

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.

ANSWERING BRIEF

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STATEMENT REGARDING ORAL ARGUMENT

Petitioner Jaciel Cirrus Rojas is an alien who entered the United States without admission and has remained unlawfully in the United States for many years. He was subsequently apprehended by federal immigration authorities and detained pending his removal proceedings. He requested and was granted bond by an immigration judge. The Department of Homeland Security appealed the bond decision, which was ultimately overturned by the Board of Immigration Appeals. Petitioner filed a writ of habeas corpus from the district court. The district court denied his petition, finding that under 8 U.S.C. §1225(b)(2)(A), he was properly detained during the course of his removal proceedings without the possibility of a bond determination.

This appeal raises a significant issue regarding the scope of the Department's obligation to detain certain aliens pending removal proceedings. Given the complexities of the issue, oral argument would assist the Court in resolving this appeal.

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INTRODUCTION

Before 1996, the federal immigration laws required the detention of aliens who presented at a port of entry but allowed any alien who had entered unlawfully and was present in the United States to obtain release pending deportation proceedings. Congress overhauled the immigration system in 1996 with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), Pub. L. 104-208, Div. C, 110 Stat. 3009-546 (Sept. 30, 1996), in part to end the preferential treatment of aliens who successfully evaded inspection and thereby entered the United States unlawfully.

As relevant here, Congress enacted what is now codified at 8 U.S.C. §1225. This provision “deem[s]” any “alien present in the United States who has not been admitted or who arrives in the United States” to be “an applicant for admission.” 8 U.S.C. §1225(a)(1). And it mandates the detention during removal proceedings of any “applicant for admission” who cannot show he is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §1225(b)(2)(A).

The statute makes no exception for how far into the country an alien has traveled or how long the alien has managed to evade detection. Unless the Secretary of Homeland Security exercises her narrow and discretionary

parole authority, mandatory detention is the rule for any alien who has not been lawfully admitted. Although the Government once operated under a different understanding of the law, this Court must apply the language of §1225(b)(2)(A) as written.

There is no dispute that Petitioner is an “applicant for admission” under §1225(a), as he entered the country without inspection and was never “admitted.” Nor does he contest that he did not (and cannot) show that he is “clearly and beyond a doubt” entitled to be admitted. The district court thus correctly held that Petitioner is subject to detention, without bond, under §1225(b)(2)(A).

On appeal, Petitioner argues that §1225(b)(2)(A) does not govern his detention on the theory the phrase “seeking admission” in §1225(b)(2)(A) limits that provision to the border. That is wrong. The plain text of §1225 establishes that applicants for admission, like Petitioner, are seeking admission—including by an “otherwise clause” that makes plain that “applicants for admission” are a subset of aliens “seeking admission.” See 8 U.S.C. §1225(a)(3); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 483 (7th Cir. 2019) (holding that “‘or otherwise’ language ‘operates as a catchall: the specific items that precede it are meant to be subsumed by what comes after [it].’”).

The Fifth Circuit held exactly that in a published decision issued just last week. *See Buenrostro-Mendez v. Bondi*, ---F.4th---, 2026 WL 323330 (5th Cir. Feb. 6, 2026). Ignoring the words Congress actually used, Petitioner urges an agrammatical reading that is at war with numerous other cases interpreting similar language, not to mention the English language.

Ultimately, Petitioners' interpretation would require disparate treatment Congress never intended—favoring aliens who *intentionally* evade inspection and enter the country *in violation of law* by affording them bond hearings, while mandating detention of those who present at a port of entry *in compliance with law*. In Petitioner's view, “no good deed goes unpunished.” *Winter v. NRDC*, 555 U.S. 7, 31 (2008). Those who actually commit the crime of illegal entry (8 U.S.C. §1325) are rewarded with access to bond hearings which their law-abiding counterparts are denied. That is exactly the perverse regime Congress sought to abolish through §1225.

Despite §1225's clear text, Petitioner asks the Court to ignore it based on the separate detention authorities in §1226. His arguments based on §1226 rely on inference, conflicting legislative history, and inconsistent Executive interpretations—nothing remotely sufficient to displace the clear terms of §1225. On its face, §1226 applies to numerous aliens *not* subject to §1225(b)(2)(A), including all *admitted* aliens who are now deportable—such

as the more than a million aliens in the United States who were lawfully admitted but overstayed visas. By contrast, §1225 explicitly applies to all “applicants for admission,” and it is axiomatic that “the specific controls the general.” *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012).

Finally, Petitioner urges the application of the canon of constitutional avoidance. But §1225(b)(2)(A) is not amenable to a narrowing construction and, even if it were, there is no constitutional issue to avoid. Under longstanding precedent, aliens who have never “been admitted into the country pursuant to law” are due only the process given by Congress in statute. *DHS v. Thuraissigiam*, 591 U.S. 103, 138-39 (2020). Only “*once an alien gains admission* to our country ... [does] his constitutional status change[.]” *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (emphasis added). Because Congress did not provide “applicants for admission” like Petitioner the right to a bond hearing, the due process clause does not either.

The Court should affirm.

STATEMENT OF JURISDICTION

Petitioner’s jurisdictional statement filed on January 5, 2026, is complete and correct.

RESTATEMENT OF THE ISSUE

Whether the district court correctly denied Petitioner's application for a writ of habeas corpus because 8 U.S.C. §1225(b)(2)(A) requires the Department to detain any alien who is present in the United States without admission pending their removal proceedings, regardless of how long the alien has been unlawfully present in the United States or how far the alien's incursion into the country.

STATEMENT OF THE CASE

I. Statutory framework

A. **The pre-IIRIRA framework distinguished between excludable aliens who had not made an entry and deportable aliens who had entered the United States, even unlawfully.**

The Immigration and Nationality Act of 1952, as amended, 8 U.S.C. §1101 *et seq.*, contains a comprehensive framework governing the regulation of aliens, authorizing proceedings for the removal of aliens who unlawfully enter the United States, or are otherwise removable, and establishing requirements for detaining aliens pending removal.

Prior to 1996, the INA provided different treatment for aliens who presented at a port of entry and for those found within the borders of the United States. *See* 8 U.S.C. §§1225, 1226, 1252 (1995); *see Ming-Hui Wu v. Holder*, 567 F.3d 888, 891 (7th Cir. 2009). Under former §1225(b), any alien

“who may not appear to the examining officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special inquiry officer”—*i.e.*, an exclusion proceeding before an immigration judge under former §1226. An alien detained for exclusion proceedings under former §1226 was not entitled to bond, but could be temporarily released—that is, “paroled”—into the United States under 8 U.S.C. §1182(d)(5)(A) (1995).

By contrast, under former §1252(a)(1), “[p]ending a determination of deportability in the case of any alien ..., such alien may, upon warrant of the Attorney General, be arrested and taken into custody.” Unlike aliens in exclusion proceedings, those in deportation proceedings could be “released under bond” or “released on conditional parole.” *Id.*; *see also Reno v. Flores*, 507 U.S. 292, 294-95 (1993) (describing the availability of release for deportable aliens); *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010). Among those subject to deportation were those aliens “who entered the United States without inspection or at any time or place other than as designated by the Attorney General....” 8 U.S.C. §1251(a)(1)(B) (1995). In short, under the pre-IIRIRA INA, whether an alien was subject to mandatory detention (with exclusion proceedings) or was subject to authorized detention and bond (during deportation proceedings) depended wholly on

whether the alien had effected a physical “entry” by coming “into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise.” 8 U.S.C. §1101(a)(13) (1995). The lawfulness of the entry did not play a role, except as a basis for deportation.

This division, however, led to the anomalous treatment of certain aliens:

Under this regime, non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings.

Hing Sum, 602 F.3d at 1100; H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“House Rep.”) (similar).

B. IIRIRA eliminated preferential treatment for unlawful entrants into the United States, mandating detention and removal proceedings for certain “applicants for admission.”

Congress refashioned the prior regime through enactment of IIRIRA, Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546. 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” and instead made lawful “admission” the touchstone both of whether an alien is subject to inadmissibility or deportability grounds of removal and of whether the alien is subject to mandatory detention pending his removal proceedings. Under IIRIRA, “admission” means “the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer.” Pub. L. No. 104-208, §301(a), 8 U.S.C. §1101(a)(13)(A) (emphasis added). As such, the immigration laws no longer distinguish between aliens based merely on whether they manage to enter the country. Instead, 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).

Additionally, IIRIRA eliminated the dichotomy of exclusion and deportation proceedings, consolidating the two into a single removal proceeding. *See* 8 U.S.C. §1229a; *Ming-Hui Wu*, 567 F.3d at 891-92. Nonetheless, IIRIRA retained burdens of proof for aliens in removal proceedings akin to those for excludable and deportable aliens: Under 8 U.S.C. §1229a(c)(2)(A), an alien who is “applicant for admission” must establish that he is “clearly and beyond a doubt entitled to be admitted” and “not inadmissible,” while the Department has “the burden of establishing by

clear and convincing evidence that, in the case of an alien who has been admitted to the United States, the alien is deportable.” 8 U.S.C. §1229a(c)(3)(A).

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

Section 1225(a): Section 1225(a) codifies Congress’s decision to make lawful “admission,” rather than physical entry, the touchstone of removal and detention grounds, first, by deeming a broad class of aliens who have not been admitted “applicants for admission.”

An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. §1225(a)(1). Immigration officers are required to inspect “[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States.” *Id.* §1225(a)(3). The inspection by the immigration officer is designed to determine whether the alien may be lawfully “admitted” to the country or, instead, must be referred to removal proceedings. As part of inspection, “[a]n applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes

and intention of the applicant in seeking admission to the United States” *Id.* §1225(a)(5). Section 1225 also allows an “alien applying for admission” to “at any time ... withdraw the application for admission” and “depart immediately from the United States.” *Id.* §1225(a)(4).

Section 1225(b): IIRIRA also provided for expedited removal and non-expedited removal proceedings, mandating that applicants for admission be detained pending these proceedings. 8 U.S.C. §1225(b)(1)-(2).

Section 1225(b)(1) authorizes so-called “expedited removal proceedings,” *Thuraissigiam*, 591 U.S. at 109-13, which may be applied to a subset of aliens—those inadmissible on certain grounds who (1) are “arriving in the United States,” or (2) have “not been admitted or paroled into the United States” and have “not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. §1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration officer shall “order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum ... or a fear of persecution.” *Id.* §1225(b)(1)(A)(i). In that event, the alien “shall be detained pending a final determination of credible fear of persecution and, if found not to have such

fear, until removed.” *Id.* §1225(b)(1)(B)(iii)(IV); *see* 8 C.F.R. §235.3(b)(4)(ii). If found to have a fear, “the alien shall be detained for further consideration of the asylum application.” 8 U.S.C. §1225(b)(1)(B)(ii). An alien processed for expedited removal who does not indicate an intent to apply for asylum or a fear of persecution or who is determined not to have a credible fear is likewise detained until removed. 8 U.S.C. §1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. §235.3(b)(2)(iii).

Section 1225(b)(2) is a “catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)].” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).¹ It directs an immigration officer to detain applicants for admission pending §1229a removal proceedings:

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

8 U.S.C. §1225(b)(2)(A) (emphasis added); *see* 8 C.F.R. §235.3(b)(1)(ii) (mirroring §1225(b)(2)’s detention mandate); *Jennings*, 583 U.S. at 302 (holding that §1225(b)(2) “mandate[s] detention of aliens throughout the

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

completion of applicable proceedings and not just until the moment those proceedings begin”).

While §1225(b)(2) does not provide for the release of aliens on bond, the Secretary nonetheless has discretion to exercise her 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).² Parole, however, “shall not be regarded as an admission of the alien.” *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that “the purposes of such parole ... have been served,” the “alien shall ... be returned to the custody from which he was paroled” and be “dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. §1182(d)(5)(A).

Section 1226: IIRIRA moved and revised former §1252(a) to provide separate authority enabling the arrest, detention, and release of certain aliens. *See* 8 U.S.C. §1226. The statute provides that “[o]n a warrant issued by the [Secretary], 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.

² On March 1, 2003, authority over the administration of the immigration laws was reallocated by the Homeland Security Act of 2002. *See* 6 U.S.C. §§291, 542.

§1226(a). Like its predecessor, this provision encompasses the detention of aliens who were admitted to the country but later become removable—for example, admitted aliens who overstay or otherwise violate the terms of their visas, who engage in conduct that renders them deportable, or who are later determined to have been improperly admitted.

Detention under this provision is generally discretionary. The Secretary “may” either “continue to detain the arrested alien” or release the alien on bond or conditional parole. 8 U.S.C. §1226(a)(1)-(2).³ In practice, the Department makes an initial custody determination. 8 C.F.R. §236.1(d)(1). The alien may then seek custody redetermination—a bond hearing—before an immigration judge and can appeal the immigration judge’s custody determination to the Board of Immigration Appeals. 8 C.F.R. §§236.1(c)(8), (d), 1236.1(d)(1), 1003.19.

This “default rule” of discretionary detention does not apply to certain criminal aliens. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. §1226(c). Section 1226(c) mandates that “[t]he [Secretary] shall take into custody” certain classes of criminal aliens—those who are inadmissible or deportable because the alien either “committed” certain offenses delineated in 8 U.S.C. §§1182

³ Conditional parole under §1226(a) is distinct from parole under §1182(d)(5)(A). *See Ortega-Cervantes v. Gonzalez*, 501 F.3d 1111, 1116 (9th Cir. 2007).

and 1227 or engaged in terrorism-related activities or associations. 8 U.S.C. §1226(c)(1). Such aliens may be released only if the Department 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 §1226(c) through the Laken Riley Act, Pub. L. No. 119-1, §2, 139 Stat. 3 (2025), which additionally requires detention of and limits release on parole for criminal aliens who (1) are inadmissible because they are physically present in the United States without admission or parole under 8 U.S.C. §1182(a)(6)(A), have committed a material misrepresentation or fraud under 8 U.S.C. §1182(a)(6)(C), or lack required documentation under 8 U.S.C. §1182(a)(7); and (2) are “charged with, [] arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of” certain listed offenses. 8 U.S.C. §1226(c)(1)(E).

C. The Government applies §1225(b)(2)(A) to mandate detention of all applicants for admission for removal proceedings under §1229a

For many years after IIRIRA, the Department and most immigration judges treated aliens who entered the United States without admission as being subject to discretionary detention under 8 U.S.C. §1226(a), rather than

mandatory detention under 8 U.S.C. §1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 225 n.6 (BIA 2025). Until this year, however, the Board of Immigration Appeals had not issued any precedential opinion on the appropriate detention authority for such individuals.

On July 8, 2025, the Department “revisited its legal position on detention and release authorities” and issued interim guidance that brought the Executive’s practices in line with the statute’s plain text. Appendix (“App.”) 34-35. Specifically, the Department concluded that “applicants for admission are subject to mandatory detention under INA §235(b) [8 U.S.C. §1225(b)] and may not be released from Department custody except by INA §212(d)(5) [8 U.S.C. §1182(d)(5)] parole.” *Id.* As a result, the “only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under the INA §236(a) [8 U.S.C. §1226(a)] are aliens admitted to the United States and chargeable with deportability under INA §237 [8 U.S.C. §1227].” *Id.*

The Board also adopted this interpretation in *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 222-23. There, the Board concluded that §1225(b)(2)’s mandatory detention regime applies to *all* aliens who entered the United States without inspection and admission:

Aliens ... who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully

inspected and admitted by an immigration officer. Remaining in the United State for a lengthy period of time following entry without inspection, by itself, does not constitute an “admission.”

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

II. Factual and Procedural History

Petitioner is a citizen and national of Mexico who unlawfully entered the United States without being admitted in 2008. App.4. On June 3, 2025, he was arrested by the Department and served a notice to appear for removal proceedings that charged him with 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. App.43, 45.

The Department determined that Petitioner must be detained during his removal proceedings pursuant to §1225(b)(2)(A), App.30, and Petitioner sought review of that custody determination before an immigration judge. App.31. The immigration judge found him to be subject to §1226(a)’s discretionary detention regime and ordered him to be released on \$1,500 bond. App.31. The Department appealed the bond decision to the Board, which automatically stayed the decision. App.41.

Petitioner then filed an application for a writ of habeas corpus under 28 U.S.C. §2241 in the district court and soon after moved for a temporary

restraining order, contending that he is not subject to mandatory detention under §1225(b)(2)(A) and is entitled to release on bond. App.1-29, 47-48. While his petition was pending with the district court, the Board reversed the immigration judge's bond decision on the grounds that Petitioner is subject to mandatory detention under §1225(b)(2)(A). App.154-55.

On October 30, 2025, the district court denied the habeas petition, also holding that Petitioner is subject to mandatory detention under §1225(b)(2). App.83-104. In reaching this determination, the district court concluded that the respondents' "largely textual" arguments provide a "better" interpretation of the relevant statutory language, though noting that "the statutory language and interplay between those sections [8 U.S.C. §§1225, 1226] could certainly be more clear." App.93-94. The district court found the phrase "applicant for admission" in §1225(b)(2)(A) to apply to Petitioner and not to be limited by the phrase "seeking admission," observing that the later phrase is "best read as simply another way of referring to aliens who are applicants for admission" and that "upon apprehension most unadmitted aliens promptly seek admission and permission to stay." App.94. Further, the district court found that inclusion of unadmitted aliens among those aliens to be detained under the Laken Riley Act did not "indicate anything" about §1225(a)(2)(B). App.94-95. Though noting that Petitioner's

accounting of past agency practice was his “most persuasive effort[],” the district court found the mere fact of this practice did not compel it to depart from the “most natural reading of the statutory text.” App.95. Finally, the district court found Petitioner’s having been arrested on a warrant not to be dispositive of his detention status. App.95-96.

Petitioner noticed his appeal on November 24, 2025. App.106-07. He subsequently filed a motion for release pending appeal under Federal Rule of Appellate Procedure 23(b), which a panel of this Court denied. Dkt. 31.

SUMMARY OF THE ARGUMENT

The district court correctly held that Petitioner is subject to mandatory detention under §1225(b)(2)(A). This Court should affirm.

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

Petitioner’s reliance on the phrase “seeking admission” is unavailing. The statute makes clear that an alien who is an “applicant for admission” is necessarily “seeking admission.” *See* 8 U.S.C. §1225(a)(3), (5). No additional, affirmative act is needed for an “applicant for admission” to be “seeking admission.” This reading does not render the term “seeking admission” redundant; read consistent with the provision’s structure, every portion has independent meaning. Even if there were redundancy, “[r]edundancies are common in statutory drafting,” and “[r]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text.” *Barton v. Barr*, 590 U.S. 222, 223 (2020).

The references to the “arriving aliens” and “inspection” in the statutory headings do not undermine the Government’s interpretation. Titles and headings cannot “limit the plain meaning of the text,” *Trainmen v. Baltimore & Ohio Ry. Co.*, 331 U.S. 519, 528-29 (1947)—especially where, as here, the headings are not meant to be comprehensive.

II. Section 1226 does not displace the clear text of §1225. Section 1226(a) applies to a significant swath of aliens who are *not* covered by §1225(b)(2)—for example, admitted aliens who overstayed visas and thus are deportable. With respect to aliens who have not been admitted, §1225(b)(2)

is the more specific provision and it controls. *RadLAX*, 566 U.S. at 645. Nor does §1226(c) undermine Government’s reading. That provision, too, governs a significant swath of aliens who are *not* covered by §1225(b)(2), including as amended by the Laken Riley Act. The mere fact that the provisions overlap is not a basis for rewriting §1225(b)(2)’s clear text. Even as to the areas of overlap, §1226(c) does considerable independent work by limiting the Secretary from releasing on parole those aliens the subsection covers.

III. Petitioner’s interpretation would also reimpose the same perverse regime that IIRIRA was meant to eliminate—requiring the detention of aliens who present at a port of entry as the law requires, but authorizing the release of those aliens who enter the United States in violation of law and make *no effort* to prove admissibility. This Court should not endorse such a backwards outcome—particularly one that is so plainly subversive of congressional intent.

IV. The Government’s interpretation of §1225(b)(2) is consistent with *Jennings*, 583 U.S. 281. That case did not address the statutory scope of the Executive’s pre-removal order detention authority, only limits on the length of detention under this authority. Even so, *Jennings* characterized §1225(b)(2) consistent with the Government’s interpretation as “a catchall

provision that applies to all applicants for admission not covered by §1225(b)(1),” and reasoned that “[r]ead most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission[.]” *Id.* at 287, 297.

V. The canon of constitutional avoidance has no relevance here. That provision applies only when a statute “is ‘readily susceptible’ to such a construction.” *United States v. Stevens*, 559 U.S. 460, 481 (2010). Section 1225(b)(2)(A) is not. Moreover, there is no constitutional issue to avoid. Petitioner suggests a due process violation, but the settled rule is that for aliens who have never “been admitted into the country pursuant to law, the decisions of executive and administrative officers, acting within the powers expressly conferred by Congress, are due process of law.” *Thuraissigiam*, 591 U.S. at 138.

STANDARD OF REVIEW

This Court reviews *de novo* a district court’s denial of a petition for a writ of habeas corpus under 28 U.S.C. §2241. *Camacho v. English*, 872 F.3d 811, 813 (7th Cir. 2017).

ARGUMENT

I. The district court properly held that §1225(b)(2)(A) requires the detention of aliens, like the Petitioner, who are present in the United States without having been admitted.

The district court concluded that §1225(b)(2)(A) requires the Department to detain all aliens, like Petitioner, who are present in the United States without admission during their removal proceedings, regardless of how long the alien has been in the United States or how far from the border they were detained. That holding follows from the plain text of the statute. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) (“Our analysis begins and ends with the text.”). Petitioner’s interpretation, by contrast, is incompatible with the statutory text and subverts Congress’s manifest purpose in adopting §1225(b)(2)(A).

A. The plain text of §1225(b)(2)(A) mandates detention of applicants for admission.

Section 1225(a) deems any alien who is “present in the United States [and] has not been admitted or who arrives in the United States” to be an “applicant for admission.” 8 U.S.C. §1225(a)(1). The INA further defines “admission” not to mean mere physical entry, but “lawful entry ... after inspection and authorization by an immigration officer.” 8 U.S.C. §1101(a)(13)(A). Thus, any alien who enters the country without inspection and is not admitted is (and remains) an applicant for admission, regardless

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

In turn, §1225(b)(2)(A) provides that for “an alien who is an applicant for admission,” if an examining officer finds the “alien seeking admission is not clearly and beyond a doubt entitled to be admitted,” the alien “shall be detained” for a removal proceeding. 8 U.S.C. §1225(b)(2)(A). The statute's use of the term “shall” denotes that this detention is mandatory. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998); *see Jennings*, 583 U.S. at 302 (holding that §1225(b)(2) “mandate[s] detention”). And like subsection (a), subparagraph (b)(2)(A) makes no exception for the duration of the alien's presence in the country or the distance of the alien from the country's borders. Except for those aliens expressly exempted, the statute's text mandates that the Department detain all “applicants for admission” who are not “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §1225(b)(2)(A).

As the district court concluded, Petitioner falls squarely within the statute's definition. He is “present in the United States,” there is no dispute that he has “not been admitted,” and he does not fall within any of the exemptions to §1225(b)(2)(A). *See* 8 U.S.C. §1225(a), (b)(2)(B). Moreover, he cannot—and did not—establish to an examining officer that he is “clearly

and beyond a doubt entitled to be admitted.” 8 U.S.C. §1225(b)(2)(A). Therefore, the statute commands that he “shall be detained for a proceeding under [8 U.S.C. §1229a].” 8 U.S.C. §1225(b)(2)(A).

B. Petitioner’s contrary interpretation is at war with the text of §1225(b)(2)(A).

Despite its clear language, Petitioner argues that §1225(b)(2)(A) “is confined to individuals apprehended upon inspection at the border.” Opening Br. (“O.B.”) 27-28. None of his arguments in support of this cramped interpretation has merit.

1. All applicants for admission are “seeking admission.”

Section 1225(b)(2) requires the detention for §1229a proceedings of an “applicant for admission, if the examining officer determines that [the] alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §1225(b)(2)(A) (emphasis added). The statutory text and context show that all “applicants for admission” are necessarily “seeking admission.” No additional affirmative act is necessary.

a. Section 1225(a) provides that “[a]ll aliens ... who are applicants for admission *or otherwise* seeking admission or readmission to or transit through the United States shall be inspected.” 8 U.S.C. §1225(a)(3) (emphasis added). The word “[o]therwise” means “in a different way or manner[.]” *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities*

Project, Inc., 576 U.S. 519, 535 (2015) (quoting Webster’s Third New International Dictionary 1598 (1971)); see also *Att’y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same). The phrase “or otherwise” “operates as a catchall: the specific items that precede it are meant to be subsumed by what comes after the ‘or otherwise’” clause. *Kleber*, 914 F.3d at 482-83; see *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) (“or otherwise” means “the first action is a subset of the second action”). Being an “applicant for admission” is thus a particular “way or manner” of seeking admission, so that “an ‘applicant for admission’ is necessarily someone who is ‘seeking admission.’” *Buenrostro-Mendez*, 2026 WL 323330, at *5.

Other provisions of §1225(a) confirm this understanding. First, §1225(a)(5) states that “[a]n applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the *applicant* in *seeking admission* to the United States” 8 U.S.C. §1225(a)(5) (emphasis added). The statute thus explicitly recognizes that an applicant for admission is seeking an admission to the United States the reasons for which the immigration officer is authorized to examine under oath. “Th[is] language strongly suggests that those who are

applicants for admission are ‘seeking admission.’” *Buenrostro-Mendez*, 2026 WL 323330, at *6.

Second, §1225(a)(4) states that “[a]n alien applying for admission may ... be permitted to withdraw the application for admission and depart immediately from the United States.” 8 U.S.C. §1225(a)(4). “A plain language reading of the phrase ‘*applicant* for admission’ alongside the phrase ‘*application* for admission’ lends the inference that the ‘application’ to be ‘withdrawn[]’ is that of the ‘applicant for admission.’” *Montoya v. Holt*, 2025 WL 3733302, at *10 (W.D. Okla. 2025). “[I]n turn,” that “lends the straightforward inference that ‘applicants for admission’ [are] apply[ing] for admission until taking the actions prescribed by §1225(a)(4).” *Id.* That makes sense: Because an alien’s status as an “applicant for admission” turns on his presence “in the United States,” 8 U.S.C. §1225(a)(1), “depart[ing] ... from the United States” would necessarily “withdraw” status as an “applicant for admission,” *id.* §1225(a)(4). Thus, an alien is “*applying* for admission” as long as he is an “applicant for admission,” and (again) anyone “applying” for admission is necessarily “seeking” it.

“The everyday meaning of the statute’s terms confirms that being an ‘applicant for admission’ is not a condition independent from ‘seeking admission.’” *Buenrostro-Mendez*, 2026 WL 323330, at *4. 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 v. Noem*, 2025 WL 3131942, at *3 (E.D. Mo. 2025) (“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) (“American Heritage Dictionary”) (“apply” means “[t]o request or *seek* employment, acceptance, or *admission*”) (emphasis added). Likewise, an alien who is “applying” for admission to the United States (*i.e.*, an “applicant for admission”) is necessarily “seeking admission” to the United States. See *Buenrostro-Mendez*, 2026 WL 323330, at *4 (adopting same argument).

All of this confirms that neither the duration of an alien’s unlawful presence in the United States nor his distance from the border when apprehended alters the legal reality that an “applicant for admission” is “seeking admission.” “Congress knows how to limit the scope” of the INA “geographically and temporally when it wants to.” *Mejia Olalde*, 2025 WL 3131942, at *4. For example, Section 1225(b)(1) may apply to aliens “arriving

in the United States” or who “ha[ve] been physically present in the United States continuously for [a] 2-year period.” 8 U.S.C. §1225(b)(1). So, “[i]f Congress meant to say that an alien no longer is ‘seeking admission’ after some amount of time in the United States, Congress knew how to do so.” *Mejia Olalde*, 2025 WL 3131942, at *4. It did not. To the contrary, Section 1225(a)(1)’s inclusion of *both* aliens “arriving” and those “present in the United States” confirms that *all* aliens who are not admitted are “applicants for admission,” regardless of the length of their presence in the country.

b. The preceding discussion confirms that “seeking admission” in §1225(b)(2)(A) does not “connote[]” some kind of “present-tense, affirmative action” by an alien “to ‘go in search of or to try to acquire or gain’ a lawful entry into the United States.” O.B.28. Section 1225(a) deems an alien to be an “applicant for admission” simply because the alien is “present in the United States [and] has not been admitted,” 8 U.S.C. §1225(a), and an applicant for admission necessarily is “seeking admission.” Nothing more is needed.

This is not, as Petitioner says, a way of “read[ing]” the phrase “‘seeking admission’ into the definition of ‘applicant for admission.’” O.B.33. Section §1225(a)(3) 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.25. “Seeking admission” is a broader category, which is why Congress would not have included that phrase in §1225(a)(1)’s definition of “applicant for admission.” *Montoya*, 2025 WL 3733302, at *9 (“§1225(a)(3) leaves open the possibility that some aliens who are not applicants for admission may nonetheless be ‘seeking admission.’ But it does *not* leave open the possibility that some ‘applicants for admission’ are not ‘seeking admission.’”).⁴

Petitioner is likely to argue that §1225(a)(3)’s reference to “readmission” and “transit” undermine this reading of “or otherwise.” They do not. As for “readmission,” there is no meaningful difference between one alien seeking “admission” and another seeking “readmission”—both are seeking the same thing: admission. The “or otherwise” clause maps on perfectly: all applicants for admission are “seeking admission,” whether for the first time or again—for example, an alien with a nonimmigrant visa authorizing multiple entries may be “seeking ... readmission to ... the United

⁴ For example, lawful permanent residents returning to the United States are not “applicants for admission” but they still may be deemed to be “seeking admission” in some circumstances. *See* 8 U.S.C. §1101(a)(13)(C). Stowaways, too, are not “applicants for admission” but are still subject to inspection for admissibility. *See* 8 U.S.C. §§1182(a)(6)(D); 1225(a)(2). And, given the complexity of the statutory scheme and IIRIRA’s amendments, Congress’s use of the phrase “or otherwise seeking admission” ensured that all aliens would be subject to §1225(a)’s requirement—including aliens who entered before IIRIRA’s effective date.

States” as an “applicant for admission.” 8 U.S.C. §1225(a)(3).

As for “transit,” the sentence structure makes clear that “or otherwise” does not modify the “transit” clause at all. The relevant portion of §1225(a)(3) contains two independent clauses ending in prepositions—(1) “seeking admission or readmission to” and (2) “or transit through.” Although “or otherwise” modifies the first, it does not apply to subsequent non-parallel clauses. *Accord* Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 152-53 (2012) (discussing the nearest-reasonable-referent canon). The rest of §1225(a)(3) confirms this result. It makes no sense to read “or otherwise” to modify the transit clause—“or [or otherwise seeking] transit through”—because the latter clause already contains an “or.” And it makes no sense to carry forward *only* “otherwise”—“or [otherwise seeking] transit”—because the “or otherwise” is a pair that has a “meaning[] ... different from the sum of its parts.” *Villarreal*, 839 F.3d at 963 (“This use of ‘or otherwise’ to connect verbs is a familiar construction”).⁵

⁵ Even if it were otherwise, that would not be a license to wholesale rewrite otherwise clear text: “To object that §1225(a)(3)’s syllogism is invalid is an objection to be heard by Congress, not the Court.” *Montoya*, 2025 WL 3733302, at *8 n.7. And even if part of a statute may be “awkward” in some respect, that does not “make it ambiguous on the point at issue.” *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004); *see TDX Energy, LLC v. Chesapeake Operating, Inc.*, 857 F.3d 253, 262 (5th Cir. 2017) (applying *Lamie* to adopt reading with “imperfect grammar” over one that gives a term “its opposite meaning”); *accord Torres v. Lynch*, 578 U.S. 452, 472-73 (2016) (courts

Bottom line: “or otherwise” does not modify the “transit” clause.

Nor does Respondent’s reading of “seeking admission” render the term superfluous in §1225(b)(2)(A). O.B.34. Instead, the structure of §1225(b)(2)(A) demonstrates that each phrase has independent meaning: §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: If “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)

must discern “the right and fair reading of the statute before [them]” even though “Congress could have expressed itself more clearly”).

the alien is seeking admission by being “an applicant for admission” under §1225(a)(1). No portion of the statute is redundant.

By contrast, while the Government’s construction of §1225(b)(2)(A) vests every phrase with independent meaning, including “seeking admission,” Petitioner’s reading does not. Rather, it renders an entire clause surplusage:

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

Even if there were redundancy under the Government’s reading, the canon against surplusage “is not a silver bullet.” *Rimini St., 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*, 590 U.S. at 239. Thus, “[t]he Court has often recognized: Sometimes the better overall reading of a statute contains some redundancy.” *Id.* (quoting *Rimini St., Inc.*, 586 U.S. at 346) (internal quotations omitted). For that reason, “the surplusage canon ... must be applied with statutory context in mind,” *United States v. Bronstein*, 849 F.3d

1101, 1110 (D.C. Cir. 2017), and “redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text,” *Barton*, 590 U.S. at 239.

2. Petitioner’s interpretation of “seeking admission” distorts the statutory scheme.

Petitioners’ interpretation of “seeking admission”—referring only to aliens who “go in search of, or try to acquire or gain, lawful entry into the United States after inspection,” O.B.35—would distort the statutory scheme. Petitioner is strategically ambiguous about whether he reads “seeking admission” only to encompass aliens presenting at a port of entry or also to include aliens entering *between* ports of entry. Either one contravenes the statute.

Section 1225(b)(2)(C) forecloses any argument that “seeking admission” limits subparagraph (A) to the ports of entry. That provision reads:

In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 1229a of this title.

That language unambiguously conveys that an alien “described in subparagraph (A)” includes aliens who “arriv[e]” in the United States “*not* at a designated port of arrival.” *Id.* (emphasis added). So it cannot be that

“seeking admission” in §1225(b)(2)(A) limits that subparagraph to aliens arriving at ports of entry. And if Petitioner’s conception of “seeking admission” includes aliens arriving *between* ports of entry, this would create the perverse result under §1225(b)(2)(C) that the only aliens from a foreign “contiguous” territory who are guaranteed the benefit of remaining in the United States during removal proceedings are those who do *not* “try to acquire” (O.B.28) admission but instead *intentionally evade inspection*. Congress could not have intended such a perverse regime.

Reading “seeking admission” under Petitioner’s view to include aliens crossing *between* ports of entry just “introduce[s] more questions to the statute than answers.” Order at 16, *Diaz Lopez v. Director*, No. 25-cv-1313 (M.D. Fla. Jan. 26, 2026), ECF No. 9 (quoting *Chen v. Almodovar*, 2026 WL 100761, at *9 (S.D.N.Y. Jan. 14, 2026)). For example: “[W]here does the statute’s application end? One mile from the border? Twenty-five? And how quickly must the alien be apprehended before the statute no longer applies?” *Id.* (quoting *Altamirano Romas v. Lyons*, 2025 WL 3199872, at *7 (C.D. Cal. Dec. 19, 2025)). And how is one to know whether an alien crossing between ports of entry is “go[ing] in search of” or “try[ing] to acquire or gain” admission? The statute does not even begin to answer these questions—a clear sign this is not what it means. That is particularly true, as Congress

knows how to write geographic, temporal, or other limitations into law, as illustrated by the expedited removal provision (§1225(b)(1)). O.B.28.

Further, Petitioner’s construction of “seeking admission” makes a hash of the relationship between §1225(b)(1) and §1225(b)(2). Section 1225(b)(2) makes an exception from its detention and §1229a removal proceeding requirements for those aliens who would otherwise be subject to expedited removal. *See* 8 U.S.C. §1225(b)(2)(B)(ii) (“Subparagraph (A) shall not apply to an alien ... to whom [8 U.S.C. §1225(b)(1)] applies....”). Section 1225(b)(1), in turn, applies to any alien “who is arriving in the United States” or alien “who has not been admitted or paroled” and not been in the interior for less than two years and is inadmissible, among other things, for not possessing valid entry documents under 8 U.S.C. §1182(a)(7). 8 U.S.C. §1225(b)(1)(A). On Petitioner’s reading, almost no alien would be subject to §1225(b)(2)(A) as an alien seeking admission at the border, because that alien would also be arriving in the United States or present without admission or parole under §1225(b)(1). *See United States v. Villareal Silva*, 931 F.3d 330, 334 (4th Cir. 2019). In this respect, the exception at §1225(b)(2)(B)(ii) would devour §1225(b)(2)(A). A reading that permits “an exception to swallow the rule” is “unlikely” to be one Congress intended. *EPA v. Calumet Shreveport Refining, LLC*, 605 U.S. 627, —, 145 S.Ct. 1735, 1751 (2025).

Finally, Petitioner’s interpretation of “seeking admission” would make nonsense out of the §1225(a)(3)’s “inspection” requirement. Under his reading of “seeking admission,” §1225(a)(3) reduces to a command that only aliens who *want* to be inspected need be inspected. That would nullify the entire point of having an inspection requirement. *Accord Buenrostro-Mendez*, 2026 WL 323330, at *6 (recognizing that Petitioner’s “reading would eliminate the inspection requirement for aliens entering the country unlawfully”).

3. Section 1225’s “context” does not support Petitioner’s reading.

Straying from the statute’s text, Petitioner argues that “[t]he context of 8 U.S.C. §1225” shows that it “is focused” on “the border and ports of entry, not noncitizens living within the interior of the United States.” O.B.28. He is wrong.

Petitioner first notes that the statute’s headings refer to “inspection” and “expedited removal of inadmissible arriving aliens.” O.B.28, 29-30. (He ignores that the heading also refers broadly to “referral for hearing,” which §1225(b)(2)(A) requires for a broad class of unadmitted aliens.) But a statute’s title is “of use only when [it] shed[s] light on some ambiguous word or phrase”; “the title of a statute and the heading of a section cannot limit the plain meaning of the text.” *Trainmen*, 331 U.S. at 528-29 (titles “cannot

undo or limit that which the text makes plain”). Here, §1225(b)(2)(A)’s text makes crystal clear that it applies to aliens who are already physically present in the United States, not just to those who are arriving at the border. The statute’s title “cannot undo or limit that which the text makes plain.” *Trainmen*, 331 U.S. at 529.

Section 1225’s title is an especially weak indicator of the statute’s scope. “Where the text is complicated and prolific, headings and titles can do no more than indicate the provisions in a general manner,” and often “neglect to reveal that [the statute] also deals with” a variety of other subjects. *Id.* at 528 (“That the heading of s 17 fails to refer to all matters which the framers of that section wrote into the text is not an unusual fact.”). Here, §1225 covers a multitude of subjects and classes of aliens; that the statute’s title singles out arriving aliens specifically “cannot limit the plain meaning of the text.” *Id.* Even if it could, the title refers to “arriving aliens” in a clause addressing “*expedited removal* of inadmissible ... aliens,” and expedited removal is governed by subsection (b)(1), not subsection (b)(2). *See* 8 U.S.C. §1225(b)(2)(B)(ii). If §1225’s title had a limiting effect—and it does not—it would not extend to subsection (b)(2). *Mejia Olalde*, 2025 WL 3131942, at *3 (adopting same interpretation).

Nor does the word “inspection” in the various headings in §1225 suggest that §1225(b)(2) is limited to the border. *Cf.* O.B. 29-30. Section 1225 provides that “all aliens ... *who are applicants for admission* or otherwise seeking admission or readmission ... *shall be inspected* by immigration officers.” 8 U.S.C. §1225(a)(3) (emphasis added). That includes not only aliens “arriv[ing] in the United States,” but also those already “present in the United States who have not been admitted.” *Id.* §1225(a)(1). This point is reinforced by subsection (b)(1), which authorizes inspection of aliens who “ha[ve] been physically present in the United States” for up to two years, 8 U.S.C. §1225(b)(1)(A)(i), (iii)(II)—encompassing many aliens who are in no sense “arriving.”

The preceding discussion all but disposes of Petitioner’s theory that §1225(b)(2)(A)’s reference to “crewman” and “stowaways,” and subparagraph (C)’s provision for the return of aliens from contiguous territories, suggest that §1225(b)(2)(A) is limited to “the border.” O.B.29, 30. Yes, §1225(b)(2)(A) also applies to certain arriving aliens, which is why excluding “crewm[e]n” and “stowaways” required express exemptions from §1225(b)(2)(A). *See* 8 U.S.C. §1225(b)(2)(B)(i), (iii). But again, the statute “deem[s]” *both* aliens who arrive in and those already “present in the United States” to be “applicant[s] for admission.” *Id.* §1225(a)(1). Congress’s

decision to exclude certain aliens who arrive in the United States from the reach of §1225(b)(2)(A) does not otherwise limit the provision's scope.

4. Alternatively, Petitioner is “seeking admission” under his definition.

Even assuming “seeking admission” requires some separate affirmative conduct by the alien, an applicant for admission who attempts to avoid removal from the United States, rather than trying to voluntarily depart, is by any definition “seeking admission.”

Section 1225(b)(2)(A) applies to an alien who is present in the United States without admission, even for years. Although the alien may not have been affirmatively seeking admission during those years of illegal presence, §1225(b)(2) is not concerned with the alien's pre-inspection conduct. Rather, the statute's use of present-tense language (“seeking” and “determines”) shows that its focus is a specific point in time—when “the examining immigration officer” is making a “determin[ation]” regarding the alien's admissibility. 8 U.S.C. §1225(b)(2)(A). At *that* point, the alien is “seeking”—*i.e.*, presently “endeavor[ing] to obtain,” American Heritage Dictionary, *supra*, at 1174—admission into the United States; if it were otherwise, the applicant would seek to withdraw his application for admission and voluntarily “depart immediately from the United States” in lieu of removal proceedings. *See* 8 U.S.C. §1225(a)(4). An applicant who

forgoes that statutory option and instead endeavors to remain in the United States by participating in §1229a removal proceedings—proceedings in which the alien has the “burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted” or satisfies the criteria for “relief from removal,” 8 U.S.C. §1229a(c)(2)(A), (c)(4)—is plainly “endeavor[ing] to obtain” admission to the United States. American Heritage Dictionary, *supra*, at 1174. Indeed, the entire purpose of a §1229a removal proceeding is to “decid[e] the inadmissibility or deportability of an alien.” 8 U.S.C. §1229a(a)(1).

Petitioner contends that the district court’s treatment of relief from removal as an “admission” conflicts with Supreme Court precedent that identifies relief as a form “lawful status” apart from admission. O.B.34-35 (citing *Sanchez v. Mayorkas*, 593 U.S. 409, 415-16 (2021)). *Sanchez*, however, did not deal with relief from removal, but merely temporary protected status that did not ease the path to eventual admission and adjustment under 8 U.S.C. §1255. *Id.* at 417-18. By contrast, the entire point of seeking asylum—the relief Petitioner is seeking, *see* O.B.15—is to obtain admission through an adjustment of status. *See* 8 U.S.C. §1159(b).

Finally, Petitioner contends that treating an alien who applies for relief as one “seeking admission” creates “absurd results” because it would mean

that “eligibility for bond can change over time ... or depend on the kind of relief a person seeks.” O.B.35-36. That is a problem for *his* interpretation, under which an alien who arrives at the border but requests relief that does not secure “admission” would not be “going in search of” or “trying to acquire or gain” admission to the United States. Respondent agrees: “[S]uch a regime would hardly make any sense.” O.B.36. That is why Congress established a simple rule that *all* applicants for admission are seeking admission and are to be detained pending a removal hearing.

C. Petitioner’s Narrow Interpretation Subverts Congressional Intent.

Petitioner’s reading is not only textually baseless, it also subverts IIRIRA’s express goal of eliminating preferential treatment for aliens who enter the country unlawfully, *supra*, p. 7. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to result “that Congress designed the Act to avoid”); *New York State Dep’t of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) (“We cannot interpret federal statutes to negate their own stated purposes.”).

Recall that one of IIRIRA’s express objectives was to dispense with the perverse pre-1996 regime under which aliens who entered the United States unlawfully were given “equities and privileges in immigration proceedings that [were] not available to aliens who present[ed] themselves for

inspection” at the border, including the opportunity to request release on bond. House Rep., *supra*, at 225; *see also Sandoval v. Acuna*, 2025 WL 3048926, at * 6 (W.D. La. 2025) (“Before IIRIRA, there was ‘an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border lawfully.’”) (quoting *Torres*, 976 F.3d at 928); *supra*, p. 7. Petitioner’s interpretation would resurrect the regime Congress sought to bury: 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 or even decades until an involuntary encounter with immigration authorities. That is *exactly* the “perverse incentive to enter” unlawfully, *Thuraissigiam*, 591 U.S. at 140, that IIRIRA sought to eradicate.

The Government’s reading, by contrast, adheres to the statute’s text and congressional intent. *Buenrostro-Mendez*, 2026 WL 323330, at *5 (“the government’s interpretation better honors [the] predominant goal in the enactment of IIRIRA”). It also brings the statute in line with the longstanding “entry fiction” that courts have employed for well over a century to avoid giving favorable treatment to aliens who have not been lawfully admitted. Under that doctrine, all “aliens who arrive at a port of

entry,” as well as those who enter unlawfully but are not “taken into custody the instant [they] attempted to enter the country,” are “treated for due process purposes as if stopped at the border,” including aliens “paroled elsewhere in the country for years pending removal” who have developed significant ties to the country. *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). For example, *Kaplan v. Tod*, 267 U.S. 228 (1925), held that an alien who was paroled for nine years into the United States was still “regarded as stopped at the boundary line” and “had gained no foothold in the United States.” *Id.* at 230; *see also Mezei*, 345 U.S. at 214-15. The “entry fiction” thus prevents favorable treatment of aliens who have not been admitted—including those who have “entered the country clandestinely.” *Yamataya v. Fisher*, 189 U.S. 86, 100 (1903). IIRIRA sought to implement that same principle with respect to detention. The Government’s reading is true to that purpose; Petitioner’s reading subverts it.

II. Section 1226 does not support Petitioner’s interpretation.

Rather than accept §1225(b)(2)(A) as written, Petitioner claims that his detention is governed instead by 8 U.S.C. §1226, which authorizes the Department to “arrest[] and detain[]” an alien “pending a decision on whether the alien is to be removed from the United States,” 8 U.S.C.

§1226(a), and mandates detention of certain aliens, *id.* §1226(c). O.B.20-21. Ultimately, Petitioner’s misguided reading of §1226 rests on his insistence that it be interpreted in isolation from §1225, but “[i]t is this Court’s duty to interpret Congress’s statutes as a harmonious whole rather than at war with one another.” *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 502 (2018).

1. Section 1226(a) does not displace §1225(b)(2)(A).

As noted, §1226(a) authorizes the Secretary to “arrest[] and detain[]” any “alien” pending removal proceedings but provides that the Secretary (or the Attorney General, per 8 C.F.R. §1003.19) also “may release the alien” on bond or conditional parole. Petitioner maintains that §1226(a) governs his detention. He is wrong.

To begin, there is no possible argument that Respondent’s interpretation of §1225(b)(2)(A) renders §1226(a)’s discretionary detention authority superfluous. Section 1226(a) provides the detention authority for the significant group of aliens who are *not* deemed applicants for admission subject to §1225(b)(2)(A)—that is, aliens who have been admitted to the United States but are now deportable and subject to removal proceedings under §1229a. For example, the detention of any of the millions of aliens who have overstayed their visas will be governed by §1226(a), because those aliens (unlike Petitioner) were lawfully admitted to the United States. *See*

Buenrostro-Mendez, 2026 WL 323330, at *7 (“the government’s interpretation does not render portions of §1226 superfluous”). But to the extent that §1226(a)’s terms cover aliens who are “applicants for admission” subject to §1225(b)(2)(A) when read in isolation, the latter is plainly the more specific provision and it governs. *RadLAX Gateway Hotel, LLC*, 566 U.S. at 645 (“It is a commonplace of statutory construction that the specific governs the general.”).

Nonetheless, Petitioner says §1226(a) must be read to apply to *all* inadmissible aliens because the predecessor to §1226(a) required detention “[p]ending a determination of *deportability*,” 8 U.S.C. §1252 (1995) (emphasis added)—a ground that applied to aliens present in the United States, O.B.22—while the new §1226(a) authorizes detention “pending a decision on whether the alien is to be *removed*,” 8 U.S.C. §1226(a) (emphasis added). This misunderstands Congress’s word choice. Recall that IIRIRA eliminated the prior “deportation” and “exclusion” proceedings and replaced them with the unified “removal” proceeding. *Supra*, p. 8. Congress’s shift from “deportability” in former §1252 to “removed” in §1226(a) conformed the language of new §1226(a) to the post-IIRIRA lexicon. Petitioners respond that another provision added in IIRIRA—codified at 8 U.S.C. §1229c(a)(1)—uses the term “deportable.” O.B.23. But §1229c is referring to

grounds for removability; IIRIRA preserved the separate categories of “deportable,” while replacing “excludable” with the broader term “inadmissible.” See 8 U.S.C. §§1182, 1227(a); compare 8 U.S.C. §1182(a) (1995) (“Classes of excludable aliens”). Section 1226(a), by contrast, is referring to the process for removal—*i.e.*, the removal proceedings.

No part of Petitioner’s argument for an expansive reading of §1226(a) would be less applicable to §1225(b)(1) than to §1225(b)(2). But there is no question that §1225(b)(1) requires detention for certain unadmitted aliens who have been physically present in the United States for less than two years. 8 U.S.C. §1225(b)(1)(B)(ii) (detention for consideration of asylum), (iii)(IV) (detention pending credible fear determination); see also *Thuraissigiam*, 591 U.S. at 118-19 (observing that alien apprehended with 25 yards of the border was subject to expedited removal and mandatory detention). By committing all aliens found in the interior, including those subject to expedited removal proceedings, to §1226(a) detention, Petitioner’s argument proves too much. See *CBOCS West, Inc. v. Humphries*, 553 U.S. 442, 455 (2008).

b. Shifting to legislative history, Petitioner seizes upon a single sentence from a committee report, stating that “Section 236(a) [§1226(a)] restates the current provisions in section 242(a)(1) [8 U.S.C. § 1252(a)(1)]

(1995)] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States.” House Rep., *supra*, at 229; see O.B. 8, 22. Of course, “legislative history [may] never ... be used to ‘muddy’ the meaning of ‘clear statutory language.’” *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 436 (2019).

Legislative history is especially weak where there are competing or conflicting sources. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). Here, the same committee report states that Congress was replacing the concept of “entry” with “admission” to dispense with the old regime under which “illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings”—including a bond hearing—“that are not available to aliens who present themselves for inspection at a port of entry.” House Rep., *supra*, at 225. That purpose is incompatible with Petitioners’ expansive interpretation of §1226 as simply “restat[ing]” the prior regime. O.B.22. At a minimum, the legislative history is “murky” and “ambiguous.” *Exxon Mobil*, 545 U.S. at 568.

c. The same essential problem faces Petitioner’s reliance on post-enactment regulations and agency practice. O.B.11-13, 25-26. He points to a 1997 interim rule stating that “[d]espite being applicants for admission,

aliens who are present without having been admitted or paroled ... will be eligible for bond.” 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). But an agency’s interpretation of a statute may inform the interpretive endeavor only when it is “issued roughly contemporaneously with enactment of the statute *and remained consistent over time.*” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 370 (2024) (emphasis added). Here, the prefatory language just quoted “concedes that unadmitted aliens fell literally within the scope of §1225.” *Buenrostro-Mendez*, 2026 WL 323330, at *8. And consistent with that acknowledgment, regulations promulgated in 1997 provide for mandatory detention consistent with Respondents’ interpretation:

An alien who was not inspected and admitted or paroled into the United States but who establishes that he or she has been continuously physically present in the United States for the 2–year period immediately prior to the date of determination of inadmissibility *shall be detained in accordance with section 235(b)(2) of the Act* [8 U.S.C. §1225(b)(2)] *for a proceeding under section 240 of the Act* [8 U.S.C. §1229a].

8 C.F.R. §235.3(b)(1)(ii) (emphasis added). “This regulatory provision ... looks no different from [Respondent’s] interpretation.” *Buenrostro-Mendez*, 2026 WL 323330, at *8-9. Regardless, the terms of the statute, not agency pronouncements, control. *Loper Bright Enters.*, 603 U.S. at 412-13.

d. Finally, and for similar reasons, Petitioner’s reliance on Government inaction falls short. O.B.25-26. “[A]uthority granted by Congress cannot evaporate through lack of administrative exercise.” *Bankamerica Corp. v. United States*, 462 U.S. 122, 131 (1983). That is especially true where, as here, neither the former INS nor the Department wholly “fail[ed] ... to exercise the power it now claims.” *Id.* Prior administrations still detained the aliens subject to §1225(b)(2)(A)—just under §1226(a). And those administrations interpreted and applied §1225(b)(2)(A) to mandate detention of *some* aliens—just a subset of all those subject to §1225(b)(2)(A). In any event, the Supreme Court has not hesitated to set aside longstanding agency interpretations and practices, including in the context of IIRIRA itself, when the agency practice was inconsistent with the statute. *See Pereira v. Sessions*, 585 U.S. 198, 204-05 (2018) (rejecting interpretation of INA consistent with 21-year government practice). As the Fifth Circuit recognized, “[y]ears of consistent practice cannot vindicate an interpretation that is inconsistent with a statute’s plain text.” *Buenrostro-Mendez*, 2026 WL 323330, at *8.

Nor is it probative that Congress has not amended §1225 and §1226 since 1997 to correct the Government’s prior practice. Congressional acquiescence in an agency interpretation may be found only where there is

“overwhelming evidence” that “Congress considered and rejected the *precise* issue presented before the Court.” *Rapanos v. United States*, 547 U.S. 715, 750 (2006) (quotation marks, citations, and alterations omitted). Nothing like that occurred here.⁶ Indeed, the Board did not adopt a formal interpretation of §1225(b)(2)(A) until months ago. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216.⁷ “Regardless of the government’s past practice and regardless of Congress’s silence on §1225(b)(2)(A), the text controls.” *Buenrostro-Mendez*, 2026 WL 323330, at *8.

2. Section 1226(c) does not aid Petitioner’s interpretation.

Petitioner fares no better relying on §1226(c), which provides that the Secretary “shall take into custody” certain aliens who are deportable or inadmissible for having committed certain specified offenses or engaged in terrorism-related actions of affiliations. O.B.22-24. According to Petitioner, §1226(a) must apply to “inadmissible” aliens because otherwise “Congress

⁶The fact that Congress amended the INA in other respects after 1996 is not helpful to Petitioner. *Cf.* O.B.26 n.7. The INA is a “comprehensive and complete code governing all aspects of admission of aliens to this country,” *Elkins v. Moreno*, 435 U.S. 647, 664 (1978), and IIRIRA enacted “comprehensive amendments to the [INA],” *INS v. St. Cyr*, 533 U.S. 289, 292 (2001). That Congress later enacted targeted amendments to the INA cannot plausibly be understood as an endorsement of all the possible disagreements Congress may have with the Government’s implementation and interpretation of such a sprawling statute.

⁷None of the BIA decisions Petitioners cite (at 12-13) adjudicated the scope of §1226 or §1225(b)(2).

would have had no need to exclude a subset of them from bond-eligibility under §1226(a) in the first place.” O.B.23. The district court correctly found that inclusion of unadmitted aliens among those aliens to be detained 8 U.S.C. §1226(c), and specifically under the Laken Riley Act, did not “indicate anything” about §1225(a)(2)(B). App.94-95.

a. Petitioner relies on *Nielsen v. Preap*, 586 U.S. 392 (2019), to argue that §1226(a) applies to inadmissible aliens. O.B.23. *Preap* addressed the very specific question of whether the language in §1226(c)(1) referring to “when the alien is released” means that §1226(c)’s mandatory detention applies only when the alien is taken into custody *immediately* upon release. 586 U.S. at 396; *see id.* at 420-22 (Kavanaugh, J., concurring). In answering that narrow question, the Court discussed the relationship between §1226(a) and (c), *see id.* at 408-10, but it did *not* address the interaction between §1225 and §1226. *See, e.g., Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 170 (2004) (issues “neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents”). It did not need to. The aliens there were *admitted* as lawful permanent residents. *See Preap v. Johnson*, 303 F.R.D. 566, 572-73 (N.D. Cal. 2014); *Khoury v. Asher*, 3 F. Supp. 3d 877, 880 (W.D. Wash.

2014).⁸ Indeed, the Supreme Court framed the issue in terms of “deportable” aliens. *Preap*, 586 U.S. at 395, 396.

Reading §1226 together with §1225, as *Preap* had no occasion to do, disproves Petitioner’s theory that §1226(a) necessarily covers *every* inadmissible alien referenced in §1226(c). For example, the grounds of admissibility listed in §1226(c)(1)(A) and (D) would apply to aliens arriving at a port of entry—the same aliens he agrees are subject to §1225(b)(2)(A). The ground listed in §1226(c)(1)(A) renders inadmissible any alien who has committed “a violation of ... any law or regulation of a State, the United States, or a foreign country related to a controlled substance,” 8 U.S.C. §1182(a)(2)(A), and the ground listed in §1226(c)(1)(D) renders inadmissible an alien for past terrorism-related activities or associations, 8 U.S.C. §1182(a)(3)(B). An alien who presents at a port of entry and is inadmissible on one of these grounds falls squarely within the terms of §1226(c). But if §1226(c) did not exist, those aliens would not be subject to §1226(a); even under Petitioner’s reading, they would be covered by §1225(b)(2)(A).

The same is true of the inadmissibility grounds added by the Laken Riley Act: §1182(a)(6)(C) and (a)(7). *See* 8 U.S.C. §1226(c)(1)(E)(i)-(ii).

⁸ One of the named plaintiffs in *Khoury* was not a lawful permanent resident, but was subsequently determined not to be subject to §1226(c) and released. *Khoury*, 3 F. Supp. 3d at 891 n.3.

Under Petitioner’s reading, those aliens would otherwise be subject to §1226(a)’s discretionary detention. That is refuted by the expedited-removal provision, which applies to (1) aliens arriving in the United States *and* (2) aliens who “ha[ve] not been admitted or paroled into the United States” and have been present in the United States for less than two years—but *only* if they are “inadmissible under section 1182(a)(6)(C) or 1182(a)(7).” 8 U.S.C. §1225(b)(1)(A)(i), (iii). And §1225(b)(1) mandates detention. *Supra*, pp. 10-11, 45-46. The upshot: §1226(a)’s *discretionary* detention regime does not apply to the aliens subject to §1225(b)(1) expedited removal, even though the latter *may also* be addressed by §1226(c).

The preceding point refutes Petitioner’s argument that the Laken Riley Act—which added subparagraph (E) to §1226(c)(1)—“makes even clearer that §1226(c) is the exception to the general rule” that *all* inadmissible aliens are eligible for bond under §1226(a). O.B.23. His reliance on the Laken Riley Act is further undermined by the fact that it also amended §1225(b) to provide a cause of action for States in the event the federal government “violat[es] the detention and removal requirements under paragraph (1) or (2).” Laken Riley Act, Pub. L. No. 119-1, §3 (codified at 8 U.S.C. §1225(b)(3)). If §1225(b)(2)(A) really were limited to aliens voluntarily presenting at a port of entry for inspection, there would have been little reason to worry that the

Secretary would not enforce the “detention ... requirements” in that provision. 8 U.S.C. §1225(b)(3).

b. Otherwise, Petitioner’s remaining arguments regarding §1226(c) boil down to an objection that Respondents’ reading of §1226(c) renders portions of it redundant or fails to explain why Congress wrote the law as it did. But legislation often does not fit into neatly compartmentalized boxes, and Congress often takes a belt-and-suspenders approach to be “doubly sure.” *Barton*, 590 U.S. at 239. Section 1226(c) is no different.

Besides, §1226(c) applies to a number of inadmissible aliens *not* subject to §1225(b)(2)(A). O.B.36. This includes aliens who are inadmissible but were erroneously admitted. *See* 8 U.S.C. §1227(a), (a)(1)(A) (providing for the removal of “[a]ny alien ... in *and admitted to* the United States,” including “[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 the time....” (emphasis added)).⁹

⁹ Another example of inadmissible aliens subject to §1226(c) may be those aliens subject to 8 U.S.C. §1228(b) whose removability has not been finally determined. Section 1228(b) includes any alien who “was not lawfully admitted for permanent residence,” 8 U.S.C. §1228(b)(2)(A), including (but not limited to) an alien who is present in the country without admission—*i.e.*, an applicant for admission. An alien subject to a §1228(b) proceedings is not amenable to §1225(b)(2)(A) because he is not being detained “for a proceeding under 1229a....” Rather, the alien is detained under

Section 1226(c) also differs from §1225(b)(2) in another crucial way; §1226(c) narrows the circumstances under which aliens may be *released* from mandatory detention. Recall that, for aliens subject to mandatory detention under §1225(b)(2), IIRIRA allows the Secretary to “temporarily” parole them “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. §1182(b)(5); *supra*, p. 12. Section 1226(c)(1) takes that option off the table for aliens who have also committed the offenses or engaged in the conduct specified in §1226(c)(1)(A)-(E). As to those aliens, §1226(c) limits release from detention on parole by authorizing their release only if “necessary to provide protection to” a witness or a similar person “and the alien satisfies the [Secretary] that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.” 8 U.S.C. §1226(c)(4); *see Buenrostro-Mendez*, 2026 WL 323330, at *7 & n.12 (noting that §1226(c)(4) “eliminates the option of parole for those to whom it applies”).

To be sure, the Laken Riley Act’s application to aliens who are inadmissible under §1182(a)(6)(A)—for being “present ... without being admitted or paroled”—overlaps with §1225(b)(2)(A). But again,

§1226(c)(1)(A), (B), because the alien is typically inadmissible under 8 U.S.C. §1182(a)(2), as well as deportable under §1227(a)(2)(iii).

“[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; see *Mejia Olalde*, 2025 WL 3131942, at *4 (“even assuming there were surplusage, that cannot trump the plain meaning of [Section] 1225(b)(2)”). In any event, the canon against surplusage is “weak” when applied, as here, to “acts of Congress enacted at widely separated times.” *Montoya*, 2025 WL 3733302, at *12 (“the Supreme Court ‘ha[s] often observed the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one’ (quoting *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 355 (1998)); see App.94-95 (“legislation passed in 2025 has little bearing on the meaning of legislation enacted in 1996”). And it is especially weak where, as here, there will be overlap under *any* possible reading of the statute. See *Microsoft Corp. v. I4I Ltd. P’ship*, 564 U.S. 91, 106 (2011) (“[T]he canon against superfluity assists only where a competing interpretation gives effect to every clause and word of a statute”) (internal quotation omitted). After all, this portion of the Laken Riley Act requires detention of “arriving aliens” and “applicants for admission” who are taking affirmative steps toward admission or “lawful immigration status,” as long as they meet the offense criteria, see 8 U.S.C. §1226(c)(1)(E)(ii)—but

Petitioner would agree that those aliens are subject to §1225(b)(2)(A), too. Some overlap is unavoidable.

Besides, “the [Laken Riley] Act did have a substantial effect when passed insofar as it required the detention without bond or parole of certain aliens the administration was then treating as bond-eligible.” *Buenrostro-Mendez*, 2026 WL 323330, at *7.¹⁰

III. The Supreme Court’s decision in *Jennings* does not support Petitioner’s interpretation.

The Supreme Court’s decision in *Jennings*, 583 U.S. 281 does not support Petitioner’s argument, much less control this case. *Cf.*, O.B.11. *Jennings* reviewed a Ninth Circuit decision that applied constitutional avoidance to “impos[e] an implicit 6-month time limit on an alien’s detention” under Sections 1225(b) and 1226. 583 U.S. at 292. The Court held that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need to—resolve the precise

¹⁰ Petitioner argues that Congress’s authorization for the Executive to delay implementation of mandatory detention under §1226(c), but not §1225(b)(2)(A), suggests §1225(b)(2)(A) should be read narrowly. O.B.32. As the Fifth Circuit recognized in rejecting this exact argument, “Congress could have declined to delay implementation of §1225(b)(2)(A) for any number of reasons, and reading into a Congressional omission provides little insight, if any, into the meaning of clear text.” *Buenrostro-Mendez*, 2026 WL 323330, at *9; *see Garland v. Cargill*, 602 U.S. 406, 428 (2024) (“it is never the court’s job to rewrite statutory text under the banner of speculation about what Congress might have done” (alterations omitted)).

groups of aliens subject to §1225(b) or §1226. *See Buenrostro-Mendez*, 2026 WL 323330, at *7 (explaining that the language on which Petitioner relies “is part of a general description” and is “[a]t most ... dicta”). Nonetheless, consistent with the Government’s reading, the Court recognized in its description of §1225(b) that “[s]ection 1225(b)(2) ... serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1).” *Jennings*, 583 U.S. at 287; *accord Buenrostro-Mendez*, 2026 WL 323330, at *8.

To be sure, *Jennings* described the detention authorities in §1225(b) and §1226, and in that context summarized §1226 as applying to aliens “already in the country”:

In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§1226(a) and (c).

583 U.S. at 289; *see also id.* at 288 (characterizing §1226 as applying to aliens “once inside the United States”). But when describing the scope of §1226 in particular, *Jennings* refers to aliens “present in the country” who are removable under 8 U.S.C. §1227(a)—a provision that applies *only* to admitted aliens. *See* 583 U.S. at 288. In any case, “the language of an opinion is not always to be parsed [like the] language of a statute,” and

instead “must be read with a careful eye to context.” *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74 (2023).

The Government’s interpretation is therefore perfectly consistent with the Court’s understanding: it reads §1226 to be the exclusive source of detention authority for the substantial category of aliens who have been admitted into the United States but are now deportable. *Supra*, p. 11-12. Moreover, nothing in the quoted language from *Jennings* suggests that §1226 is the *sole* detention authority for *every* “alien[] already in the country,” and the passage’s use of the word “certain” conveys the opposite. At a minimum, the quoted language is ambiguous and such uncertain dicta is insufficient to displace the statute’s text and the manifest congressional purpose. That is especially so, as no part of the holding in *Jennings* required resolution of the precise scope of §§1225(b) and 1226. *See Webster v. Fall*, 266 U.S. 507, 511 (1925) (“Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.”)

IV. Constitutional avoidance does not permit the Court to rewrite the statute and there is no constitutional issue to avoid.

As a last resort, Petitioner turns to the canon of constitutional avoidance. O.B.36-41. That canon “comes into play only when, after the

application of ordinary textual analysis, the statute is found to be susceptible of more than one construction.” *Jennings*, 583 U.S. at 296. The key to the constitutional avoidance canon is that a court may “impose a limiting construction on a statute only if it is ‘readily susceptible’ to such a construction.” *United States v. Stevens*, 559 U.S. 460, 481 (2010). A court may “not rewrite a law to conform it to constitutional requirements,” as “doing so would constitute a serious invasion of the legislative domain, and sharply diminish Congress’s incentive to draft a narrowly tailored law in the first place.” *Id.* (citations omitted); *see also Jennings*, 583 U.S. at 297-98 (refusing to employ the doctrine of constitutional avoidance to import a 6-month limit to mandatory detention under §1225(b)(2)).

The canon has no relevance here. Section 1225(b)(2)(A) unambiguously requires detention of aliens like Petitioner and it is not “readily susceptible” to a different reading. *Stevens*, 559 U.S. at 481; *see supra*, pp. 22-43.

In any event, §1225(b)(2)(A) does not offend due process and so there is no constitutional concern to avoid. Petitioner argues that immigration detention comports with due process only if the alien receives a hearing to show he is either (1) a danger to the community, or (2) a flight risk. O.B.37-38, 40. He purports to derive this principal from *Zadvydas v. Davis*, 533

U.S. 678, 693 (2001), but *Zadvydas* addressed only whether *indefinite* detention under a different provision of the INA comports with due process. *Id.* at 682, 690, 692. Petitioner is not challenging the *duration* of his detention, only that it is mandatory. Moreover, the aliens challenging their detention in *Zadvydas* were aliens with final orders of removal for whom removal was “no longer practically attainable.” *Id.* at 527.

Neither is true here. Petitioner is not subject to *indefinite* detention; his detention under §1225(b)(2)(A) lasts only for the duration of the removal proceedings, and there is no suggestion that his removal is not “practically attainable.” Importantly, *Demore v. Kim*, 538 U.S. 510, 528-29 (2003), distinguished *Zadvydas* on these precise grounds in upholding the mandatory detention scheme in §1226(c).

Instead, the rule is as stated in *Thuraissigiam*, 591 U.S. at 103, which held that for aliens who have never “been admitted into the country pursuant to law, the decisions of executive and administrative officers, acting within the powers expressly conferred by Congress, are due process of law.” *Id.* at 138 (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)). Thus, all “aliens who arrive at ports of entry ... are ‘treated’ for due process purposes ‘as if stopped at the border,’” including aliens “paroled elsewhere in the country for years pending removal” who have developed significant

ties to the country. *Thuraissigiam*, 591 U.S. at 139 (quoting *Mezei*, 345 U.S. at 215).

This position aligns with an unbroken line of Supreme Court precedent. For example, in *Landon*, 459 U.S. 21, the Court observed that only “*once an alien gains admission to our country and begins to develop the ties that go with permanent residence [does] his constitutional status change[]*.” *Id.* at 32 (emphasis added). “Th[is] rule,” the Court explained, “rests on [the] fundamental proposition” that “the power to admit or exclude aliens is a sovereign prerogative,” and “the Constitution gives the political department of the government plenary authority to decide which aliens to admit.” *Thuraissigiam*, 591 U.S. at 139 (quoting *Landon*, 459 U.S. at 32, and *Nishimura Ekiu*, 142 U.S. at 659).

Petitioner asserts that “[t]he Fifth Amendment’s Due Process Clause protects all persons who have entered the country—even those who have entered illegally—from unjustified deprivations of liberty.” O.B.37 (citing *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)). But *Leng May Ma* states that an alien’s presence in the country “pending determination of his admissibility” does not “legally constitute an entry though the alien is physically within the United States.” 357 U.S. at 187. And while he tries to draw the line at physical entry for when additional due process rights

accrue under the Due Process Clause, the Supreme Court has instead drawn the boundary at lawful admission: “*once an alien gains admission to our country and begins to develop the ties that go with permanent residence [does] his constitutional status change[.]*” *Landon*, 459 U.S. at 32. That much is confirmed by *Kaplan*, 267 U.S. 228, which held that a child paroled into the care of relatives *for nearly nine years*—but never lawfully admitted—must be “regarded as stopped at the boundary line” and “had gained no foothold in the United States.” *Id.* at 230-31.¹¹

Ultimately, Petitioner’s theory would constitutionalize the perverse dynamic underlying his theory of the statute. If, as Petitioner asserts, the principle of *Thuraissigiam* applies only to aliens at the border—not to those who deliberately evade inspection and cross unlawfully, then aliens who violate federal law would enjoy *greater* constitutional protections than those who comply with it. Nothing in law or basic morality allows aliens to

¹¹ Petitioner contests the district court’s reliance on *Parra v. Perryman*, 172 F.3d 954 (7th Cir. 1999), in concluding that he had a limited interest in his own liberty in the United States and can end his detention immediately by voluntarily departing. App.41; O.B.40-41. Unlike Parra, who had no hope of remaining in the United States, Petitioner claims that he can only immediately depart if he is willing to face persecution. O.B.40-41. This is beside the point, given that his interest is only that of an alien at the doorstep, *Landon*, 459 U.S. at 32, and his detention will extend only for the limited time it takes for adjudication of his application for relief. The district court did not mistake *Parra* in concluding that it is up to him whether he pursues that application or seeks to end his detention by departing the United States.

adversely possess additional due process rights by virtue of unlawfully entering the United States—which is a *criminal act*, see 8 U.S.C. §1325(a)—over those who *lawfully* present themselves at ports of entry.

CONCLUSION

The Court should affirm the judgment of the district court.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) and Circuit R. 32(c) because it contains 13,902 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P. 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 360, Georgia, 14-point type.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system on February 9, 2026. 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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