

[Oral Argument Not Yet Scheduled]

No. 25-3127

**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,

Respondents-Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN
No. 2:25-cv-01437-BHL
Hon. Brett H. Ludwig

REPLY BRIEF OF PETITIONER-APPELLANT

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INTRODUCTION

Last week an immigration judge found—for the second time—that Petitioner-Appellant Jaciel Cirrus Rojas (“Petitioner”) poses no flight risk or danger and ordered him release from detention on bond. The judge applied 8 U.S.C. § 1226, the detention provision that governs noncitizens, like Petitioner, who are apprehended inside the country for regular removal proceedings.¹ Yet Respondents-Appellees (“Respondents”) detained Petitioner for nine months, separating him from his wife and one-year-old daughter, based on their contrary belief that Congress *required* his detention under 8 U.S.C. § 1225(b)(2)—a statute that by its terms applies only to noncitizens at the border who are “seeking admission” into the United States. Respondents now ask this Court to uphold a detention regime that Congress never enacted to deny bond to Petitioner and millions of noncitizens living in the country. But as Petitioner and *amici curiae* have demonstrated, that regime breaks with the

¹ Petitioner was granted bond on February 23 and released from detention on February 26. *See* Declaration of Michael K.T. Tan ¶¶ 2–4 & Ex. A. Petitioner asks that the Court take judicial notice of these facts as they “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned” and are therefore “not subject to reasonable dispute.” Fed. R. Evid. 201(b); *see also In the Matter of Lisse*, 905 F.3d 495, 496–97 (7th Cir. 2018) (explaining that a party should request judicial notice in its brief and that court orders are “appropriate subjects of judicial notice”).

Petitioner’s appeal is not moot. Petitioner received his bond hearing as a result of an order in *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at *12 (C.D. Cal. Feb. 18, 2026), vacating the agency precedent that placed him in mandatory detention under § 1225(b)(2)(A). The government has moved to stay that order pending appeal. Appellants’ Mot. for Stay Pending Appeal, *Bautista v. U.S. Dep’t of Homeland Sec.*, No. 26-1044 (9th Cir. Feb. 26, 2026), Dkt. 3.1. Because Petitioner faces re-detention under § 1225(b)(2)(A) should a stay be granted or the order be reversed on appeal, his challenged detention is “capable of repetition, yet evading review.” *See Turner v. Rogers*, 564 U.S. 431, 439–40 (2011); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 228 (3d Cir. 2011).

Immigration and Nationality Act's ("INA's") text, context, and history. *See, e.g.*, Dkt. 30 (Br. for *Amici Curiae* Immigration Law Scholars).

Respondents make two main arguments. First, they claim that allowing noncitizens like Petitioner—who have lived in the country for years—the chance for release on bond would thwart Congress's intent in enacting the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"). Second, they argue that, by labeling individuals who entered without inspection "applicants for admission," Congress decreed that they were "seeking admission" and thus mandated their detention.

Both arguments lack merit. The 1996 Congress reasonably declined to mandate the detention of noncitizens, like Petitioner, who have lived in the country for years, while denying bond to noncitizens found inadmissible upon arriving at the border. Indeed, this is how the immigration system has worked for decades. The 1996 Congress also enacted a new detention provision that required the detention of an estimated 45,000 noncitizens with criminal history annually and was so concerned about this impact that it authorized the agency to defer implementation for up to two years. Yet Respondents claim that the same Congress immediately mandated the detention of millions of noncitizens like Petitioner *without even mentioning it*.

Respondents' textual arguments also fail. The plain language, context, and history all show that "seeking admission" in § 1225(b)(2)(A) refers to noncitizens seeking a lawful entry into the country at or near the border, not individuals like Petitioner who already entered the country and are engaged in no such effort.

Respondents' claim that the terms "applicant for admission" and "seeking admission" are essentially synonymous is contradicted by the very provisions they rely on, rendering text in those provisions surplusage and nullifying parts of § 1226.

More than 390 judges to date have rejected Respondents' arguments, as has a motions panel of this Court. *See Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1061 (7th Cir. 2025).² Ignoring these, Respondents rely on the Fifth Circuit's split decision, which was irregularly rushed at Respondents' request. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 508 n.1 (5th Cir. 2026) (Douglas, J., dissenting). But that decision, and Respondents' position, are "based on little more than an apparent conviction that Congress *must have* wanted these noncitizens detained." *Id.* at 509 (Douglas, J., dissenting).

Speculation of this sort cannot trump statutory text, context, and history. This is especially true when it would mean that Congress enacted a detention mandate covering millions of people living inside the country—a mandate that somehow escaped the attention of five Presidential administrations, Congress, and the courts for 30 years. Congress does not "hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). And were there any lingering doubt, this Court would have to construe the statute to avoid the serious constitutional concerns

² *See also* Kyle Cheney, *Our running list of judges who have ruled on ICE's mass detention policy*, Politico (updated Feb. 27, 2026), <https://www.politico.com/news/2026/02/18/trump-judges-immigration-detention-00784614> (listing over 390 judges that have rejected Respondents' position).

that Respondents’ detention mandate creates. This Court should reject Respondents’ attempt to rewrite the statutes and reverse the judgment below.

ARGUMENT

I. Making Bond Available to Noncitizens Like Petitioner Honors Congress’ Intent.

Respondents argue that providing the possibility of bond to noncitizens like Petitioner would undermine the entire purpose of IIRIRA. *See* Dkt. 42 (Answering Brief (“AB”)) 22, 41–43. But this is simply not the case. The Congress that enacted IIRIRA in 1996 was focused on combatting illegal migration and implemented numerous measures for doing so. None of them, however, eliminated the possibility of bond for individuals like Petitioner, who have lived in this country for years.

In fact, § 1226 clearly authorizes bond for such noncitizens, *see* Dkt. 24 (Opening Brief, “OB”) 20–26 & Section II, *infra*, whereas § 1225(b)(2)(A), which mandates the detention of noncitizens “seeking admission,” does not apply to them. *See* OB 26–32 & Section III, *infra*. Moreover, the *only* germane legislative history shows that Congress “retain[ed]” the possibility of bond under § 1226 for noncitizens who entered the country without inspection and are placed into regular removal proceedings under § 1229a. OB 22 (citing H.R. Rep. No. 104-469, pt. 1, at 229 (1996); H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.)). Respondents claim this evidence deserves little weight considering “clear statutory language” to the contrary and “competing or conflicting sources.” AB 47 (citations omitted). But no contrary statutory language or “competing or conflicting” legislative authority exists.

Indeed, the text and history of IIRIRA confirm that Congress did not enact Respondents’ sweeping detention mandate. Congress carefully considered the burdens imposed by the expanded mandatory detention of “criminal aliens” under § 1226(c)—estimating the provision would require the detention of 45,000 more noncitizens annually—and authorized a two-year delay in implementation to give the Executive time to expand capacity. *See* OB 32. It defies reason that the same Congress silently imposed a vastly broader mandatory-detention regime under § 1225(b)(2)(A), while making *no acknowledgment whatsoever* that the new law immediately required the detention of *millions more noncitizens*. Respondents repeat the *Buenrostro-Mendez* majority’s speculation that “Congress could have declined to delay implementation of § 1225(b)(2)(A) for any number of reasons.” AB 57 n.11 (citation omitted). But the issue is not why Congress did not delay implementation of § 1225(b)(2)(A), but rather why Congress *made no mention at all* of the huge new detention mandate that Respondents claim it enacted. If Congress had intended to grant such “extraordinary power . . . it would have done so expressly.” *Learning Res., Inc. v. Trump*, 607 U.S. ----, 2026 WL 477534, at *10 (U.S. Feb. 20, 2026).

Respondents nonetheless insist that because Congress wanted to abrogate advantages that noncitizens who entered the country without inspection gained in removal proceedings over noncitizens who presented at ports of entry, it must have required the detention of every noncitizen who entered without inspection. AB 41–43. Respondents latch onto a single sentence of legislative history, but that statement refers to replacing “certain aspects” of the prior regime—not all of them—and makes

no reference at all to eliminating bond. H.R. Rep. No. 104-469, pt.1, at 225. Indeed, Respondents’ brief is misleading on this point, inserting the words “including a bond hearing” into the quote from the House Report. *See* AB 47.

Congress did, of course, enact many changes designed to penalize those who entered unlawfully, such as making them “inadmissible” rather than “deportable,” and shifting the burden of proof in removal proceedings onto them. H.R. Rep. No. 104-469, pt.1, at 22; OB 22. It also enacted other measures to deter unlawful migration, including enhanced border security, IIRIRA §§ 101–12, 110 Stat. at 3009-553 to 3009-559; new “unlawful presence” bars on noncitizens who depart the country after residing in the country without lawful status, IIRIRA § 301(b)(1), 110 Stat. at 3009-576 to 3009-577 (codified at 8 U.S.C. § 1182(a)(9)(B)); and new expedited removal proceedings to summarily remove certain noncitizens attempting to enter the country without proper documents and mandatorily detain them during that process, IIRIRA § 302, 110 Stat. at 3009-580 to 3009-582 (codified at 8 U.S.C. § 1225(b)(1)). Congress also gave the Executive the option to apply expedited removal and mandatory detention to noncitizens who entered without inspection and have been present for less than two years. 8 U.S.C. § 1225(b)(1)(A)(iii). But Congress did not do what Respondents claim: mandate detention without bond for *all* noncitizens who enter the country without inspection, regardless of how long they have lived here.

“[N]o law pursues its purposes at all costs”—especially complex legislation like IIRIRA. *Luna Perez v. Sturgis Public Schs.*, 598 U.S. 142, 150 (2023) (citation omitted) (cleaned up). And Congress had good reason for the choices it made. A

binding directive to put millions of people in mandatory detention would have overwhelmed the detention system. Not to mention that this new class of mandatory detainees would have included the parents and grandparents of U.S. citizens, noncitizens with no criminal record, trafficking and domestic violence survivors, and longtime residents like Petitioner. *See* Dkt. 35 at 10–19 (Br. of *Amici Curiae* American Immigration Council and American Immigration Lawyers Ass’n). Congress reasonably declined to require the use of detention resources on long-term residents with family and community ties like Petitioner by preserving the option of their release on bond.³

II. Section 1226 Governs Petitioner’s Detention and Affords the Possibility of Bond.

Section 1226’s text, structure, and history make clear that it, rather than § 1225, is the detention authority for noncitizens like Petitioner. *See* OB 20–26. Section 1226 applies to individuals who are “already in the country,” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), and “detained pending a decision on whether the alien is to be removed from the United States,” 8 U.S.C. § 1226(a). The term “removed” in § 1226 encompasses individuals like Petitioner who are inadmissible, as well as individuals who are deportable. *See* 8 U.S.C. § 1229a(a)(1) (directing the immigration judge to “conduct [removal] proceedings for deciding the inadmissibility . . . of [a noncitizen]”); *id.* § 1229a(a)(2) (noncitizen placed in removal proceedings may

³ Respondents note that entering the country unlawfully is a crime, AB 3, 64 (citing 8 U.S.C. § 1325), but that hardly establishes Congress subjected noncitizens who do so to mandatory detention. Indeed, noncitizens charged with illegal entry are *eligible for bail* under the Bail Reform Act, 18 U.S.C. § 3142, and routinely have been granted release on bail.

be charged with any applicable ground of inadmissibility or deportability); *see also* *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020) (explaining how § 1229a removal proceedings is the “usual removal process” if a noncitizen “is inadmissible” and that noncitizen “will either be detained, at considerable expense, or allowed to reside in this country” (citing § 1226(a)).

Respondents’ principal argument is that regardless of whether § 1226 applies to inadmissible noncitizens, because noncitizens like Petitioner are “applicants for admission,” and because § 1225(b)(2)(A) is “more specific” than § 1226, § 1225(b)(2)(A) requires their detention. AB 43–45. Yet Respondents ignore that § 1225(b)(2)(A) applies only to those applicants for admission who—unlike Petitioner—are “seeking admission.” *See* OB 26–32 & Section IV, *infra*. Moreover, as the Supreme Court made clear in *Jennings*, the two statutory provisions—§§ 1226 and 1225(b)(2)(A)—are mutually exclusive. Section 1226 is the “default rule” governing the detention of noncitizens “inside the United States.” *Jennings*, 583 U.S. at 288. Section 1225(b)(2), meanwhile, governs detention of individuals at the border “seeking admission into the country.” *Id.* at 289. Respondents’ assertion that the latter provision is the more specific and must control is simply incorrect. *See* AB 45.⁴

⁴ Although Respondents try to minimize *Jennings*, *see* AB 57–59, the Court’s statements “constitute[] an explication of the governing rules of law” and thus are “not dictum.” *Buenrostro-Mendez*, 166 F.4th at 513 (Douglas, J., dissenting) (citing cases). And even if the language in *Jennings* were dictum, it still “provides the best, though not an infallible, guide to what the law is, and it will ordinarily be the duty of a lower court to be guided by it.” *Reich v. Cont’l Cas. Co.*, 33 F.3d 754, 757 (7th Cir. 1994).

Respondents argue that Petitioner’s “expansive reading of § 1226(a) . . . proves too much.” AB 46. But Respondents’ “expansive reading” of § 1225(b)(2)(A) is the problem, along with its misrepresentation of Petitioner’s reading of § 1226(a). Petitioner has never claimed that § 1226(a) applies to “all aliens found in the interior, including those subject to expedited removal proceedings.” AB 46. Section 1226 *does* apply to all noncitizens who, like Petitioner, are apprehended inside the country and placed into regular removal proceedings under § 1229a. *See* OB 20–22. Indeed, it is Respondents’ “expansive reading” of § 1225(b)(2)(A) as mandating the detention of noncitizens like Petitioner who have lived in the United States for years and are not “seeking admission” that “proves too much” by nullifying part of § 1226. *See* Section IV, *infra*.

III. Respondents’ Position that § 1226 Does Not Apply to Inadmissible Noncitizens like Petitioner Cannot be Reconciled with § 1226(c) or the Laken Riley Act and Violates Cardinal Rules of Statutory Construction.

Were there any doubt that § 1226(a) applies to inadmissible noncitizens like Petitioner, § 1226(c) and Congress’s recent enactment of the Laken Riley Act (“LRA”) put it to rest. *See* OB 22–24. By expressly carving out an exception to § 1226(a)’s authorization of bond for “inadmissible” noncitizens with specified criminal conduct, Congress confirmed that § 1226(a) applies to inadmissible noncitizens and provides them the possibility of bond. *See* 8 U.S.C. §§ 1226(c)(1)(A), (D) & (E), 1226(c)(4); *see also id.* § 1226(a) (permitting release on bond “[e]xcept as provided in subsection (c)”). Otherwise, there would have been no need for a carve out. OB 22–23.

Respondents have no response to this structural argument. They claim their reading does not render §§ 1226(a) or (c) superfluous because those provisions still apply to those who have been admitted. AB 44. But the inclusion of admitted noncitizens in § 1226 is beside the point: §§ 1226(a) and (c) apply explicitly to inadmissible noncitizens as well, and Respondents' interpretation renders those parts of the statute superfluous. Nor can Respondents explain why Congress would specifically mandate the detention of certain inadmissible noncitizens in § 1226(c) or specifically mandate the detention of noncitizens inadmissible based on entering without inspection in the LRA, if their detention were already mandated under § 1225(b)(2)(A). *See* 8 U.S.C. § 1226(c)(1)(E)(i) (referring to § 1182(a)(6)(A), under which Petitioner was charged with being “present in the United States without being admitted or paroled”).

Recognizing that their position renders parts of § 1226(c) and the LRA amendments surplusage, Respondents claim that these provisions do “independent work” beyond what is done by § 1225(b)(2)(A). AB 20. But none of their examples hold up. Respondents argue that § 1226(c) applies to inadmissible noncitizens who were admitted erroneously and are thus not subject to § 1225(b)(2)(A). AB 54. But those noncitizens are subject to the grounds of *deportability* at § 1227(a)(1)(A), not *inadmissibility* at § 1182. *See Muratoski v. Holder*, 622 F.3d 824, 826 (7th Cir. 2010); *Matter of Quilantan*, 25 I. & N. Dec. 285, 293 (BIA 2010). Likewise, Respondents claim that noncitizens subject to § 1228(b) are an example of inadmissible noncitizens subject to § 1226(c). AB 54 n.9. But they too are subject to deportability. *See* 8 U.S.C.

§ 1228(b)(1). As such, neither example explains the reference to inadmissibility in § 1226 that Respondents seek to avoid.

Respondents' other arguments equally miss the mark. They argue that reading § 1226 to apply to inadmissible noncitizens like Petitioner would create overlap between that section and § 1225(b)(2)(A) by applying both provisions to “arriving aliens.” *See* AB 51–53. That is incorrect. Noncitizens who arrive at a port of entry, as well as those who arrive between ports but have not yet effected an entry, are subject to mandatory detention under § 1225(b)(2)(A) because they are “applicants for admission” who are “seeking admission” at the border. *See* Section IV, *infra*. They are not subject to detention under § 1226, which applies only to those who are apprehended *inside* the country. *See* 8 C.F.R. § 235.3(c)(1) (requiring the detention of “arriving” noncitizens under § 1225(b)(2)(A)); *id.* § 1003.19(h)(2)(i)(B) (excluding “arriving” noncitizens from bond hearings under § 1226).

Respondents also claim that Petitioner's reading creates overlap between § 1226 and the expedited removal provision, § 1225(b)(1). *See* AB 52–53. But any noncitizen who is subject to expedited removal—including an “applicant for admission” who is present inside the country for less than two years—is subject to mandatory detention under § 1225(b)(1) and *not* entitled to release on bond under § 1226. That is because § 1226 applies only to those who are apprehended inside the country and placed into *regular removal proceedings* under § 1229(a), not those who are placed into expedited removal proceedings. *See Jennings*, 583 U.S. at 288.

Respondents lastly assert that the LRA and § 1226(c) remove the option of parole for noncitizens who are detained under § 1225(b)(2)(A) but have specified criminal history. AB 55–57. This again ignores the detention statutes’ structure. Sections 1226 and 1225(b)(2) are mutually exclusive authorities that apply respectively to noncitizens apprehended inside the country and those detained at the border. *See Jennings*, 583 U.S. at 287–89. As a result, § 1226(c) does *not* operate as either freestanding or overlapping authority that applies to noncitizens subject to § 1225(b)(2)(A) and precludes their release on parole. It operates as *an exception* to § 1226(a), eliminating the possibility of release on bond only for the class of noncitizens who are apprehended inside the country and subject to § 1226(a). *See Nielsen v. Preap*, 586 U.S. 392, 397, 409–10 (2018). “[S]ubsection (c) is simply a limit on the authority conferred by subsection (a)” that requires the detention of some noncitizens who fall within § 1226(a)’s ambit. *Id.* at 409.

Indeed, if Congress had intended to eliminate parole via the LRA, it would have either amended § 1225(b)(2) itself or enacted exceptions to the parole statute, § 1182(d)(5)—not amended § 1226. The parole statute already includes two exemptions from the Executive’s general parole authority: refugees under 8 U.S.C. § 1182(d)(5)(B) and crewmen under 8 U.S.C. § 1184(f). *See* 8 U.S.C. § 1184(d)(5)(A).

Even worse, Respondents’ position would *undermine* the LRA by creating the very possibility of release for “criminal aliens” that Congress was trying to prohibit. If § 1225(b)(2)(A), and not § 1226, governs the detention of noncitizens who entered without inspection, as Respondents claim, those noncitizens would be eligible for

parole under § 1182(d)(5) at the agency’s discretion—even if they are accused of or committed the Act’s predicate crimes. Congress enacted the LRA precisely to avoid that result. The Court should not “impute to Congress such a contradictory and absurd purpose, particularly where doing so has no basis in the statutory text.” *Pereira v. Sessions*, 585 U.S. 198, 212 (2018) (cleaned up).

Respondents, in short, cannot have it both ways: either a noncitizen is detained under § 1225(b)(2) and eligible for parole (regardless of criminal history), or he is detained under § 1226 and eligible for bond (unless his criminal history triggers the statute’s detention mandate). Respondents’ attempt to rewrite the detention statutes confirms that Petitioner’s interpretation is the correct one.

Finally, this is even clearer given that the Executive itself adhered to this interpretation of the detention statutes for decades—including the first Trump administration. Respondents’ attempts to discount the relevance of their prior understanding and practice, AB 49, are unconvincing. *See* OB 25 (setting forth three decades of consistent Executive practice that Respondents have suddenly reversed). Although Respondents rely on *Pereira*, AB 49, that case said that “the statutory text alone [was] enough to resolve” the question at issue, merely confirming that where the text is clear, it controls over agency practice. 585 U.S. at 209. More recently, the Supreme Court affirmed that “the longstanding practice of the government can inform [the Court’s] determination of what the law is.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (citation omitted) (cleaned up). “[T]he fact that no President has ever found” the detention mandate that Respondents’ assert in the

INA is “strong evidence that it does not exist.” *Learning Res. Inc.*, 2026 WL 477534, at *11. Here, § 1226’s text clearly governs detention of noncitizens apprehended inside the country, while § 1225(b)(2)(A) governs inspection-based detention at the border. The Executive’s consistent application of § 1226 to interior arrests thus aligns with that statutory command. *See* OB 25–26.⁵

IV. Section 1225(b)(2)(A) Applies to Noncitizens Who, Unlike Petitioner, Are “Seeking Admission” at the Border.

A. Individuals apprehended inside the country after having entered without inspection are not “seeking admission” and thus are not subject to mandatory detention under § 1225(b)(2)(A).

Mandatory detention under § 1225(b)(2)(A) applies only to those “applicants for admission” who are also “seeking admission.” It does not apply to individuals like Petitioner who entered the country without inspection and have been living in the country for years. This follows from the INA’s definition of “admission” as the “lawful entry . . . into the United States after inspection and authorization by an immigration officer,” 8 U.S.C. § 1101(a)(13)(A); Congress’s use of the term “*seeking* admission,” *id.* § 1225(b)(2)(A) (emphasis added); and the statutory context and history. OB 27–32. Noncitizens who have already entered the country without inspection are not engaged in any present tense effort to obtain a “lawful entry . . . into the United States.” 8 U.S.C. § 1101(a)(13)(A). Nor are they at the border, which the definition of admission clearly requires, as that is where an “entry . . . into the United States” occurs. *Id.*

⁵ Respondents cite 8 C.F.R. § 235.3(b)(1)(ii), AB 48, but this regulation appears in the subsection of addressing expedited removal, and multiple other regulations clarify that noncitizens who entered without inspection and are placed directly in regular removal proceedings are eligible for bond hearings under § 1226(a). *See* OB 11–12.

Instead, the only noncitizens who are “seeking admission” under § 1225(b)(2)(A) are those who present themselves at a port of entry for admission, or who cross the physical border into the United States but are apprehended before effecting an entry. The latter group are “seeking admission”—either when they affirmatively seek out an immigration officer or when they are apprehended by one and continue to seek to enter upon inspection. But a noncitizen who has entered the country and is already present cannot be “seeking admission” to the United States. *See, e.g., Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 489 (S.D.N.Y. 2025).

Indeed, where Congress applied § 1225(b) to noncitizens present in the country, it did so explicitly, authorizing application of § 1225(b)(1)’s expedited removal provisions to certain noncitizens who are present without having been admitted or paroled and who cannot demonstrate continuous physical presence for up to two years. *See* 8 U.S.C. § 1225(b)(1)(A)(iii). Section 1225(b)(2)(A) contains no comparable language. Instead, Congress limited § 1225(b)(2)(A)’s application to noncitizens who are “seeking admission”—a term noticeably absent from § 1225(b)(1)(A)(iii). This is “a distinction *with* a difference,” *Esteras v. United States*, 606 U.S. 185, 196 (2025), and reinforces the Supreme Court’s description of § 1225(b)(2) as focused on noncitizens seeking admission at the border, not noncitizens who are present in the country. *See Jennings*, 583 U.S. at 289.

The statutory history further supports that “seeking admission” in 1225(b)(2)(A) refers to noncitizens seeking admission at or near the border. The term “seeking admission” comes from a former version of § 1225, which governed exclusion

proceedings and “[t]he inspection . . . of aliens . . . seeking admission” to the United States. 8 U.S.C. § 1225(a) (1995). Those who were “seeking admission” were “outside the United States.” *Landon v. Plasencia*, 459 U.S. 21, 25 (1982). “When a statutory term is obviously transplanted from another legal source, it brings the old soil with it.” *Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019) (citation and quotation omitted).

B. Interpreting an “applicant for admission” as necessarily “seeking admission” defies the text and context of § 1225(b)(2)(A).

Respondents’ principal argument for why individuals like Petitioner are nonetheless “seeking admission”—and thus subject to mandatory detention under § 1225(b)(2)(A)—is that, by deeming them “applicants for admission,” Congress simultaneously decreed that they were “seeking admission.” AB 22–43. But this argument violates the plain meaning of the term “seeking admission,” creates surplusage in the statute, and nullifies parts of § 1226.

Respondents can point to nothing in the statute that makes the equivalency they claim.⁶ Indeed, their position is contradicted by the very provisions they seek to rely on, requiring that they make surplusage of the statutory text. Respondents place great weight on § 1225(a)(3) which requires the inspection of “[a]ll aliens . . . who are applicants for admission or otherwise seeking admission or readmission to or transit

⁶ Recognizing this problem, Respondents’ brief rewrites § 1225(b)(2)(A), substituting “the” for “an” before “alien seeking admission” to equate that term with the preceding reference to “an applicant for admission.” AB 24. But that is not what the statute says: Congress provided only that “*an* applicant for admission” who is also “*an* alien seeking admission” is subject to detention. 8 U.S.C. § 1225(b)(2)(A) (emphases added). “Congress’s choice between a definite and indefinite article matters when determining statutory meaning.” *United States Sugar Corp. v. E.P.A.*, 113 F.4th 984, 993 (D.C. Cir. 2024) (citing *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 817–18 (2024))).

through the United States.” *Id.* Respondents rely heavily on the term “or otherwise” to argue that it makes “applicants for admission” a subset of “seeking admission.” thereby proving that “all ‘applicants for admission’ are necessarily ‘seeking admission’” and that “[n]o additional affirmative act is necessary.” OB 24–25. But the provision actually proves the opposite. Were Respondents correct that all applicants for admission are “seeking admission,” the entire first clause of the provision would be unnecessary. Congress could have eliminated that first clause, along with the otherwise language, and simply said that “[a]ll aliens seeking admission or readmission to or transit . . . shall be inspected.”

Because courts “must give effect, if possible, to every clause and word of a statute,” *Williams v. Taylor*, 529 U.S. 362, 404 (2000) (internal quotation marks and citation omitted), Respondents are wrong that this provision proves the equivalency that they try to manufacture. Rather, giving effect to every word in the provision, § 1225(a)(3) requires the inspection of *all* “applicants for admission”—some of whom will be seeking admission and others not—as well as any noncitizens who are *not* applicants for admission but are “otherwise seeking admission or readmission to or transit through the United States.” *Id.* This reading gives effect not only to “applicants for admission” but also to the term “or otherwise,” which here means that the additional individuals seeking admission are doing so “in a different way or manner” than applicants for admission. *See Otherwise*, Webster’s Ninth New

Collegiate Dictionary 835 (1984).⁷ Indeed, the *only* way to avoid creating surplusage in § 1225(a)(3) is to recognize that only *some* applicants for admission are “seeking admission” while others, like Petitioner, are not. Thus, far from supporting Respondents’ argument that “applicant for admission” is synonymous with “seeking admission,” this provision does the opposite.

The same is true for § 1225(b)(2)(A). Were Respondents correct that “applicants for admission” are necessarily “seeking admission,” there would have been no reason for Congress to have included the phrase “seeking admission” in the text. Respondents’ insistence that all “applicants for admission” are “seeking admission” thus renders part of § 1225(b)(2)(A) superfluous, “violating one of the cardinal rules of statutory construction.” *Castañon-Nava*, 161 F.4th at 1061 (citing *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023)).⁸

The broader context of the INA underscores that the terms “applicant for admission” and “seeking admission” are not synonymous. For example, a noncitizen who obtains “advance parole”—a special grant of permission to travel abroad, *see* 8 C.F.R. § 212.5(f)—and then tries to reenter the country at a port of entry is an “applicant for admission” under § 1225(a)(1), but is not “seeking admission.” *See* 8

⁷ *See also Otherwise*, Black’s Law Dictionary (6th ed. 1990); *J.G.O. v. Francis*, No. 25-CV-7233 (AS), 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025) (construing § 1225(a)(3)).

⁸ Respondents argue that Petitioner’s reading of § 1225(b)(2)(A) creates surplusage by making the text referring to applicants for admission unnecessary. AB 32. Not so. Section 1225(b)(2)(A) contains two threshold requirements: the noncitizen must be *both* an “applicant for admission” *and* “seeking admission” to be subject to the statute’s inspection and detention requirements. Not all noncitizens who are seeking admission are applicants for admission, as Respondents concede, AB 29, and as § 1225(a)(3) confirms. *See* 8 U.S.C. § 1225(a)(3) (requiring inspection of noncitizens “who are applicants for admission *or otherwise seeking admission*” (emphasis added)).

U.S.C. § 1101(a)(13)(B) (distinguishing between a “paroled” noncitizen and “admitted” one). Similarly, a noncitizen who goes through the immigration inspection process at a pre-clearance location outside the United States, *see* 8 U.S.C. §1225a; 8 C.F.R. § 235.5(b), is clearly “seeking admission,” but not an “applicant for admission” under § 1225(a)(1) as they are neither arriving in the country nor present in the country without having been admitted.

Respondents attempt to downplay the redundancy their interpretation creates, invoking *Barton v. Barr*, 590 U.S. 222 (2020). *See* AB 31–33. But in *Barton*, the Supreme Court rejected an interpretation that, in order to avoid redundancy, would “rewrite or eviscerate another portion of the statute contrary to its text” and, importantly, would create redundancies of its own. 590 U.S. at 239. Here, it is *Respondents’* reading of “seeking admission” as necessarily applying to *all* applicants for admission, including those who are present in the country after having entered without inspection, that would eviscerate parts of both § 1225(b)(2)(A) and § 1226. *See* OB 21–22, 34; *see also Castañon-Nava*, 161 F.4th at 1061 (rejecting government’s interpretation of § 1225(b)(2)(A) because it would “render superfluous another part of the same statutory scheme” (quoting *Marx v. Gen. Rev. Corp.*, 568 U.S. 371, 386 (2013))). Petitioner’s interpretation, in contrast, gives effect to all parts of the statutory scheme.

Finding no support in the statutory language, Respondents invoke the ordinary meaning of an “applicant” and argue that an “applicant for admission” is necessarily “*applying* for something is necessarily *seeking* it,” analogizing to a person who is

“applying for admission” and “seeking admission” to a college or club. AB 26–27. But the dispute is not about whether the action of “*applying* for admission” necessarily means one is “seeking admission.” It is whether being an “*applicant for admission*”—the term of art that Congress used in §§ 1225(a)(1) and 1225(b)(2)(A)—necessarily means the person is also “seeking admission”—the additional condition Congress included in § 1225(b)(2)(A).

Respondents’ reliance on §§ 1225(a)(5) and 1225(a)(4) fails for similar reasons. *See* AB 25–26. Section 1225(a)(5) merely states that “[a]n applicant for admission may be required to state . . . [their] intentions . . . in seeking admission” *Id.* But all this shows is that, like § 1225(b)(2)(A), § 1225(a)(5) is about applicants for admission who are seeking admission. *See Buenrostro-Mendez*, 166 F.4th at 519 n.20 (Douglas, J., dissenting).

Section 1225(a)(4) provides that “[a]n alien applying for admission may . . . be permitted to withdraw the application for admission and depart immediately from the United States.” *Id.* Respondents argue that this creates an inference that “applicants for admission [are] apply[ing] for admission.” AB 26 (citations omitted). But the text of § 1225(a)(1) does not make this equivalence, instead “deem[ing]” noncitizens present in the country without having been admitted “applicant[s] for admission.” *Id.*; *see also Castañon-Nava*, 161 F.4th at 1061. Congress’s purpose in doing so was not to treat such noncitizens as “seeking admission” and subject them to mandatory detention, as Respondents claim, but to make clear that they were to be treated as inadmissible in removal proceedings and would bear the burden of proof

in such proceedings. *See* Section I, *supra*; *see also* 8 U.S.C. § 1229a(c)(2); H.R. Rep. No. 104-469, pt. 1, at 231 (designation as “[a]n alien applicant for admission” means that noncitizen “shall have the burden to establish that he or she is beyond doubt entitled to be admitted”); H.R. Rep. No. 104-828, at 212 (same). And as explained, Section IV.A, *supra*, such individuals cannot be “seeking admission,” as they are already present in the country and are not engaged in any action to obtain a lawful entry.⁹

Finally, treating noncitizens who entered the country without admission as “seeking admission” under § 1225(b)(2)(A), and therefore subject to mandatory detention, would nullify § 1226(a), under which such individuals are eligible for release on bond. Courts “aim[] for harmony over conflict in statutory interpretation.” *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 511 (2018). *See also* A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 180 (2012) (“The imperative of harmony among provisions is more categorical than most other canons of construction”). Here, nothing in the language, history, or context of § 1225(b)(2) requires treating noncitizens who have entered the country without inspection as subject to that provision, and the two provisions can and should be construed harmoniously.¹⁰

⁹ Respondents, citing the expedited removal provision at § 1225(b)(1), argues that all non-admitted noncitizens remain “applicants for admission” regardless of their length of time living in the country or where they are apprehended. AB 27–28; *see also id.* at 38. But this is beside the point. The question is not whether they remain “applicants for admission,” but rather whether they are “seeking admission.” For the reasons set forth, noncitizens who are present in the country after having entered without inspection are not.

¹⁰ Respondents contend that, under Petitioner’s reading of the statute, almost no noncitizens would be subject to § 1225(b)(2)(A). AB 35. But that is incorrect. Section 1225(b)(2)(A) applies to applicants for admission who are not subject to § 1225(b)(1) expedited removal and who are “seeking admission.” This means it applies to any applicant for

Respondents offer one more argument in the alternative, redefining “seeking admission” to include noncitizens who contest their removal in removal proceedings. *See* AB 39–41. But that argument contradicts the text of § 1225(b)(2)(A), which only applies to noncitizens “seeking admission” before an “immigration officer” and not an immigration judge. *Compare* 8 U.S.C. § 1101(a)(18), *with id.* § 1101(b)(4) (distinguishing between an “immigration officer” and an “immigration judge”). Moreover, seeking relief from removal is “distinct” from “seeking admission” in that the former may afford a noncitizen “lawful status” but does not “admit” them and cure an unlawful entry into the country. *Sanchez v. Mayorkas*, 593 U.S. 409, 415–16 (2021). And this is specifically true for asylum, the relief that Petitioner is seeking. *See id.* at 415.

The overwhelming majority of federal courts have rejected Respondents’ attempt to write a new detention mandate into the statutes where none exists. *See* Introduction, *supra*. Although a divided panel of the Fifth Circuit and a handful of district courts have endorsed Respondents’ interpretation, their rulings all suffer from the same errors Respondents make here. *See, e.g., Buenrostro-Mendez*, 166 F.4th at 502 (equating “applicant for admission” with “seeking admission”). This Court should decline Respondents’ invitation to “take[] a sledgehammer to the statutes Congress wrote.” *Id.* at 512 (Douglas, J. dissenting).

admission who is seeking lawful entry but is inadmissible on any ground other than the two that trigger § 1225(b)(1). *See* OB 31. This includes, among many others, noncitizens who have committed criminal conduct that renders them inadmissible, *see* 8 U.S.C. § 1182(a)(2).

V. Constitutional Avoidance Compels Rejecting Respondents’ Reading of the Detention Statutes.

The text, structure, and history of the statutes demonstrate that § 1226(a) governs Petitioner’s detention. But to the extent any lingering doubt remains, the canon of constitutional avoidance buttresses that established understanding. *See* OB 36–41.

Respondents’ new detention mandate raises serious constitutional problems by subjecting long-term residents in this country like Petitioner to detention without the basic due process of a hearing to determine if their detention is justified based on flight risk or danger. Respondents resist this concern by arguing that Petitioner has no due process rights. AB 61–64. That flies in the face of the constitutional scheme. Respondents completely ignore Supreme Court precedent reaffirming that due process protects persons who have entered the country—even those who have entered unlawfully—from unjustified deprivations of liberty. *See A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025).

The fact that Petitioner was not admitted does not change this. *Cf.* AB 42–43. The “entry fiction,” under which those who are stopped at the border have diminished due process rights, has no application to individuals who reside in the country without having been admitted. As a result, Respondents’ reliance on *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), AB 42–43, is inapposite. There the Supreme Court emphasized that noncitizens “in this country have due process rights,” but treated an arriving noncitizen as functionally still at the border because he was apprehended within 25 yards thereof. 591 U.S. at 107. But Petitioner

was not apprehended at the “threshold of initial entry,” *see id.*; he was apprehended over seven years after entering the country, Dkt. 25 (App.) 1–2, 139. To suggest that someone like Petitioner can be treated as functionally still at the border stretches the entry fiction beyond its breaking point.¹¹ Respondents’ reliance on *Thuraissigiam* is even more strained because that case involved the process due before removing a noncitizen, not the process due before detaining them. *See* 591 U.S. at 127 & n.21 (explaining Court had “no occasion to consider . . . arguments” regarding “unauthorized executive detention”).

Respondents attempt to extend *Thuraissigiam*’s analysis to deny Petitioner’s due process rights. *See* AB 61–64. But the Supreme Court and this Court have repeatedly drawn the line between those apprehended at the border and those like the Petitioner who were apprehended within the country, even if they entered without inspection. *See Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Castañon-Nava*, 161 F.4th at 1061. Accordingly, for individuals like Petitioner, due process requires the basic safeguard of a bond hearing to ensure that the government’s justification for detention outweighs his constitutionally protected liberty interest.¹²

¹¹ The other cases Respondents cite likewise address noncitizens who are either stopped at the border or paroled into the country and who thus are treated as noncitizens on the “threshold of initial entry” who “stand[] on different footing” than those who have entered. *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *Kaplan v. Tod*, 267 U.S. 228, 230 (1925).

¹² Respondents defend the district court’s reliance on *Parra v. Perryman*, 172 F.3d 954 (7th Cir. 1999). AB 63 n.11. But as explained, OB 40–41, *Parra* addressed mandatory detention under § 1226(c) of certain noncitizens with criminal history, 172 F.3d at 958, that the Supreme Court later held justified a presumption of flight risk or danger for a brief period

CONCLUSION

For these reasons, the Court should reverse the judgment below.

Dated: March 2, 2026

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of detention, *see Demore v. Kim*, 538 U.S. 510, 528–31 (2003). Neither statute at issue here, however, targets individuals with criminal histories.

CERTIFICATE OF COMPLIANCE

In accordance with Federal Rule of Appellate Procedure 32(a), 32(g) and 27(d), I hereby certify that this motion is compliant with the type-volume limitations contained in the rules as follows:

1. This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 6,815 words.
2. This brief complies with the typeface requirements of Fed. R. App. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced and easy-to-read typeface using Microsoft Word in 12-point size font.

/s/ Michael K. T. Tan

Michael K. T. Tan

March 2, 2026

Counsel for Petitioner-Appellant

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2026, I electronically filed the foregoing Certificate with the Clerk for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. A true and correct copy of this brief has been served via the Court's CM/ECF system on all counsel of record.

/s/ Michael K. T. Tan

Michael K. T. Tan

March 2, 2026

Counsel for Petitioner-Appellant

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,

Respondents-Appellees.

No. 25-3127

**DECLARATION OF MICHAEL K.T. TAN IN SUPPORT OF PETITIONER-
APPELLANT'S REPLY BRIEF**

Pursuant to 28 U.S.C. § 1746, I, Michael K.T. Tan, hereby declare, under penalty of perjury, that the following is true and correct to the best of my knowledge, information, and belief.

1. I am a Deputy Director of the ACLU Immigrants' Rights Project and counsel for Petitioner-Appellant Jaciel Cirrus Rojas ("Petitioner") in this case. I submit this Declaration in support of Petitioner's Reply Brief.
2. On February 23, 2026, the Immigration Judge ("IJ") held a bond hearing for Petitioner under the Immigration and Nationality Act, 8 U.S.C. § 1226(a). The IJ held this bond hearing as a result an order in *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at *12 (C.D. Cal. Feb. 18, 2026),

vacating the agency precedent that placed Petitioner in mandatory immigration detention under 8 U.S.C. § 1225(b)(2)(A).

3. At the bond hearing, the IJ found that Petitioner posed no flight risk or danger to the community and ordered his release on a \$1,500 bond. Attached as Exhibit A to this Declaration is a true and correct copy of the IJ's bond order.
4. Petitioner subsequently posted the bond and, on February 26, 2026, was released from immigration detention.

Executed on this 2nd day of March 2026.

/s/ Michael K. T. Tan

Michael K. T. Tan
Counsel for Petitioner-Appellant
American Civil Liberties Union
Foundation
425 California Street, 7th floor
San Francisco, CA 94104

Exhibit A



**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
CHICAGO IMMIGRATION COURT**

Respondent Name:

CIRRUS-ROJAS, JACIEL

To:

Cruz Laureano, Lyneshka
1585 N. Milwaukee Ave
Suite 111
Libertyville, IL 60048

A-Number:

240-155-901

Riders:

In Custody Redetermination Proceedings

Date:

02/23/2026

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

☐ Denied, because

- ☒ Granted. It is ordered that Respondent be:
- ☐ released from custody on his own recognizance.
 - ☒ released from custody under bond of \$ 1,500.00
 - ☐ other:

☐ Other:



Immigration Judge: Beese, Matthew 02/23/2026

Appeal: Department of Homeland Security: ☐ waived ☒ reserved
Respondent: ☒ waived ☐ reserved

Appeal Due: 03/25/2026

Certificate of Service

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To: [] Alien | [] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name : CIRRUS-ROJAS, JACIEL | A-Number : 240-155-901

Riders:

Date: 02/23/2026 By: Diep, Tiffany, Court Staff