No. 25-6842

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Laura HERMOSILLO, Seattle Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement et al.,

Defendants-Appellants,

v.

Ramon RODRIGUEZ VAZQUEZ,
on behalf of himself and others similarly situated,

Plaintiff-Appellee.

On Appeal from the United States District Court
for the Western District of Washington
No. 3:25-cv-05240 – Honorable Tiffany M. Cartwright

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INTRODUCTION

At issue in this class action is Defendants' new policy reinterpreting decades-old immigration detention authorities. Defendants now claim unprecedented authority to subject every noncitizen who entered the United States without admission or parole to mandatory detention—i.e., detention without the possibility of a bond hearing—regardless of how long that person has lived in the country. Their new policy runs counter to the statutory framework governing detention of persons in removal proceedings, as reflected in part by decades of interpretation and practice. Accordingly, almost all of the more than three hundred federal district judges to consider Defendants' arguments have rejected this new policy as unlawful. The only court of appeals to have considered the issue—the Seventh Circuit—has also agreed that this new policy likely violates the governing statutes. *See Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1060–62 (7th Cir. 2025).

The new policy, which both the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have adopted, requires mandatory detention under 8 U.S.C. § 1225(b)(2) for all persons who are inadmissible for having entered the United States without admission or parole. According to Defendants, this is because such people are "applicant[s] for admission" who are "seeking admission." 8 U.S.C. § 1225(b)(2)(A).

That understanding of § 1225(b)(2)(A) defies the Immigration and Nationality Act (INA). As the Supreme Court has explained, as past agency practice and relevant legislative history confirm, and nearly every judge to have considered the issue also observes, 8 U.S.C. § 1226(a)—and not § 1225(b)(2)(A)—governs the detention of class members in this case. This is because § 1226 provides the default detention authority for those "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). And it explicitly includes people who are inadmissible to the United States, i.e., those who have not been admitted or paroled. This is evident from § 1226's text and structure. The statute carves out certain noncitizens who are inadmissible and have certain criminal histories from § 1226(a)'s default detention scheme providing the possibility of release on bond, and instead subjects them to § 1226(c)'s mandatory detention provision. Notably, recent amendments to § 1226 underscore that Congress enacted § 1226(a) as the default detention authority for people who entered without inspection or admission. Defendants' view of the statute renders much of § 1226—including those recent amendments—pointless, contradicting the statute's plain language and structure.

Nor does § 1225(b)(2)(A) support Defendants' position. Section 1225 is a border inspection and processing statute. That limited temporal focus is evident throughout the statute, which focuses on "inspections" at the border, and which introduced a new summary removal process for certain noncitizens who arrive at

the border or who have recently entered. Critically, the specific provision that Defendants invoke, § 1225(b)(2)(A), governs the "[i]npection" of persons "seeking admission," i.e., seeking lawful entry, and requires that an "examining immigration officer determine[]" if the person "seeking admission is . . . entitled to be admitted." 8 U.S.C. § 1225(b)(2), (A). Class members—who previously entered the United States and have since resided here—do not satisfy those statutory requirements. In particular, they were not "seeking admission" from an "examining immigration officer" when arrested, typically long after entering the United States. *Id.* § 1225(b)(2)(A). While the traditional understanding of the statute accords meaning to all its terms, Defendants' newfound interpretation introduces redundancies into the statute to achieve their desired policy goal. But the statute's text—not Defendants' policy goals decades after enactment—controls.

The Named Plaintiff and class members who have sought relief through this litigation exemplify the severe effects of Defendants' policy. Nearly all class members have lived in the United States for several years, and often a decade or longer, when apprehended by immigration authorities. They have deep ties to this country, including, for many, U.S.-citizen children and siblings, and are integral members of their local communities, with long-term employment in construction, agriculture, and other vital industries. Indeed, many of these individuals have ultimately prevailed in their removal proceedings and obtained lawful immigration

status. Nevertheless, Defendants have doubled down, taking what started as a policy of the Tacoma Immigration Court and adopting it as a nationwide practice to detain persons without the right to any individualized custody hearing. The result is the separation of long-term residents from their U.S.-citizen families, their jobs, and their homes throughout the course of removal proceedings that often last months and sometimes years. Congress did not authorize such an extraordinary and punitive policy. And for that reason, the Court should affirm the district court's final declaratory judgment.

JURISDICTIONAL STATEMENT

The district court had jurisdiction under 28 U.S.C. § 1331. This Court has jurisdiction under 28 U.S.C. § 1291. The district court denied Defendants' motion to dismiss, granted Plaintiff's motion for summary judgment as to the Bond Denial Class, and entered a final, classwide declaratory judgment on September 30, 2025. Defendants filed a timely notice of appeal on October 28, 2025.

STATEMENT OF ISSUE PRESENTED

Whether noncitizens who enter the United States without admission or parole, but are later arrested after residing in the United States, are subject to 8 U.S.C. § 1226(a)'s default detention authority applicable to those already present in the country, or instead are subject to § 1225(b)(2)(A)'s detention authority governing individuals seeking admission.

RELEVANT STATUTORY PROVISIONS

Plaintiff sets forth the relevant statutory provisions, along with a list of the cases granting habeas petitions on the issue presented in this case, in a separately bound addendum.

STATEMENT OF THE CASE

I. Legal Background

This case concerns 8 U.S.C. § 1226(a) and § 1225(b)(2)(A), two separate provisions of the INA that govern the detention of noncitizens in removal proceedings. Generally, § 1226 applies to those "already in the country," *Jennings*, 583 U.S. at 289, while § 1225 governs noncitizens "at the Nation's borders and ports of entry," *id.* at 287.

A. Section 1226(a): discretionary detention of noncitizens already present in the United States

Section 1226 provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed." 8 U.S.C. § 1226(a). Except as provided in subsection (c), detention under § 1226 is discretionary, as individuals may be released on "bond" or "conditional parole." 8 U.S.C. § 1226(a)(2)(A)–(B); *Jennings*, 583 U.S. at 288 (describing § 1226(a) as the "default rule"). Accordingly, noncitizens detained under § 1226(a) are entitled to bond hearings before an immigration judge (IJ). *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d).

Before § 1226(a) was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009 (1996), the statutory authority for bond hearings was found at 8 U.S.C. § 1252(a). That statute authorized the detention and release of all noncitizens in deportation proceedings, regardless of their manner of entry. *See* 8 U.S.C. § 1252(a) (1994). By contrast, noncitizens who arrived at ports of entry and had never entered the United States were placed in exclusion proceedings and were subject to mandatory detention. *See id.* § 1225(b) (1994).

IIRIRA maintained this basic framework for detention.[1] *See* IIRIRA § 304, 110 Stat. 3009-587 to 3009-593. Indeed, Congress made clear that § 1226(a) merely "restates the current provisions in [§ 1252(a)] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (same).

Shortly after IIRIRA was passed, the Department of Justice (DOJ) promulgated regulations confirming that noncitizens arrested in the interior and

[1] While maintaining the detention framework, IIRIRA made significant changes to the framework for removal proceedings. Specifically, it combined deportation and exclusion proceedings into "a general 'removal' proceeding," covering persons charged with either being inadmissible or deportable. *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010). It also created an expedited removal process for certain noncitizens who are either apprehended at the border or are recent arrivals. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 106–08 (2020).

placed in removal proceedings are eligible for bond hearings under § 1226(a), 8 C.F.R. § 1003.19(a), unless subject to mandatory detention under § 1226(c) for certain enumerated criminal grounds or for those deemed "[a]rriving aliens," *id.* § 1003.19(h)(2)(B), (E); *see also id.* § 1236.1(d). At the time, the Immigration and Naturalization Service (INS) and EOIR explained that "[d]espite being applicants for admission," noncitizens "present without having been admitted or paroled . . . will be eligible for bond and bond redetermination," and that "inadmissible aliens, except for arriving aliens," may seek bond hearings before an IJ. Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997); *see also id.* ("This procedure maintains the status quo regarding release decisions for aliens in proceedings . . . .").

B. Section 1225(b): mandatory detention of noncitizens apprehended at the nation's borders and ports of entry

As part of IIRIRA, Congress also enacted § 1225(b), which governs the processing of "arriving" noncitizens and certain other "applicants for admission." The subsection retains the prior practice of subjecting persons apprehended at the border to mandatory detention by providing that "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted," the noncitizen shall be placed in removal proceedings and subject to mandatory detention. 8 U.S.C. § 1225(b)(2)(A).

Noncitizens subject to § 1225(b)(2)(A) thus consist of individuals seeking lawful entry who, upon inspection, are determined not to be "clearly and beyond a doubt entitled to be admitted" at the time of their arrival. For example, travelers from visa-exempt countries may be subject to § 1225(b)(2)(A) if they are deemed inadmissible when inspected. *See* 8 U.S.C. § 1736 (directing an "applicant for admission" under the visa waiver program be screened "at the time the alien seeks admission to the United States"). Similarly, persons who have been issued temporary nonimmigrant visas may be found inadmissible at the time they seek admission and thus subject to § 1225(b)(2)(A). Grounds of inadmissibility may include having been convicted of a crime of moral turpitude or an offense relating to a controlled substance, *id.* § 1182(a)(2)(A); seeking to procure entry through fraud, *id*. § 1182(a)(6)(C)(i); falsely claiming U.S. citizenship, *id.* § 1182(a)(6)(C)(ii); being suspected of smuggling, *id*. § 1182(a)(6)(E)(i); presenting an expired passport or invalid visa, *id*. § 1182(a)(7)(B)(i); or having been previously removed, *id*. § 1182(a)(9)(A)(i). Accordingly, § 1225(b)(2) reflects Congress's longstanding authorization to subject such arriving noncitizens to mandatory detention pending the ultimate determination of admissibility. *See id.* § 1225(b) (1994).

Section 1225(b) did change the pre-IIRIRA framework by implementing an expedited removal scheme that could be expanded to recent entrants beyond those

apprehended at the border. Expedited removal authorizes a summary removal process (generally an immediate expulsion without any hearing before an IJ) for certain "arriving" noncitizens who are determined to be inadmissible based on fraud or lack of proper entry documents. *See id.* § 1225(b)(1)(A)(i). Congress also gave the Attorney General discretion to apply the provision to recent entrants who have been in the country for less than two years. *See id.* § 1225(b)(1)(A)(iii). Individuals are not entitled to bond hearings while placed in expedited removal, as it is intended to be a swift proceeding completed within days, if not hours. *See* H.R. Rep. No. 104-828, at 209. Instead, they are covered by the expedited removal statute's detention provisions at § 1225(b)(1)(B)(ii), (iii)(IV), and thus are not detained pursuant to § 1225(b)(2)(A). *See* 8 U.S.C. § 1225(b)(2)(B)(ii).

II. Factual Background

A. Defendants' Mandatory Detention Policy

The national policy at issue in this case originated in the Tacoma, Washington, Immigration Court. Beginning in 2022, the Tacoma Immigration Court began to apply the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A) to all persons who entered the United States without inspection, regardless of how long those persons had resided here. ER-11; 1-SER-77–85; 1-SER-212–13; 2-SER-233–34; 2-SER-333, 2-SER-440–41; 2-SER-496 ¶ 3; 2-SER-505 ¶ 3; 2-SER-512–13; 3-SER-515–59. Defendants' rationale (now adopted as

nationwide policy) was that all persons who enter the United States without admission or parole are considered "applicants for admission," as defined under § 1225(a)(1). *See, e.g.*, 1-SER-79, 3-SER-518, 3-SER-524–25, 3-SER-532. Defendants took the novel and sweeping position that these individuals are therefore subject to detention under § 1225(b)(2)(A), asserting that this subparagraph "include[s] all noncitizens who have not been admitted regardless of where they are encountered or how long they have been in the United States." 2-SER-533; *see also, e.g.*, 3-SER-517 (holding that § 1225(b)(2)(A) "mandates the detention of all inadmissible noncitizens").

This policy dramatically curtailed bond grants by Tacoma Immigration Court IJs. As the district court found, national data reflected that following the Tacoma IJs' new policy, "Tacoma IJs . . . granted bond in only three percent of the cases in which bond was requested." ER-12. This three percent grant rate "was the lowest among immigration courts in the United States." ER-12–13. The effect of that change has been to detain long-time U.S. residents—many of whom have lived here for decades, support U.S.-citizen family members, work in vital industries, and form important parts of their communities—for the entirety of their often-lengthy removal proceedings. *See infra* Statement of the Case, Sec. II.B.

This class action was filed in March 2025 to challenge the Tacoma IJs' policy, *see* ER-173, after years of efforts to obtain a clear ruling from the Board of

Immigration Appeals (BIA or Board) on the issue, *see* ER-13–14 (recounting history of efforts to challenge the Tacoma policy at the Board); *see also* 2-SER-505 ¶ 5; 2-SER-509 ¶¶ 10–11 (similar). On April 24, 2025, the district court granted Named Plaintiff Ramon Rodriguez Vazquez a preliminary injunction, finding that the policy was likely unlawful. *See Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

Rather than recognize the illegality of the policy, Defendants *expanded* the policy nationwide. First, on July 8, 2025, Immigration and Customs Enforcement (ICE) issued a memorandum announcing that, "[e]ffective immediately, it is the position of DHS" that anyone who entered the country without inspection, i.e., anyone "who has not been admitted," is "subject to detention under [8 U.S.C. § 1225(b)(2)(A)] and may not be released from ICE custody except by [8 U.S.C. § 1182(d)(5)] parole." ER-65. Such noncitizens are "also ineligible for a custody redetermination hearing . . . before an [IJ] and may not be released for the duration of their removal proceedings absent a parole by DHS." *Id.* The memo further asserted that "[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under [8 U.S.C. § 1227]." *Id.*

Second, in September 2025, Defendants expanded the policy to the entire immigration court system through a published BIA decision. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). *Yajure Hurtado*, like the Tacoma IJ and DHS policies, asserted that persons who have not been admitted or paroled are "subject to mandatory detention under section [1225(b)(2)(A)]." *Id.* at 228–29. In doing so, the Board adopted the same reasoning noted above, asserting that § 1226 "generally governs the process of arresting and detaining aliens who are deportable under section [1227(a)]," while § 1225 governs the "detention[] . . . of aliens who have not been admitted." *Id.* at 218–19 (citation modified). The Board's decision made the same arguments that Defendants now offer to defend their newly discovered mandatory detention authority. *Compare Yajure Hurtado*, 29 I. & N. Dec. 216, *with* Op. Br. 19–41.

B. Named Plaintiff and Other Class Members

The Named Plaintiff and other class members who sought individual injunctions exemplify the individuals affected by Defendants' new policy: long-time residents of this country with deep family, employment, and community ties.

At the time this lawsuit was filed, Named Plaintiff Ramon Rodriguez Vazquez was a resident of Grandview, Washington, where he had lived since 2009. 2-SER-496 ¶ 3. He had long worked in Washington's agricultural sector and had no criminal history. 2-SER-497 ¶¶ 7–8. He and his wife lived within minutes of

their four children and ten U.S.-citizen grandchildren in Grandview, in a home for which they had recently finished paying. 2-SER-496 ¶¶ 3–4. Following the court's decision issuing a preliminary injunction in this matter, *see* ER-175, Mr. Rodriguez was denied bond. After an additional three months in detention, his application for relief was denied. Rather than remain in detention while he exercised his right to file an administrative appeal, he instead accepted voluntary departure. *See* ER-33.

Mr. Rodriguez's background is not unique. Four additional class members also sought injunctive relief requesting bond hearings.[2] Class member Alfredo Juarez Zeferino was a twenty-five-year old noncitizen who had resided in Washington for well over a decade at the time he was detained on March 25, 2025. 2-SER-442–43 ¶¶ 1, 3, 6. He grew up in a farmworker family with seven siblings, five of whom are U.S. citizens. 2-SER-442–44 ¶¶ 3–5, 12; *see* SER-450; SER-455–61. He was a respected community leader, advocating for farmworkers' rights and assisting with translation for members of the indigenous community in Skagit and Whatcom Counties. *See, e.g.*, 2-SER-462–71; 2-SER-473; 2-SER-475–76; 2-SER-478–82; 2-SER-484; 2-SER-487–90; 2-SER-493. At a bond hearing on May 8, 2025, a Tacoma IJ denied Mr. Juarez bond, concluding that he was detained under § 1225(b)(2)(A) because he had entered the United States without

[2] Those requests for injunctive relief later became moot for the reasons described herein.

inspection. The IJ further found that he would have qualified for a $5,000 bond if the immigration court had jurisdiction. *See* SER-444 ¶¶ 10–11; 1-SER-85. More than two months later, Mr. Juarez accepted voluntary removal, worn down by the weeks he was forced to spend in detention away from his family, employment, and community. *See* 1-SER-57–59; 2-SER-445–46 ¶¶ 15–19.

Class member David Nunez Hernandez similarly has deep ties to the United States. He has lived here since 1996, has five U.S.-citizen children, and has additional family members living in the United States. *See, e.g.*, 1-SER-71 ¶¶ 3–4. In April 2025, he was arrested at a worksite raid at the roofing company where he had long been employed. 1-SER-71 ¶ 5; SER-208. At a bond hearing held the following month, the IJ denied Mr. Nunez bond, ruling that he was detained under § 1225(b)(2)(A), but found that he would have qualified for a $10,000 bond if the immigration court had jurisdiction. 1-SER-72 ¶ 9; SER-212. Before summary judgment, an IJ granted Mr. Nunez cancellation of removal under 8 U.S.C. § 1229b(b)(1), resulting in his release forty-four days after his bond hearing. *See* 1-SER-47–48; 1-SER-212.

Class member Yesica Contreras Baca has lived in the United States for over seventeen years and has six U.S.-citizen children. 1-SER-65 ¶¶ 3–4. One of those children had been diagnosed with terminal cancer at the time she was detained by immigration authorities on April 14, 2025. *See* 1-SER-66 ¶¶ 5, 7; 2-SER-231–35;

2-SER-330. In support of her request for injunctive relief, she explained that she sought to "spend as much time with [her] child [with terminal cancer] as [she] [could], because it is unknown when his condition will worsen and when he will no longer be in this world." 1-SER-66 ¶ 5. Like other class members, Ms. Contreras had a bond hearing where she was denied consideration for bond under § 1225(b)(2)(A), but was informed that she would have qualified for a $3,000 bond if the immigration court had jurisdiction. 2-SER-333. An IJ subsequently granted Ms. Contreras cancellation of removal before the district court could determine whether to issue injunctive relief. *See* 1-SER-53. By then, Ms. Contreras had spent nearly two months in detention following her bond hearing. *See* 1-SER-52; 2-SER-333.

Finally, class member Jose Mateo has lived in the United States for fifteen years and has three U.S.-citizen children, one of whom was a baby at the time he was detained. 1-SER-60 ¶¶ 3–4, 7; 2-SER-352–54. He was detained at the same worksite raid as Mr. Nunez in April 2025. *See* 1-SER-60 ¶¶ 5, 7. Following his apprehension, on May 14, 2025, an IJ denied Mr. Mateo bond under § 1225(b)(2), but found that he would have qualified for a $7,500 bond if the immigration court had jurisdiction. 2-SER-440. Like Mr. Nunez and Ms. Contreras, Mr. Mateo was later granted cancellation of removal under 8 U.S.C. § 1229b(b), mooting his

request for injunctive relief. *See* ER-17. By then, he had spent nearly four months in detention following his bond hearing. *See* 1-SER-44; 2-SER-440.

III. Procedural History

A. District court proceedings and entry of final declaratory judgment

Named Plaintiff Rodriguez filed this case on March 20, 2025. ER-145–66. That same day, he moved for class certification and an individual preliminary injunction. ER-118–44. In his complaint, he sought to challenge the Tacoma Immigration Court's practice of denying bond to noncitizens who entered the United States without admission or parole.[3]

On April 24, 2025, U.S. District Judge Tiffany M. Cartwright issued an individual preliminary injunction on behalf of Mr. Rodriguez. *See Rodriguez Vazquez*, 779 F. Supp. 3d 1239. In issuing the injunction, she explained that "Rodriguez has shown that the text of Section 1226, canons of interpretation, legislative history, and longstanding agency practice indicate that he is governed under Section 1226(a)'s 'default' rule for discretionary detention." *Id.* at 1261.

A week later, on May 2, 2025, the district court certified a Bond Denial Class challenging the Tacoma Immigration Court's policy of denying bond to any

[3] The complaint also challenged the BIA's policy and practice of taking months to issue appeals in custody decisions, ER-156–59; ER-164–65, a claim not before this Court.

person who entered the United States without inspection, regardless of when and where they were detained. *Rodriguez Vazquez v. Bostock*, 349 F.R.D. 333 (W.D. Wash. 2025) (ER-67–110). The class is defined as:

> All noncitizens without lawful status detained at the Northwest ICE Processing Center who (1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the noncitizen is scheduled for or requests a bond hearing.

Id. at 365. The Court also certified a separate Bond Appeal Class. *Id.*

Following the preliminary injunction and class certification, the Tacoma IJs' practice did not change. Instead, as noted above, in the subsequent months, Defendants took the Tacoma IJs' interpretation of the INA and made it a nationwide policy. *See* ER-65–66. On June 2, 2025, the Bond Denial Class sought summary judgment, requesting declaratory relief on behalf of all class members. *See* ER-176 (Dist. Ct. Dkt. 41). Shortly thereafter, Defendants filed a motion to dismiss. *See* ER-177 (Dist. Ct. Dkt. 49). Following the close of briefing, the Court held a hearing on both motions, *see* ER-178 (Dist. Ct. Dkt. 61), and on September 30, 2025, the Court denied the motion to dismiss and granted the Bond Denial Class's motion for summary judgment, *see Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, --- F. Supp. 3d ----, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (ER-5–63).

B. Defendants' continued application of bond denial policy following summary judgment

The following post-judgment developments provide further procedural context for this appeal. In at least a hundred bond cases since the declaratory judgment, the Tacoma Immigration Court—a Defendant in this case—has continued to apply § 1225(b)(2) to members of the Bond Denial Class. *See Rodriguez Vazquez v. Hermosillo*, No. 3:25-cv-05240-TMC, --- F. Supp. 3d ----, 2026 WL 102461, at *3 n.2 (W.D. Wash. Jan. 14, 2026). Defendants have called the declaratory judgment an "advisory opinion," *id.* at *3, and also claimed that the Tacoma IJs "are in a position where they have to consider two legal opinions that are in contradiction," 1-SER-24.

Faced with this state of affairs, class counsel have been forced to file seriatim habeas petitions to seek relief for class members, significantly burdening the district court's resources. *Rodriguez Vazquez*, 2026 WL 102461, at *3 n.2 (listing habeas petitions for over 100 class members). Defendants have offered no defense, acknowledging that people are class members and subject to the declaratory judgment in this case. Yet they continue to defy the district court, denying bond to persons who have lived here many years, and typically decades,

and who are separated from their U.S.-citizen family members and communities.[4] Defendants' defiance of a federal court's final judgment underscores the need for a quick ruling in this matter.

STANDARD OF REVIEW

The issue in this case is one of statutory interpretation. The Court reviews such questions de novo. *See, e.g.*, *United States v. Youssef*, 547 F.3d 1090, 1093 (9th Cir. 2008). "When the meaning of a statute [is] at issue, the judicial role [is] to 'interpret the act of Congress, in order to ascertain the rights of the parties.'" *Loper*

[4] *See, e.g.*, *Ortiz Martinez v. Wamsley*, No. 2:25-cv-1822-TMC, 2025 WL 2899116 (W.D. Wash. Oct. 10, 2025) (habeas petition granted for class members); *Garcia v. Wamsley*, No 2:25-cv-1980-TMC (W.D. Wash.) (same, for three class members); *Cantero Garcia v. Wamsley*, No. 2:25-cv-2092-TMC, 2025 WL 3022252 (W.D. Wash. Oct. 29, 2025) (five class members); *Corrales Castillo v. Wamsley*, No. 2:25-cv-02172-TMC, 2025 WL 3204370 (W.D. Wash. Nov. 17, 2025) (three class members); *Leon Figueroa v. Hermosillo*, No. 2:25-cv-02228-TMC, 2025 WL 3230466 (W.D. Wash. Nov. 19, 2025) (four class members); *Hernandez Ramos v. Hermosillo*, No. 2:25-cv-02273-TMC (W.D. Wash. Nov. 21, 2025) (six class members); *Mendez Dominguez v. Hermosillo*, No. 2:25-cv-02337-TMC, 2025 WL 3537627 (W.D. Wash. Dec. 10, 2025) (eight class members); *Medina Ocampo v. Hermosillo*, No. 2:25-cv-02408-TMC, 2025 WL 3537593 (W.D. Wash. Dec. 10, 2025) (nine class members); *Almonte Hernandez v. Hermosillo*, No. 2:25-cv-02464-TMC, 2025 WL 3554639 (W.D. Wash. Dec. 11, 2025) (six class members); *Garcia Mendez v. Hermosillo*, No. 2:25-cv-02560-TMC, 2025 WL 3687519 (W.D. Wash. Dec. 19, 2025) (fifteen class members); *Estrella Zavala v. Hermosillo*, No. 2:25-cv-02627-TMC, 2025 WL 3721729 (W.D. Wash. Dec. 23, 2025) (eight class members); *Cruz Santiago v. Hermosillo*, No. 2:25-cv-02700-TMC (W.D. Wash. Dec. 31, 2025) (two class members); *Acevedo Gomez v. Hermosillo*, No. 2:26-cv-00006-TMC, 2026 WL 77338 (W.D. Wash. Jan. 9, 2026) (six class members); *Archundia-Lopez v. Hermosillo*, No. 2:26-cv-00086-TMC, 2026 WL 114942 (W.D. Wash. Jan. 15, 2026) (nine class members).

Bright Enters. v. Raimondo, 603 U.S. 369, 385 (2024) (quoting *Decatur v. Paulding*, 39 U.S. (14 Pet.) 497, 515 (1840)).

SUMMARY OF ARGUMENT

The text and structure of the INA's detention provisions in 8 U.S.C. § 1226 and § 1225(b)(2)(A) provide a straightforward answer in this case. Section 1226 states the INA's "default [detention] rule" for those, like class members, who are "already in the country" and have been placed in removal proceedings. *Jennings*, 583 U.S. at 288–89. Pursuant to that default rule, noncitizens who are arrested and detained "pending a decision whether [they will be] removed" may seek release on bond. 8 U.S.C. § 1226(a). Critically, that framework encompasses both inadmissible persons (like class members) and deportable persons.

This conclusion follows directly from § 1226's plain text and structure. By definition, removal proceedings determine if a person is inadmissible (if not already admitted) or deportable (if already admitted). *See* 8 U.S.C. § 1229a(a)(3), (e)(2). Subsection 1226(a) provides the general framework for those apprehended in the interior and placed in removal proceedings, permitting that such individuals may be released on bond or conditional parole. Subsection (c) then "carves out," *Jennings*, 583 U.S. at 289, limited categories of noncitizens from subsection (a)'s default rule and instead subjects them to mandatory detention. Specifically, § 1226(c)(1) applies to a noncitizen who "is inadmissible" or "is deportable" for

having committed certain offenses, or in some instances, for having been charged or arrested for certain offenses. By carving out only certain noncitizens who are "inadmissible" for having committed enumerated criminal offenses, the statute demonstrates that all others charged with inadmissibility remain subject to subsection (a)'s detention authority.

This rationale applies to the very ground of inadmissibility at issue in this case. Class members are typically charged under 8 U.S.C. § 1182(a)(6)(A) as persons present in the United States without admission. Pursuant to legislation enacted just last year, Congress added subparagraph (c)(1)(E), which subjects only a subset of individuals charged under those inadmissibility provisions—those who are charged with or convicted of certain enumerated crimes—to mandatory detention. By carving out only that subset, Congress reinforced that by default, the other noncitizens charged with those inadmissibility grounds remain subject to detention under § 1226(a).

Defendants' brief and the *Yajure Hurtado* decision instead offer an untenable reading of § 1226: essentially, that it covers only deportable persons. That reading flatly contradicts the statute's plain language, renders entire provisions inoperative and other language superfluous, gives little or no effect to legislation Congress just enacted, and ignores that Congress amended § 1226

against the backdrop of applying § 1226(a) to class members for nearly thirty years.

Defendants' reliance on the definition of "applicants for admission" at 8 U.S.C. § 1225(a)(1) likewise fails. In fact, § 1225's text and structure support the longstanding interpretation that § 1226 governs class members' detention.

First, every aspect of § 1225 reflects its purpose: to provide a border inspection and processing scheme for noncitizens who are arriving at ports of entry or who have just entered the United States. The statute's title is focused on the "inspection" of noncitizens at the border and implementing a new "expedited removal" scheme for "inadmissible arriving" noncitizens. The section also contains repeated references to "inspections" throughout, with references to persons seeking to be admitted. Admission, in turn, is defined as "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).

Subparagraph (b)(2)(A)'s specific text reinforces that it does not apply to class members. That subparagraph states that "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." 8 U.S.C. § 1225(b)(2)(A). Defendants point to the subparagraph's use of the term "applicant for admission" and note that its

definition at § 1225(a)(1) includes persons who are not lawfully present in the United States. However, Defendants err in isolating that term from the rest of the subparagraph. The text in subparagraph (b)(2)(A) plainly requires that such noncitizens must be "seeking admission"—i.e., seeking "lawful entry" into the United States. *Id.* § 1101(a)(13)(A). Moreover, here too, the statute presupposes "inspection" in order to determine if the person is "entitled to be admitted." In contrast, class members here are not seeking admission, i.e., "lawful entry" into the United States, *id.* § 1101(a)(13)(A), and are not subject to an "inspection" by an immigration officer to determine whether they are "clearly and beyond a doubt entitled to be admitted," *id.* § 1225(b)(2)(A). Instead, class members are being detained and arrested in the interior; the overwhelming majority of these arrests occur years or even decades after class members have entered the country. Indeed, arresting officers lack authority to admit any class members whom they encounter in the interior. Thus, the statutory scheme was never meant to apply to class members.

Defendants' contrary reading renders the statute redundant and ignores other phrases. Defendants openly acknowledge the redundancy, arguing that "any alien who is an 'applicant for admission' is 'seeking admission' for purposes of § 1252(b)(2)(A)." Op. Br. 23. That reading runs afoul of the well-established rule that courts should give meaning to each phrase and word, avoiding surplusage. The

traditional understanding of the statute does that, while Defendants' new interpretation creates surplusage and runs headlong into the plain meaning of the statutory language.

Finally, the statute's legislative history and long history of application to class members confirm that § 1226(a) applies to them. In passing IIRIRA, Congress explicitly explained that it was reauthorizing the same detention authority that existed prior to that statute, and which allowed anyone who had entered the United States to be considered for release on bond. Moreover, Congress exhibited special concern for the burden that expanded mandatory detention would place on the Immigration and Naturalization Service (INS) through the then-new § 1226(c). But nowhere did Congress acknowledge a similar concern with respect to the exponentially larger group of noncitizens—those who entered without admission or parole—whose detention Defendants now claim Congress sought to mandate.

Defendants' response misreads the legislative history. According to them, Congress's revisions to the "entry doctrine" eliminated consideration for release on bond to people who enter the United States unlawfully. But any faithful reading of the legislative history and statute shows that Congress left the basic detention framework in place, even as it dramatically overhauled deportation and exclusion proceedings.

The INS recognized all of this immediately following IIRIRA's enactment, expressly stating that persons who had entered without inspection—those who are present without admission—remained entitled to bond hearings. And for nearly thirty years, EOIR has consistently granted bond hearings to persons arrested after residing in the United States. Defendants do not—and cannot—contest this point. This further confirms that the traditional understanding of § 1226(a) is in fact the most natural reading of the statute, consistent with the INA's text and overall structure. Accordingly, this Court should affirm the district court's decision.

ARGUMENT

I. Section 1226 governs class members' detention.

A. Subsection 1226(a) governs this case as the default detention authority for those inside the United States.

i. The plain language of § 1226 demonstrates that it encompasses class members.

The text of § 1226 is straightforward, demonstrating that it provides the detention authority for class members. *See, e.g.*, *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017) ("We begin, as always, with the text."). Section 1226 provides the "default rule" for those "already present in the United States." *Jennings*, 583 U.S. at 303. That default rule 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).

This first sentence of the statute indicates that § 1226 applies "pending a decision on whether the alien is to be removed from the United States." *Id.*[5] Notably, Congress did not limit this provision to those who are "deportable," as it did under the predecessor provision. *See* 8 U.S.C. § 1252(a) (1994) (providing for detention and bond for individuals "[p]ending a determination of *deportability*" (emphasis added)). Instead, by encompassing both admissible *and* inadmissible people, § 1226(a)'s beginning text belies Defendants' central assertion in this case: that 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]." Op. Br. 14 (alterations in original).

The statute's text and structure forcefully underscore that inadmissible persons—including those charged as inadmissible for entering the United States without admission or parole—are encompassed within § 1226(a)'s detention authority. Subsection 1226(a) provides the general right to seek release on bond,

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[5] The question of whether someone "is to be removed," *id.* § 1226(a), from the United States encompasses both (1) people, like class members, who were never admitted to the country, and thus are charged as "inadmissible" under the INA, and (2) people who were originally admitted to the country and thus are charged as "deportable" under the INA. *See* 8 U.S.C. § 1229a(e)(2) ("The term 'removable' means - (A) in the case of an alien not admitted to the United States, that the alien is inadmissible under section 1182 of this title, or (B) in the case of an alien admitted to the United States, that the alien is deportable under section 1227 of this title.").

while subsection (c) carves out discrete categories of noncitizens from being eligible for release on bond (primarily those convicted of certain crimes) and subjects them to mandatory detention instead. *Compare* 8 U.S.C. § 1226(a)(2)(A), *with id.* § 1226(c)(1). These exceptions expressly include certain "inadmissible" individuals. *See, e.g.*, *id.* § 1226(c)(1)(A) (ordering mandatory detention for a noncitizen who "is inadmissible by reason of having committed any offense" in 8 U.S.C. § 1182(a)(2)), *id.* § 1226(c)(1)(D) (same, for any noncitizen charged as "inadmissible under" 8 U.S.C. § 1182(a)(3)(B)). By explicitly excepting certain inadmissible persons from § 1226(a), subsection (c) shows that those inadmissible persons are otherwise encompassed by subsection (a). This is because "the statutory exceptions would be unnecessary" unless the statute "appl[ies] generally" to inadmissible persons. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010); *see also id.* ("The fact that Congress has created specific exceptions to [the Rule] hardly proves that the Rule does not apply generally. In fact, it proves the opposite.").

This understanding of the statute is well-established. In *Nielsen v. Preap*, the Supreme Court rejected this Court's previous view that "subsections (a) and (c) . . . establish[] separate sources of arrest and release authority." 586 U.S. 392, 409 (2019). Instead, the *Preap* court affirmed the plain reading of the statute: that "subsection (c) is simply a limit on the authority conferred by subsection (a)." *Id.*

The Supreme Court likewise described subsection (c) as "carv[ing] out a statutory category of aliens who may *not* be released under § 1226(a)" in *Jennings*. 583 U.S. at 289. The district court was thus correct to view subsection 1226(c)'s exceptions as lending "strong textual support" to the view that § 1226(a) applies to class members, because the statute plainly applies to inadmissible persons. ER-40.

Critically, subsection (c) explicitly lists as an exception to § 1226(a) a narrow subset of noncitizens who entered the United States without admission or parole, pursuant to the recently enacted Laken Riley Act (LRA). Pub. L. No. 119-1, § 2, 139 Stat. 3 (2025). Specifically, subparagraph (c)(1)(E) "carves out," *Jennings*, 583 U.S. at 289, from § 1226(a)'s default detention authority certain noncitizens who are inadmissible for entering without admission or parole *and* who meet specified criminal history criteria, *see* 8 U.S.C. § 1226(c)(1)(E). That express exclusion of certain people charged under § 1182(a)(6)(A) or (a)(7) further demonstrates that, by default, § 1226(a) "appl[ies] generally" to such persons unless they meet the conditions of the exception. *Shady Grove*, 559 U.S. at 400.

This structure pointedly demonstrates how Defendants' sudden conclusion that § 1226(a) no longer applies to class members directly conflicts with the statute. Under Defendants' view, § 1226(a) applies only to *deportable* persons. *See, e.g.*, Op. Br. 14 (citing DHS's policy); *id.* at 32 (arguing that § 1226(a) applies only to "aliens who have been admitted to the United States but are now deportable

and subject to removal proceedings under § 1229a"); *Yajure Hurtado*, 29 I. & N. Dec. at 218–20 (claiming that § 1225 applies to persons who have not been admitted and that § 1226 applies to admitted persons); 3-SER-533–36 (similar); ER-65 (similar). But that understanding is an "utterly implausible interpretation of the statutory language." *Jennings*, 583 U.S. at 312. Subsection 1226(a) plainly applies to people who entered the United States without admission or parole. That conclusion is an inescapable implication of the Supreme Court's instructions as to how § 1226(a) and (c) interact, as described in *Jennings* and *Preap*.

ii. Tools of statutory construction reinforce that § 1226 applies to class members.

Traditional canons of statutory construction further underscore why the LRA's amendment to § 1226(c) confirms the longstanding understanding that § 1226(a) applies to class members. First, "[w]hen Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect." *Gieg v. Howarth*, 244 F.3d 775, 776 (9th Cir. 2001) (citation omitted); *see also Stone v. INS*, 514 U.S. 386, 397 (1995) ("Court must construe [a] statute to give effect, if possible, to every provision" (citing *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979)). That presumption applies with particular force here, where the LRA only recently amended § 1226(c)(1) to expand its application to additional categories of inadmissible persons. But under Defendants' view, the LRA simply added a redundant layer of mandatory detention authority, because

§ 1226 never applied to class members or any inadmissible persons in the first place. *See, e.g.*, Op. Br. 14, 32; *Yajure Hurtado*, 29 I. & N. Dec. at 222. This view fails to afford any "real and substantial effect" to the LRA's amendments. *Gieg*, 244 F.3d at 776 (citation omitted).

Second, and relatedly, under Defendants' view, § 1226(c)'s references to inadmissible persons—including the LRA's specific references to people who entered without admission or parole—are superfluous. According to Defendants, the INA already mandated the detention of class members, and thus the LRA's references to people who entered without admission or parole, and § 1226(c)'s references to inadmissible people in general, have no effect. *See, e.g.*, Op. Br. 34 (acknowledging that Defendants' view means the LRA "overlaps" with § 1225(b)(2)(A)); *id.* at 36 (recognizing the "redundancy" in Defendants' position); ER-45 (quoting Defendants' argument that the LRA was passed to make "doubly sure" class members are subject to mandatory detention). However, courts "must interpret the statute as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous." *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) (citation omitted). Defendants' understanding violates that well-established rule, depriving the LRA (and much of § 1226(c)) of "real and substantial effect." *Gieg*, 244 F.3d at 776 (citation omitted).

Defendants counter that caselaw recognizes occasional redundancies in statutory drafting and that redundancy alone cannot justify ignoring statutory text. Op. Br. 34–35. But the traditional understanding of the statute does not require ignoring any text. Instead, what Defendants actually ask this Court to do is to disregard the statute's text and structure because it is counter to their interpretation. Notably, Defendants' interpretation not only renders words redundant, but nullifies entire subparagraphs of § 1226(c). *See* 8 U.S.C. § 1226(c)(1)(A), (D), (E) (addressing persons who are "inadmissible," and *not* just persons who are "deportable"—i.e., persons who have been admitted). Reading the statute this way is contrary to the longstanding "cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant." *Kungys v. United States*, 485 U.S. 759, 778 (1988) (plurality opinion).

Third, courts "generally presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts." *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184–85 (1988). The text of § 1226 (as enacted by Congress in 1996), as well as Congress's reinforcement of that framework in the LRA (enacted just last year), make clear that Congress understands § 1226 to provide the general detention authority for inadmissible persons who are arrested in the interior and placed into removal proceedings. Similarly, "[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction,"

courts "generally presume[] the new provision should be understood to work in harmony with what has come before." *Monsalvo Velazquez v. Bondi*, 604 U.S. 712, 725 (2025) (citation modified).

Defendants object to these principles, saying Congress and the agency misunderstood the law. Op. Br. 36. But that argument is not persuasive and is not a response to these canons of construction; it simply asks the Court not to apply the presumption for no other reason than Defendants' disagreement with the statute's longstanding construction. This is exactly the type of situation where the presumption applies, and thus the district court correctly found that "Congress adopted the new amendments to section 1226(c) against the backdrop of decades of post-IIRIRA agency practice applying discretionary detention under section 1226(a) to noncitizens inadmissible by virtue of being 'present in the United States without being admitted or paroled,' such as the Bond Denial Class members." ER-44; *see also supra* Statement of the Case Sec. I.A; *infra* Sec. III.B. In the end, the presumption lends additional support to what the text makes clear: § 1226(a) provided bond hearings to those present without admission or parole, and accordingly, in enacting the LRA, Congress sought to "carve[] out" additional categories of inadmissible persons from receiving bond hearings. *Jennings*, 583 U.S. at 289.

B. Defendants' arguments regarding § 1226 miss the mark.

In response to the district court's reading of § 1226, Defendants offer several responses. None undermine the straightforward text of the statute.

First, Defendants claim § 1226(a) and (c) are not superfluous because "the referenced grounds cover [noncitizens] who are inadmissible but were erroneously admitted." Op. Br. 32–33. This is simply wrong. Noncitizens who were erroneously admitted are not inadmissible; they are deportable. The very provision Defendants cite to—8 U.S.C. § 1227(a)(1)(A)—provides that "[a]ny alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time *is deportable*." 8 U.S.C. § 1227(a)(1)(A) (emphasis added); *see also id.* § 1227 (enumerating grounds of deportability); *id.* § 1182 (same, for inadmissibility). The express language of the statute thus renders those persons deportable, not inadmissible. As such, the persons subject to this ground of deportability are not referred to in the relevant subparagraphs of § 1226(c), which are directed at a noncitizen who "is inadmissible," *id.* § 1226(c)(1)(A), (D), (E). Where the statute does refer to people facing a ground of deportability, it is clear, as in the subparagraphs that focus on a person who "is deportable," *id.* § 1226(c)(1)(B)–(D).[6]

[6] Paragraph (c)(1) is also stated in the present tense, requiring DHS to detain a noncitizen who "is inadmissible" or "is deportable" for specified reasons. *See*

Indeed, Defendants' argument is nonsensical. For example, it could never explain § 1226(c)(1)(E), which references a person who is inadmissible for entering without admission or parole and has been arrested for, charged with, or convicted of a listed offense. Such a person could never be potentially subject to the ground of *deportability* at § 1227(a)(1), as by definition, they have not been admitted or paroled. *See id.* § 1227(a) (grounds of deportability apply to "[a]ny alien . . . in and admitted to the United States"). Instead, they continue to be inadmissible.

Supreme Court precedent reinforces this reading. In *Barton v. Barr*, the Court explained that § 1226(c)'s requirement that the noncitizen be "inadmissible by reason of" or "deportable by reason of" means that the conviction cited must be "one of the offenses of removal in the noncitizen's removal proceeding." 590 U.S. 222, 234–35 (2020) (emphasis omitted). As the Court observed, "the statutory text and context of [§ 1226] support[s] that limitation." *Id.* at 235. That holding underscores that § 1226's detention authority applies to persons who have not yet

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8 U.S.C. § 1226(c)(1). By definition, a person who was previously admitted cannot be someone who now "is inadmissible." *See, e.g.*, *id.* § 1229a(e)(2). By suggesting that the references to a person who "is inadmissible" include a person who is deportable for being inadmissible at the time of entry, Defendants impermissibly urge the Court "to add words—and significant words, as it were—to the statute Congress enacted." *Muldrow v. City of St. Louis*, 601 U.S. 346, 355 (2024).

been admitted, as only such persons can be charged with the grounds of inadmissibility in removal proceedings. *See, e.g.*, 8 U.S.C. § 1229a(a)(3), (e)(2).[7]

Finally, Defendants err with respect to two additional points regarding the canon against surplusage. Defendants first assert that the canon is "weak" here because the LRA and IIRIRA were enacted decades apart. Op. Br. 35. However, Defendants overlook that their interpretation does not merely nullify subparagraphs introduced by the LRA; it also nullifies § 1226(c)(1)(A) and (D), which were enacted through IIRIRA (alongside § 1225(b)(2)(A)). Moreover, the Supreme Court has held that the canon "applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times." *Bilski v. Kappos*, 561 U.S. 593, 608 (2010).[8] Indeed, in direct contrast to what Defendants claim, "the canon against surplusage is strongest [where, as here,] an interpretation

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[7] To save their reading from being superfluous, Defendants also briefly invoke stowaways as a group of people whom § 1226(c) might cover that § 1225(b)(2) does not cover. Op. Br. 33. However, this group provides Defendants no support. Stowaways are subject to a completely different detention and removal scheme, which Defendants never acknowledge. *See* 8 U.S.C. § 1225(a)(2) (removal scheme for stowaways); *id.* § 1225(b)(1)(B)(ii), (iii)(IV) (mandatory detention for stowaways claiming asylum); *id.* § 1231(d)(2)(A) (mandatory detention scheme requiring stowaways to be detained on vessel on which they arrived); 8 C.F.R. § 241.11 (same).

[8] Defendants ignore this precedent and instead cite two unpublished district court opinions. *See* Op. Br. 35. But one decision cites no authority whatsoever for this proposition. *See Cirrus Rojas v. Olson*, No. 25-CV-1437-BHL, 2025 WL 3033967, at *9 (E.D. Wis. Oct. 30, 2025). And the other cites *Bilski* but then fails to apply its holding. *See Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at *5 (E.D. Mo. Nov. 10, 2025).

would render superfluous another part of the same statutory scheme." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013).

Defendants also suggest that references to inadmissible persons at § 1226(c)(1) have some meaning because they serve to ensure that a person subject to § 1225(b)(2)(A) is not paroled into the United States under 8 U.S.C. § 1182(d)(5)(A). Op. Br. 36. But that argument does not explain why the "carve[] out" provision of 1226(c) would apply to detention authority under a completely separate section, as § 1226(c) is not a freestanding bar to release on parole, but rather is a "carve[] out" from discretionary detention under 1226(a). *Jennings*, 583 U.S. at 289; *Preap*, 586 U.S. at 409 ("[S]ubsection (c) is simply a limit on the authority conferred by subsection (a)."). If a person is not detained under § 1226, then the carve out at 1226(c) is simply inapplicable. As courts have noted, § 1225(b)(2) and § 1226 are "mutually exclusive—a noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226." *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 485 (S.D.N.Y. 2025).

Finally, Defendants argue that there is "overlap under any possible reading of the statute," because the LRA imposes no-bond detention on "arriving" noncitizens as well—that is, noncitizens who arrive in the country at a port of entry. Op. Br. 35. But this is simply wrong. "Arriving" noncitizens are not detained under § 1226; they are subject to mandatory detention under § 1225(b). *See* 8

C.F.R. § 235.3(c)(1) (requiring the detention of "arriving" noncitizens under § 1225(b)); *id.* § 1003.19(h)(2)(i)(B) (excluding "arriving" noncitizens from bond hearings under § 1226). There was thus no need for Congress to exclude them from bond hearings when it enacted the LRA, as they were already ineligible for them. The government's claimed "overlap" is thus nonexistent.

* * *

Section 1226's plain text and structure show class members are entitled to bond hearings. Defendants' arguments to the contrary offer nothing but an "utterly implausible interpretation of the statutory language." *Jennings*, 583 U.S. at 312. As detailed below, § 1225's language and structure only further underscore this conclusion.

II. Section 1225(b)(2)(A) applies to processing and inspection at the border.

Defendants focus principally on § 1225(b)(2)(A), largely sidestepping the clear conflict their interpretation creates with § 1226. But their arguments as to § 1225(b)(2)(A) are also fundamentally flawed, as both text and context of § 1225(b)(2)(A) confirm that its detention authority is confined to individuals apprehended upon inspection at the border.

A. Section 1225 is focused on inspection upon arrival at the border.

Defendants' new interpretation of the statute relies almost exclusively on the term "applicants for admission" referenced at § 1225(b)(2)(A), while disregarding

the surrounding statutory language and structure of the section in its entirety. But to "ascertain[] the plain meaning" of § 1225(b)(2)(A), "the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988); *see also, e.g.*, *Biden v. Texas*, 597 U.S. 785, 798–800 (2022) (looking to text and statutory structure to interpret scope of INA provision); *Patel v. Garland*, 596 U.S. 328, 339–40 (2022) (similar). Multiple features of § 1225 reinforce that § 1225(b)(2)(A) addresses detention related to inspection and admission at the border rather than detention for apprehensions that occur in the interior.

First, section 1225 is a statute that applies principally "at the Nation's borders and ports of entry." *Jennings*, 583 U.S. at 287. As its title reflects, § 1225 is focused on "[i]nspection by immigration officers." 8 U.S.C. § 1225. Its provisions, including § 1225(b)(2), repeatedly direct the "inspection" of noncitizens "arriving" or seeking "admission," addressing the paradigmatic border function. *See, e.g.*, *id.* § 1225(a), (a)(3), (b), (b)(1); *see also, e.g., id.* § 1225(b)(2)(C) (authorizing return of noncitizen "arriving . . . from a foreign territory contiguous to the United States"); *id.* § 1225(d)(1) (authorizing inspection of certain modes of transport arriving in the United States). The INA's definition of "admission"—"the lawful entry of the alien into the United States after inspection and authorization by an immigration officer"—reinforces "inspection"

as something that occurs when a person seeks *entry* to the United States. *Id.* § 1101(a)(13)(A). Furthermore, the establishment of a "*pre*inspection" program at foreign airports, *see id.* § 1225a (emphasis added), confirms Congress's understanding of "inspection" as tied to arrival at and entry into the United States.

Second, § 1225 lays out a new scheme for "expedited removal of inadmissible arriving aliens." *Id.* § 1225. Under § 1225(b)(1), a limited subset of "arriving" noncitizens—those who are inadmissible under § 1182(a)(6)(C) (fraud or misrepresentation) or § 1182(a)(7) (lacking proper documentation at the time of application for admission)—are subject to a summary removal process without any hearing, with only asylum screening procedures available. *See id.* § 1225(b)(1)(A)(i)–(ii). Congress also expressly authorized the Attorney General to apply the expedited removal provision to recent entrants who had been in the country for less than two years. *See id.* § 1225(b)(1)(A)(iii).[9]

B. The text of § 1225(b)(2)(A) confirms that it targets noncitizens subject to inspection upon arrival.

Subparagraph (b)(2)(A) specifies that it applies only to those "seeking admission," again reflecting the limited temporal scope of the statute. *Id.* § 1225(b)(2)(A); *see also id.* § 1101(a)(13)(A) (defining admission as "the lawful

[9] Notably, the expanded detention authority in § 1225(b)(1) is not at issue in the instant litigation. By definition, the Bond Denial Class excludes those who are subject to the expedited removal scheme under (b)(1). *See, e.g.*, ER-003 ¶ 1.

entry of the alien into the United States after inspection and authorization by an immigration officer"); *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc) (holding that an individual submits an "application for admission" at "the moment in time when the immigrant actually applies for admission into the United States"); 8 C.F.R. § 235.1(a) (providing that "[a]pplication[s] to lawfully enter the United States shall be made . . . at a U.S. port-of-entry . . . or as otherwise designated").

As the district court correctly recognized, this "present-tense active language" of "seeking admission" requires more than simply that the person be an "applicant for admission." ER-50 (citation omitted). Instead, the person must also be "*doing* something"—seeking to obtain authorized entry. *Diaz Martinez v. Hyde*, 792 F. Supp. 3d 211, 219 (D. Mass. 2025). As one district judge analogized, "someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as 'seeking admission' to the theater. Rather, that person would be described as already present there." *Lopez Benitez*, 795 F. Supp. 3d at 489.

The subparagraph's reference to inspection by an examining officer who determines whether the noncitizen is entitled to be admitted further demonstrates that it is concerned only with those seeking lawful entry at the border:

(2) Inspection of other aliens

(A) In general

> [I]n 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) (emphases added). The plain language is thus focused on inspections by examining officers for persons seeking admission, i.e., lawful *entry* into the United States. In contrast, class members are already residing in the country and are not seeking "lawful entry" into the United States. *Id.* § 1101(a)(13)(A). Instead, they are being arrested, as provided for by § 1226. *See also Castañon-Nava*, 161 F.4th at 1061 (explaining that "a noncitizen arrested in the Midwest" is not someone who is "seeking admission"). Moreover, when class members are detained, the detaining officers do not determine whether they are "entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Instead, their focus is whether they "are present in the United States in violation of the immigration laws." 8 C.F.R. § 287.3(b). If so, they are referred for removal proceedings, *id.*, where an immigration judge, not an examining immigration officer, determines their entitlement to relief from removal, *see* 8 U.S.C. § 1229a.

Until recently, Defendants took the same position. Before the Supreme Court and other courts, they acknowledged that "[t]o 'seek admission[]' . . . entails affirmative actions to gain authorized entry." Reply Br. for Fed. Appellees at 14, *Crane v. Johnson*, No. 14-10049 (5th Cir. Sept. 29, 2014), Dkt. 78-1; *see also, e.g.*,

Br. for Pet'rs at 2, *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (No. 15-1204) (describing § 1225(b)(2)(A) as applying to those "who arrive at our Nation's doorstep seeking admission"); *accord* Tr. of Oral Argument at 44:23–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ("[Solicitor General]: . . . DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended."). Their recent decision to abandon this long-held understanding further underscores that the statute is most naturally read to exclude class members.

C. Defendants' interpretation contradicts the plain language of § 1225(b)(2) and its statutory context.

Defendants' contrary interpretation rests on reading § 1225(b)(2) in isolation, focusing solely on the term "applicant for admission" while disregarding the surrounding text.

Specifically, Defendants contend that § 1225(b)(2)(A) applies to class members because, in their view, the statutory phrase "seeking admission" adds nothing beyond the term "applicant for admission," such that all noncitizens who have not been admitted or paroled are necessarily "seeking admission." Op. Br. 22–30. But this "construction would render § 1225(b)(2)(A)'s use of the phrase 'seeking admission' superfluous, violating one of the cardinal rules of statutory construction." *Castañon-Nava*, 161 F.4th at 1061; *see also Kungys*, 485 U.S. at 778; *United States v. Taylor*, 596 U.S. 845, 857 (2022).

To avoid this surplusage problem, Defendants attempt to restructure § 1225(b)(2)(A), arguing that "seeking admission" is in the statute's "operative clause," while "applicant for admission" appears in a separate prefatory clause that "narrows" the former, and thus asserting that "applicant for admission" is a subset of noncitizens "seeking admission." Op. Br. 28. That reading does not resolve the redundancy they seek to avoid: the statute still requires that the operative detention command apply only to a noncitizen who is both "an applicant for admission" *and* "seeking admission." 8 U.S.C. § 1225(b)(2)(A).

Defendants also err in their reliance on § 1225(a)(3). They argue that this provision shows that being an "applicant for admission" is a "'way' or 'manner' of seeking admission, such that any alien who is an 'applicant for admission' is 'seeking admission' for purposes of § 1252(b)(2)(A)." Op. Br. 23. But "a basic rule of statutory construction is to '[r]ead on.'" *Make The Rd. New York v. Wolf*, 962 F.3d 612, 625 (D.C. Cir. 2020) (quoting *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 36 (2012)). The government argues that the use of the term "or otherwise" means that "the first action is a subset of the second action." Op. Br. 23 (citation omitted). But the "second action" is not simply "seeking admission"; it is "seeking admission *or readmission to or transit through* the United States." 8 U.S.C. § 1225(a)(3) (emphasis added). Clearly, all applicants for admission are not seeking readmission to or transit through the United States. Instead, in

§ 1225(a)(3), the phrases "applicants for admission" and "seeking admission" are expressly disjunctive and operate to ensure that all persons entering, reentering, or transiting through the United States are subject to inspection. *See id.* § 1225(a)(3); *see also Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, --- F. Supp. 3d ----, 2025 WL 3691938, at *27 (N.D. Cal. Dec. 19, 2025) ("'Otherwise' generally means, 'in a different way or manner' or 'in different circumstances.' *Otherwise*, Webster's Ninth New Collegiate Dictionary 835 (1984). So § 1225(a)(3)'s use of "or otherwise" simply means that immigration officers must inspect any noncitizen who is 'seeking admission or readmission to or transit through the United States,' whether the noncitizen is an applicant for admission or differently situated.").

By contrast, in § 1225(b)(2)(A), "seeking admission" serves to modify "applicants for admission." Treating that modifier as doing no work in § 1225(b)(2)(A) would read the language out of the statute. Defendants further ignore the surrounding text, which instructs that an examining immigration officer must determine whether a noncitizen is "entitled to be admitted," reinforcing that the subparagraph is indeed focused on a noncitizen "seeking admission," i.e., seeking "lawful *entry*" into the United States. 8 U.S.C. § 1101(a)(13)(A) (emphasis added).

Defendants also assert the redundancy caused by their interpretation of § 1225(b)(2)(A) must simply be accepted. Op. Br. 25, 29. But that position

depends on the premise that no alternative, coherent reading is available. Here, there is one. "Seeking admission" limits which applicants for admission must be covered. Only those who affirmatively seek to obtain lawful entry during inspection, consistent with the statute's repeated focus on inspections by examining officers, admissibility determinations, and entry processing, are in fact covered. *See* 8 U.S.C. §§ 1101(a)(13)(A), 1225(a)–(b).

The BIA's decision in *Matter of Lemus-Losa*, 25 I. & N. Dec. 734 (BIA 2012), also fails to support Defendants' interpretation. Critically, that decision did not interpret § 1225(b)(2)(A). Rather, the decision focused on a unique category of applicants who apply for a visa and lawful permanent residence *from within* the United States after having unlawfully entered the country. The decision held that Mr. Lemus could not elude the grounds of inadmissibility based on his prior unlawful entry. Instead, he was deemed to be seeking admission based on his application for a family visa from within the United States, and therefore had to demonstrate he was admissible. *See Lemus-Losa*, 25 I. & N. Dec. at 735, 743–44 & n.6 (BIA 2012).

Finally, Defendants err in asserting that any noncitizen who defends against removal proceedings is necessarily "seeking admission." Op. Br. 30–31. As the Supreme Court has explained, relief from removal does not afford a noncitizen "admission" to the country, but instead provides "[l]awful status," which is a

"distinct concept[] in immigration law." *Sanchez v. Mayorkas*, 593 U.S. 409, 415 (2021). Thus, the Court in *Sanchez* concluded that an individual who had entered the country unlawfully and subsequently received Temporary Protected Status—a form of temporary relief from deportation, *see* 8 U.S.C. § 1254a—was not "admitted," but instead granted a "lawful status." 595 U.S. at 415–16, 419; *see also* U.S. Citizenship & Immigr. Servs., PA-2025-25, Admission for Adjustment of Status under INA 245(a) (Nov. 3, 2025) (interpreting *Sanchez* to determine that "a grant of U nonimmigrant status . . . is not an 'admission'"). Similarly, relief in removal proceedings does not involve a determination by an "examining immigration officer," as provided in § 1225(b)(2)(A). Instead, an *immigration judge*—who is a distinct government official—makes those determinations. *Compare* 8 U.S.C. § 1101(b)(4) (defining immigration judge), *with id.* § 1101(a)(18) (defining immigration officer). Thus, Defendants again err in failing to acknowledge that the complete text and context of § 1225(b)(2)(A) readily distinguish its subject—inspection at the border—from relief sought in removal proceedings.[10]

[10] Defendants also invoke *Jennings* to support their understanding of § 1225(b)(2), noting that in that case, the Court explained that "[s]ection 1225(b)(2) . . . . serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." Op. Br. 40 (quoting *Jennings*, 583 U.S. at 287). But as Defendants themselves note, the "language of an opinion is not always to be parsed [like the] language of a statute." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373

III. The statutory and legislative history and record of administrative application of 8 U.S.C. § 1226 support understanding § 1226(a) to apply to class members.

A. Statutory and legislative history

The history of IIRIRA strongly supports the traditional understanding that § 1226(a) applies to class members. Prior to IIRIRA's adoption, any person physically inside the United States (unless the person had been paroled) was placed in "deportation" proceedings. *See* 8 U.S.C. § 1252(b) (1994). Such persons were considered detained under 8 U.S.C. § 1252(a) (1994), which included a detention provision that allowed for release on bond.[11] Separately, "exclusion" proceedings covered those who arrived at U.S. ports of entry and had never entered the United States. These proceedings had their own detention provision that did not permit

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(2023) (citation omitted); *see also* Op. Br. 40. Instead, opinions "must be read with a careful eye to context." 598 U.S. at 374. That observation applies with full force here. When making the point Defendants quote, the Supreme Court was addressing the process that "begins at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to entry the country is admissible." *Jennings*, 583 U.S. at 287. Further, in describing § 1225(b)(2) as a "catchall provision," the Court explained it covered those inadmissible for grounds other than the grounds enumerated in § 1225(b)(1)(A)(i), that is those "inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*

[11] *See also, e.g.*, *Yajure Hurtado*, 29 I. & N. Dec. at 223 ("[A]liens who were 'in the United States' and within certain classes of deportable aliens, including those 'who entered the United States without inspection or at any time or place other than as designated by the Attorney General' were deemed deportable under former section 241(a) of the INA, 8 U.S.C. § 1251(a) (1994), and placed in deportation proceedings. Those aliens were entitled to request release on bond. *See* former INA § 242(a)(1), 8 U.S.C. § 1252(a)(1) (1994); *see also* 8 C.F.R. § 242.2(c)(1) (1995).").

release on bond. *See* 8 U.S.C. § 1225 (1994); *id.* § 1226 (1994); *see also generally* Margaret H. Taylor, *The 1996 Immigration Act: Detention and Related Issues*, 74 Interpreter Releases 209, 214 (1997) ("Under prior law, the substantive criteria governing pre-hearing custody decisions and the procedures for challenging such decisions depended on whether an alien was placed in exclusion or deportation proceedings.").

Congress largely preserved this detention scheme for noncitizens when it passed IIRIRA in 1996. Indeed, Congress reauthorized the existing detention authority in 8 U.S.C. § 1252(a) (1994) (now codified at § 1226(a)). Specifically, in the Conference Report reconciling the House and Senate versions of the bill, Congress stated that the new § 1226(a) merely "restate[d] the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. Rep. No. 104-828, at 210; *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (same). The district court thus correctly found that "[b]ecause noncitizens arrested while unlawfully residing in the United States were entitled to discretionary detention under section 1226(a)'s predecessor statute, and Congress declared its scope unchanged by IIRIRA, this background supports the position that Bond Denial Class members too are subject to discretionary detention." ER-53–54.

The text and history of IIRIRA support the long-held understanding of the statute in an additional way. In passing IIRIRA, Congress exhibited significant concern for the strain on detention capacity that § 1226(c)'s new detention mandate would impose. *See* H.R. Rep. No. 104-469, pt. 1, at 119–20, 123. To address the problem, Congress authorized an option to defer implementation of § 1226(c) for two years while the agency built up its detention capacity—an option the government promptly invoked. IIRIRA § 303(b)(2), 110 Stat. 3009-585 to 3009-587; Letter from Doris Meissner, Comm'r, INS, to Henry J. Hyde, Chairman, S. Comm. on the Judiciary (Oct. 3, 1997).[12] Yet nowhere in the legislative history did Congress express *any* concern over the crushing burden that would have resulted had it mandated the detention of all persons who entered without admission or parole, as Defendants contend. Such a mandate would have represented a vastly greater expansion of mandatory detention than § 1226(c) itself. The same House Judiciary report that addressed the "lack of detention space" currently available, H.R. Rep. No. 104-469, pt. 1, at 119, estimated that half of the "four million illegal aliens residing in the United States," had entered without inspection, i.e., were present without admission, *id.* at 110–11; *see also id.* at 119. Yet Congress said nothing about how the INS would detain millions of

[12] *Available at*: https://perma.cc/HFF9-MY3N.

additional persons, while focusing closely on the agency's ability to detain the comparatively modest number of noncitizens newly subject to § 1226(c)(1).

It is simply implausible that the same Congress that showed such solicitude regarding § 1226(c)'s detention mandate simultaneously enacted the largest expansion of mandatory detention in U.S. history by imposing detention for millions of people under § 1225(b)(2)(A)—without a whisper in the statutory text or congressional record. Surely, "if Congress had such an intent, Congress would have made it explicit in the statute, or at least some of the Members would have identified or mentioned it at some point." *Chisom v. Roemer*, 501 U.S. 380, 396 (1991); *see also Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) ("Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.").

Defendants view the legislative history differently, advancing the same reasoning as the Board in *Yajure Hurtado*. One goal of IIRIRA was to eliminate the so-called entry doctrine, which treated people differently for purposes of removal proceedings based on whether they were apprehended at a port of entry or inside the United States. *See* H.R. Rep. No. 104-469, pt. 1, at 225. But according to Defendants, Congress also intended to expand that purpose beyond removal proceedings and apply it equally to custody determinations. Op. Br. 37.

This argument misstates the legislative history. Congress explicitly explained that in enacting the new definition of "admission" in the INA, it sought only to revise "*certain aspects* of the current 'entry doctrine' under which illegal aliens who have entered the United States without inspection gain equities and privileges in *immigration proceedings* that are not available to aliens who present themselves for inspection at a port of entry." H.R. Rep. No. 104-469, pt. 1, at 225 (emphasis added). The House Judiciary Report further explained that this "new doctrine of 'admission'" would make it so that "aliens who have entered without inspection" would now "be subject to a ground of inadmissibility," just like those who were apprehended at the border or a port of entry, and "[d]eportation grounds will be reserved for aliens who have been admitted to the United States." *Id.* at 226.[13] That distinction served a specific procedural purpose by ensuring that, among other things, persons who are present in the United States but who have not been admitted face the same heightened burden of proof for admission as those apprehended upon arriving. That burden stands in contrast to those who have been

[13] In *Yajure Hurtado*, the Board claims that this section of the legislative history demonstrates that "aliens present in the United States without inspection will be considered 'seeking admission.'" 29 I. & N. Dec. at 224–25. This misquotes the legislative history. The phrase "seeking admission" is used on the page in question only in relation to returning lawful permanent residents. Specifically, the report states that the bill would "preserve[] a portion of the *Fleuti* doctrine by stating that a returning lawful permanent resident shall not be regarded as seeking admission unless the alien has relinquished lawful permanent resident status." H.R. Rep. No. 104-469, pt. 1, at 225 (footnote omitted).

admitted, where the agency bears the burden to prove deportability. *See* 8 U.S.C. § 1229a(c)(2)–(3); H.R. Rep. No. 104-828, at 212 (noting that a noncitizen who is not admitted "shall have the burden to establish that he or she is beyond doubt entitled to be admitted," while for those who show they have been admitted, "the Service has the burden to establish by clear and convincing evidence that the alien is deportable").

In explaining its goal, Congress did *not* say that it sought to eliminate the historical distinction providing bond hearings to those who entered the country as opposed to those who were detained at the border. To the contrary, Congress expressly affirmed that § 1226(a) merely "restates the current provisions in [§ 1252(a)] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. Rep. No. 104-828, at 210; *see also* H.R. Rep. No. 104-469, pt. 1, at 229.

Defendants' brief omits this pertinent history. Instead, they simply cite Congress's goal of eliminating certain "equities and privileges," and claim—without citation—that Congress was referring to the law's provisions on bond and mandatory detention. Op. Br. 37. But the full legislative record shows otherwise and demonstrates that the district court was correct to conclude that Congress's goal was to place arriving noncitizens and those who entered without admission or

parole "on equal footing in *removal* proceedings." ER-54; *see also Torres*, 976 F.3d at 927–28 (same).[14]

Finally, Defendants' argument does not grapple with or address the portions of the legislative history that address the specific detention provisions at issue in this case and Congress's stated concern for their effects. As detailed above, Congress's treatment of those issues strongly underscores the traditional understanding that § 1226(a) is the statute that governs class members' detention.

B. History of administrative application

The INS's implementation of IIRIRA's detention provisions immediately following passage of the law—and through the nearly three decades that followed—confirms the traditional understanding that § 1226(a), not § 1225(b)(2), governs class members' detention. After IIRIRA was passed, INS and EOIR

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[14] Defendants also point to the "entry fiction" caselaw regarding whether those who are paroled into the United States have due process rights. Op. Br. 38–39. These cases are inapposite. First, they address people who were paroled into the United States. Class members are instead individuals who entered and then resided in the United States—typically for years or decades—before being apprehended. Moreover, Defendants' reliance on due process caselaw misses the mark: this case concerns what the statute, not the Constitution, requires. Finally, Defendants ignores the longstanding legal "distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, *irrespective of its legality*." *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (emphasis added); *see also Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (similar). The detention of noncitizens like Petitioners, who have already entered the country (in many cases years ago), must satisfy constitutional due process requirements. *See A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025); *see also Zadvydas*, 533 U.S. at 690–93.

promulgated new regulations implementing the custody provisions of IIRIRA. In the preamble to the new regulations, the agencies explained that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens, 62 Fed. Reg. at 10323; *see also id.* ("[I]nadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not.").

Those regulations remain unchanged. In particular, the regulation governing IJs' bond jurisdiction—8 C.F.R. § 1003.19(h)(2)—does not limit an IJ's jurisdiction over all inadmissible noncitizens. Instead, it limits jurisdiction only as to inadmissible noncitizens subject to § 1226(c) and certain other classes of noncitizens, like arriving noncitizens, i.e., those apprehended at the border or port of entry. *See* 8 C.F.R. § 1003.19(h)(2); *see also id.* § 1.2 (defining arriving alien). That is how the final rule was drafted when originally promulgated—and how the regulation remains today. *Compare* Procedures for the Detention and Release of Criminal Aliens, 63 Fed. Reg. 27441, 27448 (May 19, 1998), *with* 8 C.F.R. § 1003.19(h)(2). As the district court correctly indicated, this history lends "additional support to Bond Denial Class members' position." ER-57.

This history matters because an agency's longstanding and consistent interpretation "is powerful evidence that interpreting the Act in that way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting). Indeed, "[w]hen an agency claims to discover in a long-extant statute an unheralded power[,] . . . [courts] typically greet its announcement with a measure of skepticism." *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014). Courts therefore routinely consider an agency's historical application of the statute at issue (including as to *this exact statute*) to inform their own interpretation. *See Biden v. Texas*, 597 U.S. at 805 (rejecting "novel[]" interpretation of § 1225(b)(2)(C), where "every Presidential administration has interpreted" that subparagraph the same "[s]ince IIRIRA's enactment 26 years ago"); *Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government's interpretation and practice to reject its new proposed interpretation of the law at issue).

IV. The canon of constitutional avoidance resolves any lingering doubt.

The text, structure, and history of the statute demonstrate that § 1226(a) governs class members' detention. But to the extent any lingering doubt remains, the canon of constitutional avoidance further supports that traditional understanding. Where "an otherwise acceptable construction of a statute would raise serious constitutional problems, and where an alternative interpretation of the

statute is 'fairly possible,' [courts] are obligated to construe the statute to avoid such problems." *St. Cyr v. INS*, 533 U.S. 289, 299–300 (2001) (citation omitted). Here, Defendants' interpretation would raise serious constitutional questions by subjecting long-term residents in this country to detention without any individualized determination that their detention is justified because they present a flight risk or danger to the community. *See supra* Statement of the Case II.B (summarizing histories of several class members who have lived in the United States for decades, have no criminal history, and have U.S.-citizen children and grandchildren). The Due Process Clause prohibits the detention of such individuals and requires that they be afforded process to ensure their detention serves a lawful purpose. "Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). This principle protects persons who have entered the country—even those who have entered unlawfully—from unjustified deprivations of liberty. *See id.* at 693; *A.A.R.P.*, 605 U.S. at 94; *Leng May Ma*, 357 U.S. at 187. Accordingly, for class members, "due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (citation omitted); *see also Rodriguez v. Marin*, 909 F.3d 252, 256–57 (9th

Cir. 2018) ("Arbitrary civil detention is not a feature of our American government. . . . Civil detention violates due process outside of certain special and narrow nonpunitive circumstances." (citation modified)).[15]

CONCLUSION

The Court should accordingly affirm the judgment of the district court.

Date: January 21, 2026

Respectfully submitted,

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[15] Defendants also purport to "preserve[] for further review" two arguments: one about the application of § 1252(f)(1) to this case, and a second that asserts "the district court's class-wide declaratory relief cannot be squared with habeas." Op. Br. 19 n.6. Defendants did not raise the second argument in the proceedings below, and therefore have nothing to "preserve." *See United States v. Leniear*, 574 F.3d 668, 672 n.3 (9th Cir. 2009) (government waives issue it failed to raise in the court below); *see also United States v. Murguia-Rodriguez*, 815 F.3d 566, 573 (9th Cir. 2016) (government waives claim where it merely "mentions" an issue "but fails to advance a developed theory"). Moreover, the class seeks only declaratory relief—not release—and the Supreme Court has previously adjudicated such class action cases. *See generally Preap*, 586 U.S. 392.

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CERTIFICATE OF COMPLIANCE

I, Aaron Korthuis, am an attorney for Appellant. I hereby certify that this brief contains 13,624 words according to the word count feature of Microsoft Word, excluding the items exempted by Federal Rule of Appellate Procedure 32(f), and thus complies with the word limit set forth by Ninth Circuit Rule 32-1. The brief's type size and typeface comply with Federal Rule of Appellate Procedure 32(a)(5) and (6).

Signature: s/ Aaron Korthuis Date: January 21, 2026
Aaron Korthuis