Southern District of West Virginia case cited by Petitioner, *Vilchez*, there were notable different facts cautioning against transfer. *Linarez Vilchez v. Kluemper*, No. 3:26-0261, ECF No. 17 (S.D. W. Va. Apr. 16, 2026). In *Vilchez* the Petitioner appears to have provided more substantive information regarding the efforts and timing regarding ascertaining Petitioner's location. *Id.* Further, in *Vilchez*, the Petitioner was taken from the Southern District of West Virginia, through the Northern District of West Virginia, to the Western District of Pennsylvania where he then remained. *Id.* The record in *Vilchez* indicates that The Petitioner filed in the Southern District of West Virginia at the time Petitioner was in the Northern District of West Virginia. *Id.* But the Court could not transfer it to the Western District of Pennsylvania, because it could not have originally been brought there, since at the time of filing the Petitioner was not there. *Id.* That is not the issue here—Petitioner was promptly transferred to the Western District of Pennsylvania

where he remains.

Further, although the Fourth Circuit has yet to resolve whether § 2241(a)'s "within their respective jurisdictions" language is a matter of personal jurisdiction or venue, dismissal without prejudice (or transfer in the alternative) is appropriate under either lens.

To the extent the proper lens for reading § 2241(a)'s language is personal jurisdiction, it favors the Respondents' motion. Here, Petitioner was in the Western District of Pennsylvania at the time the Petition was filed, and is still in the Western District of Pennsylvania. Foster Declaration, ¶ 12.

To the extent the proper lens for reading § 2241(a)'s "within their respective jurisdictions" language is as a venue provision, this reading still favors the Respondent. As noted previously, at the time the Petition was filed when the Petitioner was in the Western District of Pennsylvania, and he remains there. Foster Declaration, ¶ 12. Therefore, the Petition was not properly filed in this district. *Little*, 392 F.3d at 680; *see also Nofflett v. United States*, No. 24-6487, 2024 U.S. App. LEXIS 29227, at *2 (4th Cir. Nov. 18, 2024); *United States v. Matteer*, 802 F. App'x 797, 798 (4th Cir. 2020); *see also Fuentes v. Choate*, No. 24-cv-01377-NYW, 2024 U.S. Dist. LEXIS 105474, at *30 (D. Colo. June 13, 2024) (dismissing without prejudice rather than transferring where the petitioner is no longer detained in the transferee court's district); *Gonzalez v. Grondolsky*, 152 F. Supp. 3d 39, 47 (D. Mass. 2016).

A habeas petition brought under 28 U.S.C. § 2241 challenging detention must be brought against the "immediate custodian" and filed in the district in which the petitioner is detained. The Northern District of West Virginia is not the proper venue because Petitioner was not detained in this district at the time he filed his habeas petition and is not detained here now. Foster Declaration, ¶ 12. Thus, the Court lacks personal jurisdiction over the immediate

custodian, and the Northern District of West Virginia is not the proper venue for this case. Consequently, the Court should either dismiss this action or transfer.

2. This Court Should Transfer this Action.

Because this Court lacks habeas jurisdiction over this petition, the Court should dismiss this action without prejudice or transfer the petition forthwith under 28 U.S.C. § 1404(a). *Matteer*, 802 F. App'x at 798. The proper transferee court is the Western District of Pennsylvania, because it is the place of Petitioner's regular and "present physical confinement[.]" *Padilla*, 542 U.S. at 447. Respondents also consent to transfer to that district.

Here, Petitioner is now "permanently"—meaning regularly and non-transitorily—housed at the Moshannon Valley Processing Center in Pennsylvania. Foster Declaration, ¶ 12. For the purposes of the § 2241(a) analysis, the Fourth Circuit has explained that transitory or temporary detention does not create § 2241(a) "jurisdiction" in every district in which a petitioner is held at some point. *United States v. Poole*, 531 F.3d 263, 275 (4th Cir. 2008). In *Poole*, the Fourth Circuit determined that the District of Maryland lacked jurisdiction over § 2241(a) petition filed by a prisoner permanently housed in Kentucky while that petitioner was temporarily in Maryland. *Id.*; *id.* at 271 ("[N]either its issuance of the writ of habeas corpus ad testificandum nor its order keeping Poole in Maryland transmuted Poole's temporary presence in the district into a permanent stay that effected a change in custodian."). Instead, the Court looks to where the petitioner is presently and regularly/non-transitorily confined for purposes of the § 2241(a) analysis. *Id.* at 273; see *Kanai*, 638 F.3d at 258 ("[T]he phrase 'within their respective jurisdictions' in § 2241(a) identifies the proper location of the federal district in which a habeas petition should be filed."); accord *Abraham v. Decker*, No. 18-CV-3481 (CBA), 2018 U.S. Dist. LEXIS 117219, at *8 (E.D.N.Y. July 11, 2018) (a "brief stint of two hours in Brooklyn" did not create § 2241(a)

jurisdiction in E.D.N.Y.); *Jenkins v. Fed. Bureau of Prisons*, No. 2:17-cv-1951-AKK-JEO, 2018 U.S. Dist. LEXIS 27588, at *2 n.2 (N.D. Ala. Jan. 11, 2018) (“...while Jenkins is held in Illinois, that confinement is merely temporary, for the purpose of his being re-sentenced.... In such circumstances, Jenkins’s immediate custodian for habeas purposes remains the warden of the prison where he is assigned to serve out his federal sentence[.]”), *R&R adopted*, 2018 U.S. Dist. LEXIS 26607 (N.D. Ala. Feb. 20, 2018).

In this case, Moshannon Valley Processing Center in Pennsylvania is where Petitioner is regularly and non-transitorily held, and thus Western District of Pennsylvania is the proper tribunal. Here, Petitioner was in not in the Northern District of West Virginia at the time the petition was filed.

Therefore, transferring the case to the Western District of Pennsylvania because Petitioner’s physical confinement in that district is present and non-transitory is entirely consistent with the practice of courts in this circuit – even in cases where transfer shortly follows the petition. *Little*, 392 F.3d at 676 (“On Little’s § 2241 claim..., the Western District of North Carolina is not the proper venue to consider that claim because Little [was transferred and] is currently incarcerated in a federal medical center in Texas. Accordingly, we dismiss that claim without prejudice.”); *Wamala*, 2019 U.S. Dist. LEXIS 211589, at *3 (transferring petition filed in W.D.N.C. to M.D. Ga. because petitioner “has since been transferred to the Stewart Detention Center in Lumpkin, Georgia”); *Tairou*, 2019 U.S. Dist. LEXIS 71460, at *1 (finding although petition filed while petitioner was in Charleston County Detention Center, transfer to S.D. Ga. was appropriate because “this court lacks personal jurisdiction over petitioner’s custodian/respondent, the Warden of the ICE Processing Center in Folkston, Georgia.”); *see also Cody v. Phelps*, No. 8:20-cv-3298-SAL-JDA, 2020 U.S. Dist. LEXIS 252539, at *5 (D.S.C. Oct. 26, 2020)

(recommending transfer of habeas petition to district of present confinement), *R&R adopted*, 2021 U.S. Dist. LEXIS 61498 (D.S.C. Mar. 31, 2021). That Petitioner was not in this district at the time the habeas petition was filed supports the conclusion that personal jurisdiction and venue is improper here. The Court should transfer the case to the Western District of Pennsylvania under 28 U.S.C. § 1404(a).

B. Section 1225(b)(2) mandates detention of aliens, like Petitioner, who are present in the United States without having been admitted.⁶

Under the plain language of §1225(b)(2), DHS is required to detain Petitioner, who is present in the United States without admission and is subject to removal proceedings—regardless of how long he may have been in the United States or how far inland from the border he managed to migrate during his parole. Section 1225(b)(2)’s unambiguous language resolves this case. *See Avila*, 170 F.4th at 1133-1139; *Buenrostro-Mendez*, 166 F.4th at 502-09; *see also 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 §1225(b)(2) mandates detention of applicants for admission.

Section 1225(a) deems all aliens who are “present in the United States [and] ha[ve] not been admitted or who arrive[] in the United States” to be “applicant[s] for admission.” 8 U.S.C. §1225(a)(1). And “admission” under the INA means not mere 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 inspection and admission is and remains an applicant for admission, regardless

⁶ Undersigned is aware, as Petitioner cites in his Amended Petition, that *Bakuradze v. Adams* is likely on point to this analysis. *Bakuradze v. Adams*, 5:26-CV-18, ECF No.10. That case involved issues of asylum and parole, but once the asylum and parole status of Petitioner in *Bakuradze* were addressed by Judge Bailey in *Bakuradze*, the remaining analysis may apply here. However, even if *Bakuradze* fully applies here, decisions of a district judge are not binding on other district judges, even within the same district, *see Kelly v. Sentara*, No. 2:11CV672, 2012 WL 4340849, at *2, n. 1 (E.D. Va. Sept. 20, 2012) *citing Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 430 n. 10 (1996). Thus, this is seemingly an issue of first impression to this district judge.

of the duration of the alien's presence in the United States or physical distance from the border.

In turn, §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). The statute's use of the term “shall” denotes that detention is mandatory. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998); *see Jennings*, 583 U.S. at 302 (holding that §1225(b)(2) “mandate[s] detention”). And like subsection (a), subsection (b)(2) makes no exception for either the alien's duration of presence in the country or the distance of his incursion. Therefore, except for those aliens expressly exempted, the statute's plain text mandates that DHS detain all “applicants for admission” who are not “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §1225(b)(2)(A); *see, e.g., Buenrostro-Mendez*, 166 F.4th at 502.

Petitioner falls squarely within the statute's definition. He is “present in the United States,” there is no dispute that he has “not been admitted,” and he does not fall within any of the exceptions to §1225(b)(2)(A). *See* 8 U.S.C. §1225(a), (b)(2)(B). Moreover, Petitioner did not—and cannot—establish that he is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §1225(b)(2)(A). Therefore, the statute commands that Petitioner “shall be detained for a [removal] proceeding under [8 U.S.C. §1229a].” 8 U.S.C. §1225(b)(2)(A).

2. Section 1225(b)(2)'s reference to aliens “seeking admission” does not otherwise limit the statute to aliens actively attempting to gain admission.

A number of courts, including the Second, Sixth, and Eleventh Circuits, *supra*, have held that the phrase “seeking admission” in §1225(b)(2)(A) requires that the provision be read to apply only to applicants for admission who are making “active efforts” to obtain admission. Such a reading contradicts the statute, as the Fifth and Eighth Circuits have correctly held. *Buenrostro-Mendez*, 166 F.4th at 506-04; *Avila*, 170 F.4th at 1135-36.

Section 1225(b)(2) requires the detention of an “applicant for admission, if the examining officer determines that [the] alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §1225(b)(2)(A) (emphasis added). The statutory text and context show that being an “applicant for admission” is a means of “seeking admission.” In other words, every “applicant for admission” is inherently and necessarily “seeking admission,” at least absent a choice to pursue withdrawal. No additional affirmative step is necessary. *Cf. Jimenez-Rodriguez v. Garland*, 996 F.3d 190, 194 n.2 (4th Cir. 2021) (“Because Jimenez-Rodriguez was never lawfully admitted, he qualifies as someone ‘seeking admission.’”) (citing, *inter alia*, §1225(a)(1)). Section 1225(a) provides that “[a]ll aliens ... who are applicants for admission *or otherwise* seeking admission or readmission ... shall be inspected.” 8 U.S.C. §1225(a)(3) (emphasis added). The word “[o]therwise” means “in a different way or manner[.]” *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster’s Third New International Dictionary 1598 (1971)); *see also Att’y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same). The phrase “or otherwise” thus “operates as a catchall: the specific items that precede it are meant to be subsumed by what comes after the ‘or otherwise’” clause. *Kleber v. CareFusion Corp.*, 914 F.3d 480, 483 (7th Cir. 2019); *see also Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) (“or otherwise” means “the first action is a subset of the second action”). 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 §1225(b)(2)(A). *See Buenrostro-Mendez*, 166 F.4th at 503.

Section 1225(a)(5) states that “[a]n applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the *applicant in seeking admission* to the United States” 8 U.S.C. §1225(a)(5) (emphasis

added). The statute thus explicitly recognizes that an applicant for admission is seeking an admission to the United States the reasons for which the immigration officer is authorized to examine under oath. “Th[is] language strongly suggests that those who are applicants for admission are ‘seeking admission.’” *Buenrostro-Mendez*, 166 F.4th at 503.

“Seeking admission” thus includes not only aliens who “entered the United States with visas or other entry documents before their presence became lawful,” but also aliens who “entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of [§1225](a)(1).” *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 n.6 (BIA 2012) (emphases omitted). As a result, “many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws.” *Id.* at 743. For example, an alien who previously unlawfully entered the United States and is never admitted, departs, and subsequently submits a literal application for admission to the United States—*e.g.*, applies for a visa—is deemed to be “*again seek[ing] admission*” to the United States. *Id.* at 743-44 & n.6 (emphasis added) (discussing 8 U.S.C. §1182(a)(9)(B)(i)(I)-(II)). Mere presence without admission *is* seeking admission “by operation of law.” *Id.*; *see also Buenrostro-Mendez*, 166 F.4th at 502 (“That ‘seeking admission’ is equivalent to being an ‘applicant for admission’ by operation of law was confirmed by the [Board] over a decade ago in *Matter of Lemus-Losa*[.]”).

The everyday meaning of the statutory terms also supports this reading. *See Buenrostro-Mendez*, 166 F.4th at 502 (“The everyday meaning of the statute’s terms confirms that being an ‘applicant for admission’ is not a condition independent from ‘seeking admission.’”). One may “seek” something without “applying” for it—however, one who is *applying* for something is necessarily *seeking* it. *Compare Webster’s New World College Dictionary* 69 (4th ed.) (stating

that “apply” means “[t]o make a formal request (to someone for something)”, *with id.* at 1298 (stating that “seek” means “to request; ask for”); *accord Mejia Olalde v. Noem*, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025) (“To ‘seek’ is a synonym of to ‘apply’ for.”). That is especially true when the object is “admission.” Thus, a person who is “applying” for admission to a college or club is “seeking” admission to the college or club. *See* The American Heritage Dictionary of the English Language 63 (1980) (“American Heritage Dictionary”) (stating that “apply” means “[t]o request or *seek* employment, acceptance, or *admission*”) (emphasis added). Likewise, an alien who is “applying” for admission to the United States (*i.e.*, an “applicant for admission”) is necessarily “seeking admission” to the United States. *See Buenrostro-Mendez*, 166 F.4th at 502; *see also Montoya v. Holt*, 2025 WL 3733302, at *8, 10 (W.D. Ok. Dec. 26, 2025) (“What individual is ‘applying’ for a given legal status without ‘seeking’ such status?”).

All of this confirms that neither the duration of an alien’s unlawful presence in the United States nor his distance from the border when apprehended alters the legal reality that an “applicant for admission” is “seeking admission.” 8 U.S.C. §1225(a)(1), (b)(2)(A). “Congress knows how to limit the scope” of the INA “geographically and temporally when it wants to.” *Mejia Olalde*, 2025 WL 3131942, at *4. For example, §1225(b)(1) may apply to certain aliens “arriving in the United States” or who “ha[ve] been physically present in the United States continuously for [a] 2-year period.” 8 U.S.C. §1225(b)(1). So, “[i]f Congress meant to say that an alien no longer is ‘seeking admission’ after some amount of time in the United States, Congress knew how to do so.” *Mejia Olalde*, 2025 WL 3131942, at *4. It did not. To the contrary, §1225(a)(1)’s inclusion of *both* aliens “arriving” and those “present in the United States” confirms that *all* aliens who are not admitted are “applicants for admission,” regardless of the length of their presence in the country.

At a minimum, §1225(a)(3) is treating what comes after the “otherwise” clause as “simply

another way of referring to aliens who are applicants for admission.” *Rojas v. Olson*, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025); *see also Mejia Olalde*, 2025 WL 3131942, at *3. Even if that produces some redundancy in §1225(a)(3) and (b)(2)(A), the canon against surplusage “is not a silver bullet,” *Rimini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019), because Congress often “employ[s] a belt-and-suspenders approach,” *Atl. Richfield Co. v. Christian*, 590 U.S. 1, 14 n.5 (2020)—here, to ensure the broadest possible application of the inspection requirement.

The Government’s reading does not render the term “seeking admission” redundant of the phrase “applicant for admission” in §1225(b)(2)(A); the structure of §1225(b)(2)(A) demonstrates that each phrase has independent meaning. Section 1225(b)(2)(A) is composed of a primary (operative) clause, which is modified by two prefatory clauses offset by commas. The operative clause requires detention of aliens “seeking admission” who cannot show their admissibility (“if the examining immigration officer . . . , [then] the alien shall be detained”). That clause’s mandate is modified by two prefatory clauses. The first excludes aliens covered by subparagraphs (B) and (C). 8 U.S.C. §1225(b)(2)(A) (“[s]ubject to . . .”). Like the first, the second prefatory clause narrows the operative clause to a subset of “case[s]”—namely, “in the case of an alien who is an applicant for admission” *Id.* Section 1225(b)(2) thus lays out a general command (the operative clause), and then qualifies that directive: “[I]f an alien seeking admission is not clearly and beyond a doubt entitled to be admitted,” then “the alien shall be detained”—but only if (1) the alien is not covered by subparagraphs (B) or (C); and (2) the alien is seeking admission by being “an applicant for admission” under §1225(a)(1). No portion of the statute is redundant.

Even if it were otherwise, “[r]edundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or

lack of foresight, or sometimes simply because of the shortcomings of human communication.” *Barton*, 590 U.S. at 239. Thus, the Supreme Court “has often recognized: Sometimes the better overall reading of a statute contains some redundancy.” *Id.* (internal quotations omitted). For that reason, “the surplusage canon ... must be applied with statutory context in mind,” *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017), and “redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text,” *Barton*, 590 U.S. at 239.

Those principles apply with full force here. Under a straightforward reading of the statute, being an “applicant for admission” is “seeking admission.” *Buenrostro-Mendez*, 166 F.4th at 502-03; *Avila*, 170 F.4th at 1134 (“[w]e agree with the Fifth Circuit that the ordinary meanings of the phrases ‘applicant for admission’ and ‘seeking admission’ are the same.”). Even if that reading produced some redundancy in §1225(b)(2)(A), that is “not a license to rewrite” §1225 “contrary to its text.” *Barton*, 590 U.S. at 239; *see also Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) (“Th[e] principle [that drafters do repeat themselves] carries extra weight where ... the arguably redundant words that the drafters employed ... are functional synonyms.”). And that is especially true here, where that re-writing would be contrary to Congress’s objective in passing the law.

To be sure, the Government previously operated under a narrower application of §1225(b)(2)(A), such that aliens present in the United States who had entered without admission could be detained under §1226(a). But “authority granted by Congress cannot evaporate through lack of administrative exercise.” *Bankamerica Corp. v. United States*, 462 U.S. 122, 131 (1983). That is especially true where, as here, neither the former INS nor the Department wholly “fail[ed] ... to exercise the power it now claims.” *Id.* Prior administrations still detained the aliens subject

to §1225(b)(2)(A)—just under §1226(a). And those administrations interpreted and applied §1225(b)(2)(A) to mandate detention of *some* aliens—just a subset of all those subject to §1225(b)(2)(A). In any event, the Supreme Court has not hesitated to set aside longstanding agency interpretations and practices, including in the context of IIRIRA itself, when the agency practice was inconsistent with the statute. See *Pereira v. Sessions*, 585 U.S. 198, 204-05 (2018) (rejecting interpretation of INA consistent with 21-year government practice). As the Fifth Circuit recognized, “[y]ears of consistent practice cannot vindicate an interpretation that is inconsistent with a statute’s plain text.” *Buenrostro-Mendez*, 166 F.4th at 506. “That prior Administrations decided to use less than their full enforcement authority under §122 does not mean they lacked the authority to do more.” *Id.*

Moreover, an applicant who endeavors to remain in the United States during the removal proceedings—proceedings in which the alien has the “burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted” or satisfies the criteria for “relief from removal,” 8 U.S.C. §1229a(c)(2)(A), (c)(4)—is “endeavor[ing] to obtain” admission to the United States. American Heritage Dictionary at 1174.

The reference to “arriving aliens” in §1225’s title—“expedited removal of inadmissible arriving aliens”—cannot limit the statute’s reach to aliens entering the United States. After all, a statute’s title is “of use only when [it] shed[s] light on some ambiguous word or phrase”; “the title of a statute and the heading of a section cannot limit the plain meaning of the text.” *Trainmen*, 331 U.S. at 528-29; see also *Miranda v. Garland*, 34 F.4th 338, 355 (4th Cir. 2022) (“While perhaps relevant, a statute’s heading is still far less instructive than its actual text,” and “[t]he heading of a section cannot limit the plain meaning of the text.”) (internal quotation marks omitted).

Here, §1225's text applies to aliens who are already physically present in the United States, not just to those who are arriving. Section 1225(a)(1) explicitly deems aliens already "present in the United States who have not been admitted" to be applicants for admission. 8 U.S.C. §1225(a)(1). And nothing in §1225(b)(2)(A) refers to "arriving aliens." *Buenrostro-Mendez*, 166 F.4th at 504 ("If §1225 truly only concerns aliens arriving in the United States, then the definition in §1225(a)(1) could have excluded unadmitted aliens present in the United States entirely."). Likewise, §1225(b)(1) expedited removal procedures may be applied not just to aliens "arriving in" the United States, but also to aliens who have been "physically present in the United States" for up to two years. 8 U.S.C. §1225(b)(1)(A)(i), (iii)(II).⁷

A number of courts have held, that the government's interpretation would render superfluous portions of §1226, which contains a separate mandatory detention provision for certain criminal aliens. That, too, is wrong. Although §1226(c) and §1225(b)(2) overlap for some aliens, each provision has independent effect. Mere overlap is no basis for re-writing unambiguous statutory text. Section 1226(a) authorizes the Executive to "arrest[] and detain[]" *any* "alien" pending removal proceedings, but provides that the Executive also "may release the alien" on bond or conditional parole. 8 U.S.C. §1226(a). That provision provides the detention authority for the significant group of aliens who are not "applicants for admission" subject to §1225(b)(2)(A), *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("the specific governs the general")—that is, aliens who have been admitted to the United States but are now

⁷ The statute's title "cannot undo or limit that which the text makes plain." *Trainmen*, 331 U.S. 5 at 529. "Where the text is complicated and prolific, headings and titles can do no more than indicate the provisions in a general manner," and often "neglect to reveal that [the statute] also deals with" a variety of other subjects. *Trainmen*, 331 U.S. at 528 ("That the heading of [a particular section] fails to refer to all matters which the framers of that section wrote into the text is not an unusual fact"). Here, §1225 covers a multitude of subjects and classes of aliens, including arriving aliens; that the statute's title singles out arriving aliens specifically "cannot limit the plain meaning of the text." *Id.* Even if it could, the title refers to "arriving aliens" in a clause addressing "expedited removal of inadmissible ... aliens," and expedited removal is governed by subsection (b)(1), not subsection (b)(2). 8 U.S.C. §1225(b)(2)(B)(ii) *emphasis added*).

removable. For example, the detention of any of the multitude of aliens who have overstayed their visas is governed by §1226(a). *See Buenrostro-Mendez*, 166 F.4th at 504-05 (holding that “Section 1226(a) undeniably does work independent from §1225(b)(2)(A)” and that “the government’s interpretation does not render portions of §1226 superfluous”).

The Laken Riley Act does not undermine the government’s interpretation, either. To be sure, the Laken Riley Act’s application to §1225(b)(2) has no application to admitted aliens. In addition, §1226(c) differs from §1225(b)(2) by narrowing the circumstances under which aliens may be *released* from mandatory detention. For aliens subject to mandatory detention under §1225(b)(2), IIRIRA allows the Executive to “temporarily” release them on parole “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. §1182(b)(5)(A). Section 1226(c)(1) takes that release option off the table for aliens who have also committed the offenses or engaged in the conduct specified in §1226(c)(1)(A)-(E). *Buenrostro-Mendez*, 2026 WL 323330, at *7 (“Not only does §1226(c) sweep in deportable aliens in addition to the inadmissible aliens covered by §1225(b)(2)(A), it also eliminates the option of parole for those to whom it applies.”) (internal citation omitted).

One of IIRIRA’s express objectives was to dispense with the perverse pre-1996 regime under which aliens who entered the United States unlawfully were given “equities and privileges in immigration proceedings that [were] not available to aliens who present[ed] themselves for inspection” at the border, including the right to secure release on bond. House Rep. at 225. *Thuraissigiam*, 591 U.S. at 140. IIRIRA sought to eradicate that. This Court should reject any interpretation that is contrary to Congress’s stated objective. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to result “that Congress designed the Act to avoid”); *New York State Dep’t of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) (“We cannot

interpret federal statutes to negate their own stated purposes.”).

The Government’s reading, by contrast, not only adheres to the statute’s text but also “better honors [the] predominant goal in the enactment of IIRIRA.” *Buenrostro-Mendez*, 2026 WL 323330, at *9. The government’s interpretation likewise promotes the application of the “entry fiction” to all aliens who have not been admitted and avoids giving favorable treatment to aliens who enter without inspection. Under that doctrine, all “aliens who arrive at ports of entry ... are treated for due process purposes as if stopped at the border,” including aliens “paroled elsewhere in the country for years pending removal” who have developed significant ties to the country. *Thuraissigiam*, 591 U.S. at 139 (internal quotation marks omitted).

IIRIRA sought to implement that same principle with respect to detention. The Government’s reading is true to that purpose and most importantly to the statutory text.⁸

C. The Court should require that Petitioner exhaust administrative remedies.

Although in *Miranda v. Garland*, the Fourth Circuit determined that administrative exhaustion was not jurisdictional as to the specific claims of the Miranda Plaintiffs challenging the statutory detention framework, the Fourth Circuit observed “[t]he doctrine of exhaustion of administrative remedies is well established in the jurisprudence of administrative law . . . [and] provides ‘that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.’” *Miranda*, 34 F.4th at 351 (quoting *McKart v. United States*, 395 U.S. 185, 193 (1969) (citations omitted)). In light of *Alvarez v. Warden, Federal Detention Center Miami*, 2026 WL 1243395 (11th Cir. May 6, 2026), which

⁸ The Supreme Court’s decision in *Jennings* does not undermine the Government’s interpretation because the Court did not—and did not need to—resolve the precise groups of aliens subject to §1225(b) or §1226. See *Buenrostro-Mendez*, 166 F.4th at 505 (explaining that the language on which Petitioner relies “is part of a general description” and is “[a]t most ... dicta”). Even so, consistent with the Government’s reading, the Supreme Court recognized that §1225(b)(2) “serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1).” *Jennings*, 583 U.S. at 287; accord *Buenrostro-Mendez*, 164 F.4th at 499.

held that aliens are entitled to bond hearings under 8 U.S.C. §1225(b)(2), the Petitioner appears to be able to have a bond hearing if he requests one. The apparent availability of a bond hearing in the Eleventh Circuit also undercuts Petitioner's irreparable harm argument since it is within his power to get the relief he is seeking if only he would request it. Accordingly, Petitioner should exhaust his administrative remedies by requesting a bond hearing.

D. Response to Motion [Doc. 3]

The Court's Order [Doc. 13] specifically Orders the Respondent's to respond to the Petitioner's Motion [Doc. 3] ("Petitioner's Motion"). Many of the issues in that motion were resolved by the entering of the Order [Doc. 13] or otherwise addressed by this Response, but to the extent they are unaddressed or require clarification, Respondent addresses the five requests in said Motion [Doc.3] here:

Petitioner's Motion first requests that the Court to enter an Order to Show Cause with particular requirements. This Court has entered an Order [Doc. 13], and in any event the Respondent cannot grant this relief.

Petitioner's second request is that the Court enjoin transfer/removal of Petitioner from this district. As addressed throughout this Response, Petitioner was already in the Western District of Pennsylvania at the time of the filing of this petition. He has not been moved as of this filing.

Petitioner's third request is that "Petitioner's property seized incident to detention is accounted for and that all such property can be immediately made available to Petitioner at the time of his release in the event Petitioner is released." Undersigned counsel has inquired as to this and was informed that the property was logged, is at his detention facility, and would be available at the time of release if such release is ordered.

Petitioner's fourth request was that an order require Respondents file any objection to

venue/jurisdiction within one day of such an Order. This Court has entered an Order [Doc. 13] addressing the timing of filings, and in any event the Respondent cannot grant this relief.

Fifth, Petitioner requests a Court order that Respondent afford Petitioner a reasonable opportunity to consult with counsel. Based on Footnote 1 in the Amended Petition [Doc. 6] this has occurred.

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