

No. 25-3127

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

JACIEL CIRRUS ROJAS,

Petitioner-Appellant,

v.

SAMUEL OLSON, Field Office Director, Chicago Field Office,
Immigration and Customs Enforcement; SCOTT SMITH, Jail
Administrator, Dodge County Jail,

Respondent-Appellee.

**RESPONDENT'S OPPOSITION TO EMERGENCY MOTION
FOR RELEASE PENDING APPEAL**

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INTRODUCTION

Federal Rule of Appellate Procedure 23(b) authorizes a court to release a habeas detainee pending appeal, but only if the habeas petitioner shows *both* (1) a high probability of success on the merits, and (2) and exceptional circumstances meriting his release. Petitioner has shown neither. The Immigration and Nationality Act (“INA”) deems all aliens who are “present in the United States who ha[ve] not been admitted” to be “applicants for admission” and provides that all such aliens who cannot show they are “clearly and beyond a doubt entitled to be admitted ... shall be detained” pending removal proceedings. 8 U.S.C. §1225(a)(1), (b)(2)(A).

There is no dispute that Petitioner is an “applicant for admission” and that he has not shown (and cannot show) that he is entitled to be admitted. Therefore, he must be detained. The tentative, contrary interpretation by the motions panel in *Castanon-Nava v. U.S. Dep’t of Homeland Security*, No. 25-3050, ---F.4th---, 2025 WL 3552514 (7th Cir. 2025), is neither binding nor persuasive. Even if Petitioner had shown a high probability of success, he has failed to identify extraordinary circumstances that differentiate him from any other detainee. His motion should be denied.

STATEMENT OF THE CASE

I. Statutory Background

A. The Pre-1996 Framework Gave Preferential Treatment to Aliens Who Unlawfully Entered the United States.

Prior to 1996, the INA treated an alien who presented at a port of entry differently than one who evaded inspection and entered the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-23 (BIA 2025); see *Ming-Hui Wu v. Holder*, 567 F.3d 888, 891 (7th Cir. 2009) (same). Whether the alien had effected an entry dictated the type of immigration proceeding that would apply and whether the alien would be detained pending those proceedings. *Ming-Hui Wu*, 567 F.3d at 891.

At the time, the INA provided for “two types of proceedings in which aliens can be denied the hospitality of the United States: deportation hearings and exclusion hearings.” *Landon v. Plasencia*, 459 U.S. 21, 25 (1982). An alien who arrived at a port of entry would be placed in “exclusion proceedings and [be] subject to mandatory detention, with potential release solely by means of a grant of parole.” *Hurtado*, 29 I. & N. Dec. at 223. In contrast, an alien who evaded inspection and entered the United States would be placed in deportation proceedings. *Id.* Aliens in deportation proceedings, unlike those in exclusion proceedings, “were entitled to request

release on bond.” *Id.*; see *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010).

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.

Hurtado, 29 I. & N. Dec. at 223; see *Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“House Rep.”) (similar).

B. IIRIRA Eliminated the Preferential Treatment of Aliens Who Unlawfully Entered and Mandated Detention of “Applicants for Admission.”

Congress discarded that prior regime through enactment of Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, IIRIRA sought 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,” instead making lawful “admission” the touchstone of the removal process.

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). Now, the “pivotal factor in determining an alien’s status” is “whether or not the alien has been *lawfully* admitted.” House Rep., *supra*, at 225 (emphasis added); see *Hing Sum*, 602 F.3d at 1100 (similar).

IIRIRA effected these changes through several provisions codified in Section 1225 of Title 8.

Section 1225(a): Section 1225(a) codifies Congress’s decision to make lawful “admission,” rather than physical entry, pivotal. That provision states:

[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival 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). “All 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.” *Id.* §1225(a)(3).

Section 1225(b): IIRIRA also provided for expedited removal and “Section 240” proceedings (under 8 U.S.C. §1229a) and mandated that

applicants for admission be detained pending those proceedings. 8 U.S.C. §1225(b)(1)-(2). Relevant here, Section 1225(b)(2)(A) requires that those aliens be detained pending Section 240 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 240].

8 U.S.C. §1225(b)(2)(A).¹

While Section 1225(b) does not allow for aliens to be released on bond, the INA grants the Department of Homeland Security (“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).

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 removable—for example, admitted aliens who overstay or otherwise violate

¹ Section 1225(b)(2)(A) does not apply to (1) aliens subject to expedited removal; (2) crewmen; or (3) 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 pending removal proceedings. *Id.* §1225(b)(2)(C).

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.” *Id.* §1226(a). Detention under this provision is generally discretionary. The Attorney General “may” either “continue to detain the arrested alien” or release the alien on bond or conditional parole. *Id.* §1226(a)(1)-(2).

That discretion does not extend to certain aliens. *Jennings*, 583 U.S. at 288. Section 1226(c) provides that “[t]he Attorney General shall take into custody” certain aliens who are inadmissible or deportable because they (1) “committed” certain offenses or (2) engaged in terrorism-related activities. 8 U.S.C. §1226(c)(1). Such aliens may be released only if the 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. *Id.* §1226(c)(4).

Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, §2, 139 Stat. 3 (2025), which additionally requires detention of certain criminal aliens who (1) are inadmissible because they are present in the United States without admission or parole (8 U.S.C. §1182(a)(6)(A)), have committed a material misrepresentation or fraud, (*id.* §1182(a)(6)(C)), or lack required documentation, (*id.* §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. *Id.* §1226(c)(1)(E).

C. The Government Applies Section 1225(b)(2)(A) to Require Detention of All Applicants for Admission.

For many years after IIRIRA, the 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). *Hurtado*, 29 I. & N. Dec. at 225 n.6.

In July 2025, DHS issued interim guidance that brought the DHS’s practices in line with the statute’s plain text. Specifically, DHS concluded that applicants for admission are subject to mandatory detention under 8 U.S.C. §1225(b). The Board of Immigration Appeals subsequently adopted this interpretation in *Hurtado*.

II. Factual and Procedural History

Petitioner Cirrus Rojas is a citizen and national of Mexico who unlawfully entered the United States without being admitted into the country in 2008. Doc. 1, at 1-2.² On June 3, 2025, he was arrested by DHS and served a Notice to Appear for removal proceedings, which charged him with

² All “Doc.” citations are to the district court docket.

being inadmissible under 8 U.S.C. §1182(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled. Doc. 1-3 at 1-2.

DHS determined that Petitioner must be detained during his removal proceedings, Doc. 1-4, and Petitioner sought review of that custody determination from an immigration judge. Doc. 1-1. The immigration judge determined that Petitioner is subject to Section 1226(a)'s discretionary detention regime, not mandatory detention under 1225(b)(2), and ordered Petitioner released on \$1500 bond. Doc. 1-1 at 1. DHS appealed the bond decision to the Board of Immigration Appeals, automatically staying the decision. Doc. 1-6 at 1, 1-7 at 1-4.

Petitioner then filed an application for a writ of habeas corpus under 28 U.S.C. §2241 in district court and soon after moved for a temporary restraining order, contending that he is not subject to mandatory detention under Section 1225(b)(2) and is entitled to release on bond. Doc. 1, 4. While his petition was pending, the Board of Immigration Appeals reversed the immigration judge's bond decision on the ground that Petitioner is subject to mandatory detention under Section 1225(b)(2)(A). Attachment A at 1-2. Then, on October 30, 2025, the district court denied the habeas petition, also holding that Petitioner is subject to mandatory detention under Section

1225(b)(2). Doc. 20 at 7-15. Petitioner noticed his appeal on November 24, 2025. Doc. 27.

On December 9, 2025, Petitioner filed his motion for release under Federal Rule of Appellate Procedure 23(b).

III. *Castanon Nava*

On December 11, 2025, a motions panel of this Court issued *Castanon-Nava v. U.S. Dep’t of Homeland Security*, No. 25-3050, ---F.4th---, 2025 WL 3552514 (7th Cir. 2025). In that decision, the panel considered whether Section 1225(b)(2) “covers any noncitizen who is unlawfully already in the United States as well as those who present themselves at its border.” *Id.* at *8. The panel tentatively concluded that the Government is “not likely to succeed on the merits” of its interpretation of 8 U.S.C. § 1225(b)(2)(A). *Id.* at *8-10.

ARGUMENT

I. Federal Rule of Appellate Procedure 23(b).

Federal Rule of Appellate Procedure 23 governs custody determinations for detainees in habeas proceedings. Relevant here, Rule 23(b) authorizes courts to determine custody arrangements for detainees in habeas proceedings “[w]hile a decision not to release [the] prisoner is under review.” A court of appeals “may order the prisoner be: (1) detained in the custody from which release is sought; (2) detained in other appropriate

custody; or (3) released on personal recognizance, with or without surety.” Fed. R. App. P. 23(b)(1)-(3); see *Bolante v. Keisler*, 506 F.3d 618, 620 (7th Cir. 2007).

Appellate Rule 23(b) does not specify the standards to govern whether release is warranted. In *Hilton v. Braunskill*, 481 U.S. 770 (1981), the Supreme Court discussed the standard that applies to another of Rule 23’s provisions—subsection (c)—which addresses detainees who have been ordered released and provides that “the prisoner must ... be released” unless a “court ... orders otherwise.” Fed. R. App. P. 23(c). Although Rule 23(c) “creates a presumption of release from custody,” the Court held that courts must consider “the factors traditionally considered in deciding whether to stay a judgment in a civil case.” 481 U.S. at 774, 777-78.

In contrast, Rule 23(b) “does not set a presumption in favor of release.” 16AA Wright & Miller, *Fed. Prac. & Proc.* §3969 (5th ed. Sept. 2025 update). Instead, release pending appeal after a denial of habeas must “be exercised very sparingly,” *Cherek v. United States*, 767 F.2d 335, 337 (7th Cir. 1985), and “is reserved for extraordinary circumstances,” *United States v. Dade*, 959 F.3d 1136, 1138 (9th Cir. 2020). Accordingly, a habeas petitioner seeking release under Rule 23(b) must show (1) “a high probability of success” on the merits,” and (2) “exceptional circumstances.” *Id.* at 1138-39; see *Armengau*

v. Hildebrand, No. 22-4049, 2023 WL 6475859, at *3 (6th Cir. June 1, 2023) (Rule 23(b) requires “a substantial claim of law ... and the existence of some circumstances making the motion for bail exceptional and deserving of special treatment”); *Elkimya v. DHS*, 484 F.3d 151, 154 (2d Cir. 2007) (“extraordinary circumstances”); *Morris v. Story*, 803 F.2d 721 (6th Cir. Sept. 30, 1986) (unpublished) (“a strong showing” and “special reasons or exceptional circumstances”). “There will be few occasions where a prisoner will meet this standard.” *Armengau*, 2023 WL 6475859, at *3 (quoting *Dotson v. Clark*, 900 F.2d 77, 79 (6th Cir. 1990)).

II. Petitioner Has Not Satisfied the Stringent Requirements of Appellate Rule 23(b).

The Court should deny Petitioner’s Rule 23(b) motion for two independent reasons. First, he has failed to show a likelihood of success on the merits, much less a high probability of success. Second, he has failed to show exceptional circumstances.

A. Petitioner has failed to show a high probability of success on the merits.

The INA unambiguously requires the Government to detain aliens who have not been admitted into the United States pending their removal proceedings. None of Petitioner’s contrary arguments has merit.

1. *Castanon-Nava* is not Binding.

As a threshold matter, Petitioner asks this Court to “apply its holding in *Castanon-Nava* that the government is unlikely to succeed on the merits of its Section 1225(b)(2)(A) argument.” Rule 28(j) Letter at 1 (Dkt. 9-1). But that decision is not binding precedent: “Decisions by motions panels are summary in character, made often on a scanty record, and not entitled to the weight of a decision made after plenary submission.” *Johnson v. Burken*, 930 F.2d 1202, 1205 (7th Cir. 1991). Indeed, *Castanon-Nava* repeatedly emphasized the tentative nature of its conclusions. 2025 WL 3552514, at *8, *9, *10. Therefore, *Castanon-Nava* is not controlling. And for the reasons given below, its tentative conclusions are incorrect.

2. Section 1225(b)(2)(A) Requires Detention of Applicants for Admission.

Section 1225(a) provides that any alien who is “present in the United States who has not been admitted” “shall be deemed ... an applicant for admission.” 8 U.S.C. §1225(a)(1). An alien’s status as an “applicant for admission” does not change depending on how far from the border he traveled or how long he has been present in the country. If the alien is “present in the United States” without admission, he is an “applicant for admission”—full stop. *Id.*

Section 1225(b)(2) then governs detention and removal of (most) “applicants for admission” who are not subject to expedited removal. *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Except for aliens expressly exempt, Section 1225(b)(2) mandates detention of all such “applicants for admission” not “clearly and beyond a doubt entitled to be admitted” pending their removal proceedings. 8 U.S.C. §1225(b)(2)(A); *supra*, p. 4 (reproducing text). Again, the statute makes no exception based on how far an unadmitted alien has journeyed into the country or been present in the United States. Therefore, any alien who is an applicant for admission must be detained pending removal proceedings. *E.g., Mejia Olalde v. Noem*, 2025 WL 3131942, at *2-3 (E.D. Mo. Nov. 10, 2025).

3. Petitioner Provides No Basis for Departing from the Clear Statutory Text.

None of Petitioner’s arguments justifies disregarding the plain statutory text.

Seeking Admission: Petitioner concedes he is an “applicant for admission” as defined by Section 1225(a)(1), *see* Mot. 12, but argues this status “is not dispositive of whether §1225(b)(2)(A) applies to him” because the statute also uses the phrase “seeking admission” and “‘applicant for admission’ and ‘seeking admission’ ... are not the same thing.” Mot. 12-13. Petitioner does not explain what “seeking admission” adds to the statute,

Mot. 11-13; regardless, the statute makes clear that “applicants for admission” *are* “seeking admission.”

a. 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). Thus, as this Court recognized: “[O]r otherwise’ language ‘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). Being an “applicant for admission” is thus a “way or manner” of seeking admission, such that any alien who is an “applicant for admission” is “seeking admission” for purposes of Section 1252(b)(2)(A).³

“Seeking admission” thus includes aliens who “entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of section 235(a)(1) of the Act.” *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

³ Petitioner’s contrary argument (Mot. 13 n.1) is incompatible with this precedent and depends on interpreting “or” and “otherwise” in isolation.

permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws.” *Id.* at 743 (emphasis in original). For example, an alien who previously unlawfully entered the United States and is never admitted, departs, and subsequently applies for admission at a port of entry is deemed to be “*again* seek[ing] admission” to the United States. *Id.* at 743-44 & n.6 (emphasis added). Mere presence without admission is seeking admission “by operation of law.” *Id.*

This dispenses with Petitioner’s example of “someone who enters a movie theater without purchasing a ticket.” Mot. 16. Even if such a person would not be understood to be “‘seeking admission’ to the theater,” *id.* at 17, Section 1225(a)(1) “*deem[s]*” aliens who are “present in the United States who hav[e] not been admitted” to be “applicant[s] for admission,” 8 U.S.C. §1225(a)(1), and Section 1225(a)(3) establishes that “applicants for admission” *are* “seeking admission.” *Sturgeon v. Frost*, 587 U.S. 28, 47 (2019) (recognizing that “deem” is used when “it is necessary to establish a legal fiction” “to treat (something) as if ... it were really something else”).

Castanon-Nava acknowledged that Section 1225(a)(3) “suggest[s] that ‘applicants for admission’ are those ‘seeking admission.’” 2025 WL 3552514, at *9. But the panel ultimately gave no weight to Section 1225(a)(3) on the view that Congress “could easily have included noncitizens who are ‘seeking

admission’ within the definition [of ‘applicant’ for admission’] but elected not to do so.” *Id.* That fundamentally misunderstands Section 1225(a)(3): That provision does not *equate* “applicant for admission” with aliens “seeking admission”; it provides only that being an “applicant for admission” is *one* “way or manner” of seeking admission. *Supra*, p. 4. “Seeking admission” is a broader category, which is why Congress would not have included “seeking admission” within Section 1225(a)(1)’s definition of “applicant for admission.”

That understanding is consistent with the everyday meaning of the statutory terms. One may “seek” something without “applying” for it—for example, one who is “seeking” happiness is not “applying” for it. But one *applying* for something is necessarily *seeking* it. *Compare* Webster’s New World College Dictionary 69 (4th ed.) (“apply” means “To make a formal request (*to* someone *for* something)”), *with id.* at 1299 (“seek” means “to request, ask for”); *accord Mejia Olalde*, 2025 WL 3131942, at *3 (“To ‘seek’ is a synonym of to ‘apply’ for.”). For example, 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) (“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.

b. This reading does not render “seeking admission” redundant in Section 1225(b)(2)(A); the structure of Section 1252(b)(2)(A) demonstrates that each term has independent meaning. *Cf.* Mot. 12-13; *Castanon-Nava*, 2025 WL 3552514, at *9.

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.* (emphasis added). 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 Section 1225(a)(1). No portion of the statute is redundant.

Even if it were otherwise, the canon against surplusage “is not a silver bullet.” *Rimini Street, Inc. v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019). “Redundancies 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 v. Barr*, 590 U.S. 222, 239 (2020). “[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*, 590 U.S. at 239.

Those principles apply with full force here. The motions panel in *Castanon-Nava* disagreed on the theory that the Supreme Court “presume[s] [an] interpretation is incorrect” if it produces redundancy. 2025 WL 3552514, at *9 (purporting to quote *Bilski v. Kappos*, 561 U.S. 593, 607-08 (2010)). Neither the quoted language nor anything like it appears in *Bilski*. That is no surprise given the Supreme Court’s contrary instruction in *Rimini Street* and *Barton*.

Jennings: Petitioner insists that Respondent’s interpretation “conflicts with the statute’s structure,” Mot. 17, based on language from

Jennings that described Section 1225(b)(2) as applying “at the Nation’s borders and ports of entry.” Mot. 17 (quoting *Jennings*, 581 U.S. at 287). He reads too much into *Jennings*: That decision rejected a Ninth Circuit ruling that “imposed an implicit 6-month time limit on an alien’s detention” under Sections 1225(b) and 1226. 583 U.S. at 292, 296-306. *Jennings* did not—and did not need to—resolve the precise groups of aliens subject to Section 1225(b) or Section 1226. Even so, the Court recognized that “Section 1225(b)(2) ... serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1).” *Id.* at 287. That is the Government’s position.

Section 1226(c): Finally, Petitioner argues that Respondent’s interpretation renders superfluous portions of 8 U.S.C. §1226(c). He does not argue that *all* of Section 1226(c) is superfluous under the Respondent’s reading of Section 1225(b)(2)(A). Nor could he. Section 1226(c) requires detention of aliens who *have been admitted* to the United States and are now “deportable,” see 8 U.S.C. §1226(c)(1)(B), but Section 1225(b)(2) has no application to admitted aliens.

Instead, Petitioner argues that Respondent’s interpretation would render redundant Congress’s recent amendment of Section 1226(c) through the Laken Riley Act, which requires mandatory detention of criminal aliens

who are “inadmissible” under 8 U.S.C. §1182(a)(6)(A), (a)(6)(C), or (a)(7). *See* 8 U.S.C. §1226(c)(1)(E)(i)-(ii); *see* Mot. 14-15. Even then, the Laken Riley Act “appl[ies] to situations where §1225 might not.” *Mejia Olalde*, 2025 WL 3131942, at *4 (citing 8 U.S.C. §1182(a)(6)(C)(i)). To be sure, the Act’s application to aliens who are inadmissible under §1182(a)(6)(A)(i)—for being “present ... without being admitted or paroled”—overlaps with Section 1225(b)(2)(A). But again, “[r]edundancies are common in statutory drafting,” and are “not a license to rewrite or eviscerate another portion of the statute contrary to its text.” *Barton*, 590 U.S. at 239. Moreover, the canon is “weak” when applied, as here, to “acts of Congress enacted at widely separated times.” *Mejia Olalde*, 2025 WL 3131942, at *5. And it is especially weak where, as here, there will be overlap under *any* possible reading of the statute. *Microsoft Corp. v. I4I Ltd. P’ship*, 564 U.S. 91, 106 (2011).

Besides, Section 1226(c) and the Laken Riley Act still do independent work by narrowing the circumstances under which aliens may be *released* from mandatory detention and preventing the Executive from releasing the specified aliens on parole. *Supra*, pp. 5-7.

* * *

Ultimately, Petitioner’s reading (and that of *Castanon-Nava*) would subvert IIRIRA’s express goal of eliminating preferential treatment for aliens

who entered the United States unlawfully: It would require detention for those who present themselves for inspection at the border in compliance with law, yet grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years until an involuntary encounter with immigration authorities. This Court should reject any interpretation that is so transparently subversive of Congress's stated objective. *See, e.g., King v. Burwell*, 576 U.S. 473, 492 (2015).

B. Petitioner has failed to show exceptional circumstances justifying release.

Even if Petitioner could establish a high probability of success on the merits, he cannot show exceptional circumstances meriting release. Although courts have not defined the full scope of circumstances that count as “extraordinary,” they include “a serious deterioration of health while incarcerated,” as well as an “unusual delay in the appeal process.” *United States v. Mett*, 41 F.3d 1281, 1282 (9th Cir. 1994); *see Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992) (“extraordinary circumstances” is “limited to situations involving poor health” or “the impending completion of the prisoner’s sentence”). Petitioner has not shown any “extraordinary circumstances.”

Petitioner claims he is being irreparably harmed by his detention. Mot. 18. The fact of detention cannot possibly constitute an *extraordinary* circumstance for purposes of Rule 23(b), because the rule only applies in the context of “a decision *not to release* a prisoner.” Fed. R. App. P. 23(b) (emphasis added). Nor is the duration of Petitioner’s detention extraordinary. Petitioner represents that he has been detained for approximately 6 months, *see* Mot. 30, but the Supreme Court has recognized in other contexts that detention for 6 months is presumptively constitutional, *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Such ordinary detention is not made extraordinary by Petitioner’s suggestion of a *constitutional* violation. His Rule 23(b) motion seeks release solely on a statutory claim, not on the basis of a constitutional violation. Although he insists that “[c]ontinuation of an unlawful detention necessarily implicates” due process, Mot. 18, a statutory violation “does not automatically mean the defendant was denied constitutional due process,” *Davis v. Jones*, 506 F.3d 1325, 1336 (11th Cir. 2007). And while Petitioner believes he is likely to succeed on his statutory claim, a petitioner always “must make a further showing of exceptional circumstances” *in addition to* a high probability of success on the merits. *See, e.g., Dade*, 959 F.3d at 1138; *Landano*, 970 F.2d at 1239; *Elkimya*, 484 F.3d at 154. “A contrary rule

would be an unwarranted departure from traditional equitable standards.”
Dade, 959 F.3d at 1138.⁴

Second, Petitioner notes that he has not seen his family since he was detained. Mot. 19 of 47. That is the ordinary consequence of detention. The Supreme Court has long “recognized [that] detention during deportation proceedings [i]s a constitutionally valid aspect of the deportation process,” and indeed that “deportation proceedings ‘would be vain if those accused could not be held in custody pending the inquiry into their true character.’” *Demore v. Kim*, 538 U.S. 510 U.S. 510, 523 (2003) (citation omitted). Petitioner has not alleged any facts that differentiate him from any other detainee.

Third, Petitioner says that “prepar[ation] for his rapidly approaching removal hearing ... [on] December 17, 2025, has been significantly hampered by the fact of this continued detention.” Mot. 19. This is not an extraordinary circumstance, either. Immigration detainees routinely must pursue such relief from within the confines of a detention facility—often (unlike Petitioner) without the aid of counsel. Petitioner has not cited a single case that justified a release from detention, even in part, based on a detainee’s

⁴ Neither of the cases Petitioner cites (Mot. 18) held that a statutory violation constitutes irreparable harm because it implicates constitutional rights.

need to prepare for an immigration proceeding. In any event, these concerns are now moot, as Petitioner's removal hearing has already occurred. Mot. 19.

Finally, Petitioner claims that but for the district court's order "there would be no question that [he] is entitled to immediate release as a member of the nationwide class in *Maldonado Bautista v. Noem*. Mot. 21. But there was no final declaratory judgment in *Bautista* prior to the district court's order in this case; the *Bautista* court entered partial final judgment only yesterday. See Final Judgment, *Maldonado Bautista v. Noem*, 25-cv-01873 (C.D. Cal. Dec. 18, 2025), ECF No. 94. Moreover, that declaratory judgment is not preclusive on this Court (or the district court below), as one district court has already held. See Order, *Calderon Lopez v. Lyons*, No. 25-cv-00226 (N.D. Tex. Dec. 19, 2025), ECF No. 12. Importantly, a habeas petition may be brought only in the district of confinement and must name the immediate custodian. *Rumsfeld v. Padilla*, 542 U.S. 426, 434-47 (2004). Petitioner's immediate custodian is not located within the Central District of California, and that court's judgment cannot be preclusive against a party over whom it lacks jurisdiction. See *Kholyavskiy v. Achim*, 443 F.3d 946 (7th Cir. 2006) (affirming dismissal for lack of jurisdiction based on immediate custodian rule); *Combs v. Nick Garin Trucking*, 825 F.2d 437,

442 (D.C. Cir. 1987) (“judgment entered without personal jurisdiction over a defendant is void as to that defendant”).

C. The Public Interest Does Not Support Release.

Finally, Petitioner cannot show that the public interest supports his release. His arguments that the public interest favors release depend entirely on his success on the merits. Mot. 20. Petitioner may have been found not to be a flight risk or public danger, but such considerations are irrelevant for aliens subject to mandatory detention under Section 1225(b)(2)(A). By contrast, Petitioner acknowledges that “the public interest lies in strong enforcement of the country’s immigration laws.” Mot. 20; *see Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 490 (1999).

CONCLUSION

The Court should deny the motion.

Respectfully submitted,

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Dated: December 19, 2025

Attorneys for Respondent

Attachment A

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

Jaciel CIRRUS-ROJAS, A240-155-901

Respondent

FILED
Oct 21, 2025

ON BEHALF OF RESPONDENT: Lyneshka Cruz Laureano, Esquire

ON BEHALF OF DHS: Antonia M. Lonquist, Assistant Chief Counsel

IN BOND PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Chicago, IL

Before: Mahtabfar, Appellate Immigration Judge

MAHTABFAR, Appellate Immigration Judge

The Department of Homeland Security (“DHS”) appeals from the Immigration Judge’s July 15, 2025, decision ordering the respondent released from custody on \$1,500 bond.¹ The Immigration Judge issued a bond memorandum setting forth the reasons for the decision on September 4, 2025. The respondent has not filed a response to the appeal. The appeal will be sustained, and the Immigration Judge’s July 15, 2025, order will be vacated.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

Pending this appeal, the Board issued a precedential decision holding that, based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack the authority over bond requests for aliens who are present in the United States without admission. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The respondent in this case does not contest that he entered the United States without admission or parole in 2018 (IJ Bond Memorandum at 1). Pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I&N Dec. at 220-28, the Immigration Judge lacked authority to hear the respondent’s request for a bond because the respondent is an applicant for admission and is subject to mandatory detention under section 235(b)(2)(A) of the INA,

¹ On July 15, 2025, DHS filed a Notice of the U.S. Immigration and Customs Enforcement (“ICE”) Intent to Appeal Custody Redetermination (Form EOIR-43), automatically staying the decision of the Immigration Judge which remains in abeyance pending a decision of the appeal by this Board. 8 C.F.R. § 1003.19(i)(2).

8 U.S.C. § 1225(b)(2)(A), and the regulation at 8 C.F.R. § 235.3(b)(1)(ii). Based on the foregoing, we will sustain DHS' appeal and vacate the Immigration Judge's July 15, 2025, decision.

Accordingly, the following order will be entered.

ORDER: The appeal is sustained, and the Immigration Judge's July 15, 2025, order is vacated.

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitations of Fed. R. App. P. 27(d) because it contains 5,198 words, excluding the parts of the brief exempted by Fed. R. App. P. 27(a)(2)(B). This motion complies with the typeface requirements of Fed. R. App. P. 27(d)(1)(E), 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010, Georgia, 14-point type.

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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2025, I caused the forgoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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Dated: December 19, 2025

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