No. 25-20496

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Victor Buenrostro-Mendez

Petitioner – Appellee,

v.

Pamela Bondi, U.S. Attorney General; Kristi Noem, Secretary, U.S. Department of Homeland Security; Todd M. Lyons, Acting Director, United States Immigration and Customs Enforcement; Matthew W. Baker, Acting ICE Houston Field Office Director, United States Immigration and Customs Enforcement; John Linscott, ICE Director, Houston Contract Detention Facility, United States Immigration and Customs Enforcement; Martin Frink, Warden, Houston Contract Detention Facility, CoreCivic,
Respondents-Appellants,

consolidated with

_____

No. 25-40701

_____

Jose Padron Covarrubias

Petitioner-Appellee,

v.

Miguel Vergara, ICE Field Office Director, San Antonio ICE Detention and Removal; Kristi Noem, Secretary, U.S. Department of Homeland Security; Orlando Perez, Warden, Laredo Processing Center, Corrections Corporation of America; Susan Aikman, In her official capacity, as Assistant Chief Counsel Office of Chief Counsel, U.S. Immigration and Customs Enforcement,

Respondents-Appellants.

On Appeal from the United States District Court
for the Southern District of Texas
No. 4:25-cv-03726
No. 5:25-cv-00112

APPELLANTS' OPENING BRIEF

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CERTIFICATE OF INTERESTED PERSONS

The unsigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of 5th Cir. R. 28.2.1 have an interest in the outcome of this case:

1. Victor Buenrostro-Mendez
2. Jose Padron Covarrubias
3. Stephen Joseph O'Connor, Attorney for Victor Buenrostro-Mendez and Jose Padron Covarrubias
4. Charles Andrew Perry, Attorney for Victor Buenrostro-Mendez and Jose Padron Covarrubias
5. Nora Ahmed, Attorney for Victor Buenrostro-Mendez and Jose Padron Covarrubias
6. ACLU of Louisiana
7. CoreCivic
8. Corrections Corporations of America
9. United States of America.

These representations are made so that this Court's judges may evaluate possible disqualification or recusal.

/s/ Brian Schaeffer
Brian Schaeffer
Trial Attorney

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is requested in this appeal. These consolidated appeals involve an exceptionally important issue of statutory interpretation regarding the scope of the Department of Homeland Security's ("DHS") obligation under the Immigration and Nationality Act to detain aliens unlawfully present in this country pending removal proceedings. Section 1225 of Title 8 deems all aliens who are "present in the United States who ha[ve] not been admitted" to be "applicants for admission" and provides that all such aliens who cannot show they are "clearly and beyond a doubt entitled to be admitted ... *shall be detained*" pending removal proceedings. 8 U.S.C. § 1225(a)(1), (b)(2)(A) (emphasis added). The exact same issue regarding the scope of the DHS's statutory authority and obligation to detain aliens pending removal proceedings under 8 U.S.C. § 1225(b)(2)(A) has produced a tidal wave of habeas cases across the country, including *hundreds* filed in the district courts within this Circuit.

Oral argument will aid the Court to address this issue of statutory interpretation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

ADMINISTRATIVE DECISIONS

STATUTES

REGULATIONS

INTRODUCTION

Before 1996, the federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who had entered unlawfully and were already present in the United States to obtain release pending deportation proceedings. Congress overhauled the immigration system in 1996 with passage of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which sought to end the preferential treatment of aliens who successfully evaded inspection and entered the United States unlawfully.[1]

As relevant here, Congress enacted what is now codified at 8 U.S.C. § 1225. That 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 for any "applicant for admission" who cannot show that they are "clearly and beyond a doubt entitled to be admitted." *Id.* § 1225(b)(2)(A). The statute makes no exception for how far into the country the alien traveled or how long the alien managed to evade detection. Unless the Secretary of

[1] Martin Frankin, Warden, the Houston Contract Detention Facility (Respondent in No. 25-20496), and Orlando Perez, Warden, Loredo Processing Center, Corrections Corporation of America (Respondent in No. 25-40701), join in the arguments in this brief.

DHS exercises her narrow and discretionary parole authority, mandatory detention is the rule for aliens who have never been lawfully admitted. Although the Government previously operated under a different (and erroneous) understanding of the law, this Court must apply the language of Section 1225(b)(2)(A) as written.

There is no dispute that Petitioners are "applicant for admissions" under Section 1225(a), and that they cannot (and have not) shown that they are "clearly and beyond a doubt" entitled to be admitted. Petitioners entered the country without inspection, were never "admitted," and thus unambiguously remain "applicant[s] for admissions." Nor do Petitioners contest that they were never admitted into the United States. Yet despite the clear statutory text in Section 1225(b)(2)(A), the district courts held that Petitioners are entitled to a bond hearing and potential release notwithstanding Section 1225. That was error.

The court's reading of Section 1225(b)(2) cannot be justified out of a desire to avoid rendering redundant the term "seeking admission" in Section 1225(b)(2)(A). There is no surplusage; the statutory text and context show that *each* term has independent meaning. But even if it were otherwise, "redundancies are common in statutory drafting" and are "not a license to

rewrite or eviscerate another portion of the statute contrary to its text." *Barton v. Barr*, 590 U.S. 222, 239 (2020).

The district courts' atextual reading also is not necessary to give effect to the separate detention authority in Section 1226. On its face, that provision applies to numerous aliens *not* subject to Section 1225(b)(2)(A), including all *admitted* aliens who are now deportable—such as the more than one million aliens in the United States who were lawfully admitted but overstayed their visas. For those aliens, Section 1226 alone applies. The mere fact that Section 1226(c) may overlap in part with Section 1225(b)(2)(A) is insufficient to rewrite clear statutory text. And the canon against surplusage has no relevance where, as here, there would be redundancy under any interpretation (including Petitioners').

Ultimately, the district courts' interpretations are not only contrary to the plain statutory text, but would reimpose the same inequitable framework that IIRIRA was specifically enacted to eliminate—requiring the detention of aliens who present at a port of entry but authorizing the release of those aliens who evade inspection and enter the United States in violation of law. The Court should not endorse such a backwards outcome—particularly one that is so plainly subversive of congressional intent.

STATEMENT OF JURISDICTION

The district courts had jurisdiction under 28 U.S.C. §§ 1331 and 2241. In appeal No. 25-20496, the district court granted Buenrostro-Mendez's petition for habeas corpus on October 7, 2025. ROA.25-20496.234-240. Respondents-Appellants filed their notice of appeal on October 24, 2025. ROA.25-20496.244. In appeal No. 25-40701, the district court granted Padron Covarrubias's petition for writ of habeas corpus on October 8, 2025. ROA.25-40701.255. Respondents-Appellants filed their notice of appeal on October 24, 2025. ROA.25-40701.267. This Court has jurisdiction under 28 U.S.C. §§ 1291 and 2253(a).

STATEMENT OF THE ISSUE

Whether an applicant for admission is eligible for bond under 8 U.S.C. § 1226 when the Immigration and Nationality Act mandates detention under 8 U.S.C. § 1225(b)(2) for applicants for admission, with parole under 8 U.S.C. § 1182(d)(5) as the exclusive statutory mechanism for release.

STATEMENT OF THE CASE

I. Statutory Framework

A. The Pre-IIRIRA Framework Gave Preferential Treatment to Aliens Who Unlawfully Entered and Were Present in the United States.

The Immigration and Nationality Act ("INA"), as amended, contains a comprehensive framework governing the regulation of aliens and

immigration, including the creation of proceedings for the removal of aliens unlawfully present in the United States and requirements for when the Executive is obligated to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether the alien had presented at a port of entry or evaded inspection and illegally entered the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-24 (BIA 2025) ("*Hurtado*") (citing 8 U.S.C. §§ 1225(a), 1251(a) (1994)); *see Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) "dictated what type of [removal] proceeding applied," *Hing Sum v. Holder*, 602 F.3d at 1099, and whether the alien would be detained pending those proceedings, *Hurtado*, 29 I. & N. Dec. at 222-31.[2]

At the time, the INA "provided for two types of removal proceedings: deportation hearing and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). An alien who arrived at a port of entry would be placed in "exclusion proceedings and subject to mandatory detention,

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

with potential release solely by means of a grant of parole." *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, an alien who evaded inspection and physically entered the United States would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens in deportation proceedings, unlike those in exclusion proceedings, "were entitled to request release on bond." *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

Thus, the INA's prior framework distinguishing between aliens based on "entry" had:

> the 'unintended and undesirable consequence' of having created a statutory scheme where aliens who entered without inspection 'could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' *including the right to request release on bond*, while aliens who had 'actually presented themselves to authorities for inspection … were subject to mandatory custody.

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v . Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (3rd Cir. 2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("[I]llegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection").

B. IIRIRA Eliminated the Preferential Treatment of Aliens Who Unlawfully Entered the United States and Mandated Detention of "Applicants for Admission."

Congress eliminated that regime through enactment of IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, IIRIRA added Section 1225(a)(1) 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); *see also Sandoval v. Acuna*, 2025 WL 3048926, at *6 (W.D. La. Oct. 31, 2025).

To that end, IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the touchstone. IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws no longer distinguish between aliens based on whether they manage to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" is "whether or not the alien has been *lawfully* admitted." House Rep., *supra*, at 226 (emphasis added); *see Hing Sum v. Holder*, 602 F.3d at 1100 (similar). IIRIRA also eliminated the

exclusion/deportation dichotomy and consolidated both types of proceedings into "removal proceedings." *Hurtado*, 29 I. & N. Dec. at 223.

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

Section 1225(a): Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. That provision states that an alien "present in the United States who has not been admitted or who arrives in the United States" "shall be deemed … an applicant for admission":

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

8 U.S.C. § 1225(a)(1) (emphasis added). "All aliens … who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States" are required to "be inspected by [an] immigration officer[]." *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 processed for removal.

Section 1225(b): IIRIRA also divided removal proceedings into two tracks—expedited removal and Section 240 proceedings—and mandated

that applicants for admission be detained pending those proceedings. 8 U.S.C. § 1225(b)(1)-(2).

Section 1225(b)(1) provides for "expedited removal proceedings," *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which apply to a subset of certain aliens—those who (1) are "arriving in the United States," or (2) have "not been admitted or paroled into the United States" and have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration officer shall "order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum ... or a fear of persecution." *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 also* 8 C.F.R. § 235.5(b)(4)(ii). Any alien found to have established a credible fear of persecution must similarly "be detained for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii). An alien processed for expedited removal who does not indicate an intent to apply for a form of

relief from removal is likewise detained until removed. *Id.* § 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).[3] It requires that those aliens be detained pending Section 240 removal proceedings:

> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 1229a of this title [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2)'s detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin").

While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA grants DHS discretion to exercise its parole authority to temporarily release an applicant for admission, but "only on a case-by-case

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[3] Subsection (b)(2)(A) also does not apply to (1) crewmen or (2) stowaways. 8 U.S.C. § 1225(b)(2)(B). In addition, the Executive has discretion to return aliens who have arrived from a contiguous territory to that territory during Section 1229a removal proceedings. *Id.* § 1225(b)(2)(C).

basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Parole, however, "shall not be regarded as 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 ... 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 also created a separate authority addressing the arrest, detention, and release of aliens generally (not "applicants for admission" specifically). *See* 8 U.S.C. § 1226. This provision governs the detention of aliens who have been admitted and later become deportable and are subject to removal proceedings under Section 1229a—for example, admitted aliens who overstay or otherwise violate the terms of their visas, engage in conduct that renders them removable, or are later determined to have been improperly admitted.

The statute provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." *Id.* § 1226(a). Detention under this provision is generally discretionary: The Executive "may" either "continue to detain the arrested alien" or release the alien on

bond or conditional parole. *Id.* § 1226(a)(1)-(2).[4] DHS makes the initial custody determination. 8 C.F.R. § 236.1(d)(1). If DHS determines to detain the alien, the alien may then seek a custody redetermination hearing (a bond hearing) before an immigration judge and can appeal an immigration judge's negative redetermination decision to the Board of Immigration Appeals (Board). 8 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19.

Section 1226(a)'s rule of discretionary detention does not apply to certain aliens who have committed criminal acts, been convicted of certain crimes, or pose national security concerns. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c). Specifically, Section 1226(c) provides that "[t]he Attorney General shall take into custody" certain classes of criminal aliens—those who are inadmissible or deportable because the alien (1) "committed" certain offenses delineated in 8 U.S.C. §§ 1182 and 1227; or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1); *see Nielsen v. Preap*, 586 U.S. 392, 398-99 (2019). The Executive must detain these aliens "without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for

[4] Conditional parole under Section 1226(a) is "legally distinct from release on" parole under Section 1182(d)(5)(A). *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023); *see Ortega-Cervantes v. Gonzalez*, 501 F.3d 1111, 1116 (9th Cir. 2007).

the same offense." 8 U.S.C. § 1226(c)(1). Such aliens may be released only if DHS determines "that release of the alien from custody is necessary" to protect a witness to a "major criminal activity" or a similar person, and then only if the alien "will not pose a danger" to public safety and is not a flight risk. *Id.* § 1226(c)(4).

Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3, (2025), which additionally requires detention of criminal aliens who (1) are inadmissible because they are physically present in the United States without admission or parole, have committed a material misrepresentation or fraud, or lack required documentation; and (2) are "charged with, arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of" certain listed offenses. *Id.* § 1226(c)(1)(E).

C. The Government Applies Section 1225(b)(2)(A)'s Requirement that All Applicants for Admission be Detained.

For many years after IIRIRA, DHS and most immigration judges treated aliens who entered the United States without admission and were later detained 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). *See Hurtado*, 29 I. & N. Dec. at 225 n.6. 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, U.S. Customs and Immigration Enforcement, a component of DHS, issued interim guidance reflecting that DHS "revisited its legal position on detention and release authorities" and brought the Executive's practices in line with the statute's plain text. ROA. 25-40701.116-117; ROA.25-20496.122-123. Specifically, DHS concluded that all aliens who enter the country without being admitted are "subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)] and may not be released from ICE custody except by INA § 212(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. § 1127]." *Id.*

The Board of Immigration Appeals also adopted this interpretation in *Hurtado*. The Board concluded that Section 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, "[i]mmigration 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 Background and Procedural History

A. Petitioners Entered the United States without Admission and were Detained for Removal Proceedings.

Petitioner Victor Buenrostro Mendez is a citizen of Mexico who entered the United States illegally in 2009 in Laredo, Texas, without inspection or admission. DHS encountered him in July 2025 in Giddings, Texas. ROA.25-20496.20. Buenrostro Mendez was inspected by an immigration officer and was determined to be inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien who is present in the United States without having been admitted or paroled. ROA.25-20496.15. Accordingly, DHS initiated removal proceedings against him under 8 U.S.C. § 1229a and directed that he be detained for the duration of those proceedings under 8 U.S.C. § 1225(b)(2)(A). ROA.25-20496.15. Buenrostro Mendez then sought custody redetermination before an Immigration Judge. ROA.25-20496.15. The Immigration Judge denied that request, concluding that he is subject to mandatory detention under Section 1225(b)(2) and is ineligible for a bond

hearing. ROA.25-20496.55-58. Buenrostro Mendez appealed the Immigration Judge's bond decision to the Board of Immigration Appeals. ROA.25-20496.61. He has indicated an intention to file for relief from removal in the form of an application for cancellation of removal and adjustment of status under 8 U.S.C. § 1229b(b). ROA.25-20496.24.

Petitioner Jose Padron Covarrubias is a citizen of Mexico, who entered the United States illegally on September 16, 2001, without inspection or admission. DHS encountered Padron Covarrubias on May 29, 2025 in Tallahassee, Florida. ROA.25-40701.16. Padron Covarrubias was inspected by an immigration officer and was determined to be inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien who is present in the United States without having been admitted or paroled. ROA.25-40701.11; ROA.25-40701.76. Accordingly, DHS initiated removal proceedings against Paron Covarrubias under 8 U.S.C. § 1229a, and directed that he be detained for the duration of those proceedings under 8 U.S.C. § 1225(b)(2)(A). ROA.25-40701.78; ROA.25-40701.81. Padron Covarrubias then sought a custody redetermination before an Immigration Judge. ROA.25-40701.19. The Immigration Judge denied that request, concluding that Padron Covarrubias is subject to mandatory detention under Section 1225(b)(2) and is ineligible for a bond hearing. ROA.25-40701.81. Padron Covarrubias appealed of the

Immigration Judge's bond decision and has also filed an application seeking cancellation of removal and adjustment of status under 8 U.S.C. § 1229b(b). ROA.25-40701.83-85; ROA.25-40701.148-155.

B. The District Courts Granted Petitioners' Habeas Petitions.

Padron Covarrubias: Petitioner Padron Covarrubias filed a petition for habeas corpus on July 8, 2025, contesting his detention and seeking release from detention or a bond hearing pursuant to 8 U.S.C. § 1226(a). ROA.25-40701.11-30. In his petition, he alleged that his detention violated the INA, the Fifth Amendment and the Administrative Procedures Act ("APA"). ROA.25-40701.24-25.

The district court granted the writ of habeas corpus on October 8, 2025, and ordered Respondents to grant Padron Covarrubias a bond hearing under 8 U.S.C. 1226(a) or release him from detention by October 17, 2025. ROA.25-40701.266. The court acknowledged the Padron Covarrubias falls within the definition of "applicant for admission," but reasoned that the phrase "seeking admission" in Section 1225(b)(2)(A) denotes "a present-tense, or current, ongoing action, and varies materially from the passive state of being an applicant." ROA.25-40701.259. According to the court, Padron Covarrubias "cannot be described as 'seeking admission' because he was not currently and actively seeking to be admitted to the United States when he

was apprehended." ROA.25-40701.260. In addition, the district court thought that the Government's reading would "render several portions of [Section 1226] superfluous." ROA.25-40701.260. The court held that Padron Covarrubias's detention is governed by 8 U.S.C. § 1226(a), and ordered Respondents to release him or provide a bond hearing. ROA.25-40701.261. Padron Covarrubias received a bond hearing and was released from detention on October 21, 2025. ROA.25-40701.264.

Buenrostro Mendez: Petitioner Buenrostro Mendez filed petition for habeas corpus on August 8, 2025, contesting his detention and seeking release from detention or a bond hearing pursuant to 8 U.S.C. § 1226(a). ROA.25-20496.5-30. In his petition, he alleged that his detention violated the INA, the due process clause of the Fifth Amendment, and the APA. ROA.25-20496.23-26. He subsequently filed a motion for a temporary restraining order requesting the same relief as his petition. ROA.25-20496.134-155.

The district court granted the writ of habeas corpus on October 7, 2025. The court held that "§ 1226, not § 1225, applies to Buenrostro's detention." ROA.25-20496.234-240. The court ordered Respondents to grant Buenrostro Mendez a bond hearing under 8 U.S.C. 1226(a) or release him from detention by October 21, 2025. ROA.25-20496.239-240. Buenrostro

Mendez received a bond hearing and was released from detention on October 22, 2025. ROA.25-20496.241.

SUMMARY OF ARGUMENT

The INA's plain language requires DHS to detain aliens, like Petitioner, who are present in the United States without admission. The district court's contrary conclusion flouts the statute's text and subverts congressional intent. This Court should reverse.

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.

II. The phrase "seeking admission" in Section 1225(b)(2) does not undermine the Government's reading. 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). No additional, affirmative act is needed for an "applicant for admission" to be "seeking admission." That is consistent with

the everyday meaning of the terms; as a matter of plain English, a person who is *applying* for something is necessarily *seeking* it. This reading does not render the term "seeking admission" redundant; 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*, 331 U.S. at 528-29—especially where, as here, the headings are not meant as a comprehensive summary of the law's content.

III. The Government's reading of Section 1225(b)(2) does not render Section 1226(c) superfluous. Here, too, the district court fretted about redundancy, but Section 1226(c)'s mandatory detention provisions, including as amended by the Laken Riley Act, govern a significant swath of aliens who are *not* covered by Section 1225(b)(2)—for example, admitted aliens who overstayed visas and thus are deportable. The mere fact that the provisions overlap is not a basis for rewriting Section 1225(b)(2)'s clear text.

Even as to the areas of overlap, Section 1226(c) does considerable independent work by prohibiting the Executive from releasing on parole those aliens it covers.

IV. To make matters worse, the district court's interpretation would 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. The Court should not endorse such a backwards outcome—particularly one that is so plainly subversive of congressional intent.

V. The Government's interpretation of Section 1225(b)(2) is consistent with *Jennings*, 583 U.S. 281. That case did not address the scope of Sections 1225 and 1226's detention authority. Even so, *Jennings* characterized Section 1225(b)(2) consistent with the Government's interpretation as "a catchall provision that applies to all applicants for admission not covered by §1225(b)(1)." *Id.* at 287.

STANDARD OF REVIEW

This Court reviews *de novo* a district court's grant or denial of a petition for a writ of habeas corpus under 28 U.S.C. § 2241. *Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000).

ARGUMENT

I. Section 1225(b)(2) Mandates Detention of Aliens, Like Petitioners, Who Are Present in the United States Without Having Been Lawfully Admitted.

Under the plain language of Section 1225(b)(2), the Government is required to detain all aliens, like Petitioners, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the alien has been in the United States or how far from the border they were detained. That unambiguous language resolves this case. *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."). The district court's contrary interpretation is incompatible with the unambiguous statutory text and subverts Congress's manifest purpose in adopting Section 1225(b)(2)(A).

A. The Plain Language of Section 1225(b)(2) Mandates Detention of Applicants for Admission.

Section 1225(a) deems all aliens who are "present in the United States [and] ha[ve] not been admitted or who arrive[] in the United States" to be "applicant[s] for admission." 8 U.S.C. § 1225(a)(1). And "admission" under the INA means not mere physical entry, but "lawful entry … after inspection" by immigration authorities. 8 U.S.C. § 1101(a)(13)(A); *supra*, p. 7. Thus, an alien who enters the country without inspection and admission 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. *See Sandoval*, 2025 WL 3048926, at *3 ("The 'or' is disjunctive, and thus indicates that there are two types of aliens who are treated as 'applicants for admission' (1) those who have not been admitted, and (2) those who arrive in the United States.")

In turn, Section 1225(b)(2) provides that "an alien who is an applicant for admission" "shall be detained" pending removal proceedings if the "alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1125(b)(2)(A). The statute's use of the term "shall" denotes that detention is mandatory. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998); *see Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) "mandate[s] detention"). And like subsection (a), subsection (b)(2) makes no exception for the duration of the alien's presence in the country or how far the alien's incursion into the country extends. Therefore, except for those aliens expressly excepted, the statute's plain text mandates that DHS detain all "applicants for admission" who are not "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1125(b)(2)(A). *See also Topal v. Bondi*, 2025 WL 3486894, at *2 (W.D. La. Dec. 3, 2025); *Sandoval v. Acuna*, 2025 WL 3048926, at *7 (W.D. La. Oct. 31, 2025);

Cabanas v. Bondi, 2025 WL 3171331, at *7 (S.D. Tex. Nov. 13, 2025); *Mejia Olalde v. Noem*, 2025 WL 3131942, at *2-3 (E.D. Mo. Nov. 10, 2025); *Rojas v. Olson*, 2025 WL 3033967, at *6, *8 (E.D. Wis. Oct. 30, 2025).

Petitioners fall squarely within the statute's definition. They were "present in the United States," there is no dispute that they have "not been admitted," and they do not fall within any of the exceptions to Section 1225(b)(2)(A). 8 U.S.C. § 1225(a), (b)(2)(B); *see Topal*, 2025 WL 3486894, at *2 ("Petitioner remains present in the United States without having formally requested such permission to enter this country. Petitioner remains an 'applicant[] for admission'"); *supra*, p. 8. Moreover, they cannot—and did not—establish that they are "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *supra*, p. 10. Therefore, the statute commands that Petitioners "shall be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

B. The District Courts' Decisions Disregard the Clear Text of Section 1225(b)(2)(A).

The clear language of Section 1225 indicates that Section 1225(b)(2) is not limited to only to aliens "arriving" in the United States, but also includes those "already present." Any reading that 1225(b)(2) only applies to aliens "arriving" directly contradicts the statute. Nor is there any other interpretation of Section 1225(b)(2)(A) that would exclude aliens, like

Petitioners, who evaded inspection and are now unlawfully present in the United States.

1. Applicants for Admission Are "Seeking Admission"

The district courts determined that the phrase "seeking admission" in Section 1225(b)(2)(A) requires that the provision be read to apply only to applicants for admission who are taking affirmative steps to gain admission to the United States—not aliens, like Petitioners, who were residing unlawfully in the United States *without* making any effort to gain admission. ROA.25-40701.260. That is wrong. The statute itself makes clear that an alien who is an "applicant for admission" *is* "seeking admission."

a. Section 1225(b)(2) requires the detention of an "applicant for admission, if the examining officer determines that [the] alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory text and context thus establish that being an "applicant for admission" is necessarily a means of "seeking admission." In other words, every "applicant for admission" is inherently and necessarily "seeking admission." No additional affirmative step is necessary.

Section 1225(a) provides that "[a]ll aliens … who are applicants for admission *or otherwise* seeking admission or readmission … shall be

inspected." 8 U.S.C. § 1225(a)(3) (emphasis added). The word "[o]therwise' means 'in a different way or manner[.]'" *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *see also Att'y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same). The phrase "or otherwise" thus "operates as a catchall: the specific items that precede it are meant to be subsumed by what comes after the 'or otherwise'" clause. *Kleber v. CareFusion Corp.*, 914 F.3d 480, 483 (7th Cir. 2019); *see 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"); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th Cir. 2019). Being an "applicant for admission" is thus a particular "way or manner" of seeking admission, such that an alien who is an "applicant for admission" *is* "seeking admission" for purposes of Section 1252(b)(2)(A).

"Seeking admission" thus includes not only aliens who "entered the United States with visas or other entry documents before their presence became lawful," but also aliens who "entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of section 235(a)(1) of the Act." *Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 n.6 (BIA 2012) (emphases omitted). As a result,

"many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Id.* at 743. For example, an alien who previously was unlawfully present in the United States and is never admitted, departs, and subsequently submits a literal application for admission to the United States—*e.g.*, applies for a visa—is deemed to be "*again* seek[ing] admission" to the United States. *Id.* at 743-44 & n.6 (emphasis added) (quoting and discussing 8 U.S.C. § 1182(a)(9)(B)(i)(I)-(II)). Mere presence without admission *is* seeking admission "by operation of law." *Id.*

The everyday meaning of the statutory terms also supports this reading. One may "seek" something without "applying" for it—for example, one who is "seeking" happiness is not "applying" for it. But one *applying* for something is necessarily *seeking* it. *Compare* Webster's New World College Dictionary 69 (4th ed.) ("apply" means "To make a formal request (*to* someone *for* something)"), *with id.* at 1299 ("seek" means "to request, ask for"); *accord Mejia Olalde*, 2025 WL 3131942, at *3 ("To 'seek' is a synonym of to 'apply' for."). For example, a person who is "applying" for admission to a college or club is "seeking" admission to the college or club. *See* The American Heritage Dictionary of the English Language 63 (1980)

("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. *Rojas*, 2025 WL 3033967, at *8 ("seeking admission" is "best read as simply another way of referring to aliens who are applicants for admission").

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 (E.D. Mo. Nov. 10, 2025). 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.

None of this is to say, however, that "seeking admission" has no meaning beyond "applicant for admission." As Section 1225(a)(3) shows, being an "applicant for admission" is only *one* "way or manner" of "seeking admission," *supra*, p. 26—not the exclusive way. 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 Section 1225(a)'s requirement—including aliens who entered before IIRIRA's effective date.

To be sure, the Government previously operated under a different application of Section 1225(b)(2)(A), such that aliens present in the United States who had entered without admission were instead detained under Section 1226(a). *Supra*, p. 13; *but see* 8 C.F.R. § 235.3(b)(1)(ii) (requiring detention of applicants for admission pending removal proceedings "in

accordance with section 235(b)(2) of the Act"). But past practice does not justify disregard of clear statutory language. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015). Indeed, the Supreme Court has rejected longstanding government interpretations that it has deemed incompatible with the INA specifically. *See Pereira v. Sessions*, 585 U.S. 198, 204-05, 208-09 (2018). Therefore, this Court must always interpret the statute "as written." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019); *see Mejia Olalde*, 2025 WL 3131942, at *5 (rejecting the prior interpretation of Section 1225(b)(2) as "nontextual" and unsupported by any "thorough, reasoned analysis"); *Rojas*, 2025 WL 3033967, at *9 ("Prior administrations' generous interpretation of these laws ... do not and cannot rewrite it.").

b. The Government's reading does not render the term "seeking admission" redundant of the phrase "applicant for admission" in Section 1252(b)(2)(A); the structure of Section 1252(b)(2)(A) demonstrates that each phrase has independent meaning.

Section 1225(b)(2)(A) is composed of a primary (operative) clause, which is modified by two prefatory clauses offset by commas. The operative clause requires detention of aliens "seeking admission" who cannot show their admissibility ("if the examining immigration officer ..., [then] the alien

shall be detained"). That clause's mandate is modified by two prefatory clauses. The first excludes aliens covered by subparagraphs (B) and (C). 8 U.S.C. § 1225(b)(2)(A) ("[s]ubject to ..."). Like the first, the second prefatory clause narrows the operative clause to a subset of "case[s]"—namely, "in the case of an alien who is an applicant for admission...." *Id.* (emphasis added). Section 1225(b)(2) thus lays out a general command (the operative clause), and then qualifies that directive: "[I]f an alien seeking admission is not clearly and beyond a doubt entitled to be admitted," then "the alien shall be detained"—but only if (1) the alien is not covered by subparagraphs (B) or (C); and (2) the alien is seeking admission by being "an applicant for admission" under Section 1225(a)(1). No portion of the statute is redundant.

Even if there were, "[t]he canon against surplusage is not an absolute rule." *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 v. Barr*, 590 U.S. 222, 223 (2020). Thus, "[t]he Court has often recognized that sometimes the better overall reading of a statute contains some redundancy." *Id.* For that reason, "the surplusage cannon ... 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 223.

That principle applies with full force here. Under a straightforward reading of the statute, an "applicant for admission" is "seeking admission." Even if that reading produced some redundancy in Section 1225(b)(2)(A), that is "not a license to rewrite" Section 1225 "contrary to its text." *Barton*, 590 U.S. at 223; *see Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) ("The principle [that drafter do repeat themselves carries extra weight where … the arguably redundant words that the drafters employed … are functional synonyms"). And that is especially true, where that re-writing would be so clearly contrary to Congress's objective in passing the law. *Infra*, p. 7.

c. Even if "seeking admission" required some separate affirmative conduct by the alien, an applicant for admission who attempts to remain in the United States is by any definition "seeking admission."

Section 1225(b)(2)(A) is not concerned with the alien's pre-inspection conduct. *See Matter of Valenzuela-Felix*, 26 I. & N. Dec. 53, 56 (BIA 2012) (An "application for admission [i]s a continuing one."). 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 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 during the course of 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" that would permit lawful presence and a pathway to admitted status, 8 U.S.C. § 1229a(c)(2)(A), (c)(4)—is necessarily "endeavor[ing] to obtain" admission to the United States. American Heritage Dictionary, *supra*, at 1174.

Here, Petitioners are applicants for admission and governed by § 1225(b)(2). Petitioner Buenrostro Mendez entered the United States without inspection in 2009. In 2025, after an immigration officer inspected Buenrostro Mendez and determined that he was not entitled to admission, Buenrostro Mendez was placed in 240 removal proceedings. *Supra*, p. 15. Buenrostro Mendez does not seek to depart the United States, rather he has

expressed an intention to file an application for cancellation of removal. *Supra*, p. 15. Likewise, Petitioner Padron Covarrubias entered the United States without inspection in 2001. *Supra*, p. 16. In 2025, after an immigration officer inspected Padron Covarrubias and determined that he was not entitled to admission, Padron Covarrubias was placed in 240 removal proceedings. *Supra*, p. 16. Padron Covarrubias does not seek to depart that United States, rather he filed an application for cancellation of removal. *Supra*, p. 17.

2. The Statute's Headings Do Not Support the District Court's Interpretation.

Petitioners may argue that the references to "arriving aliens" and "inspection" in the title and headings in Section 1225 support limiting Section 1225(b)(2)(A) to aliens who are arriving at the border, not those already physically present in the country. That Court should reject any such interpretation.

The reference to "arriving aliens" in Section 1225's title—"expedited removal of inadmissible arriving aliens"—refers to expedited removal under Section 1225(b)(1), which, as noted above, is a separate removal process from the Section 240 proceedings referenced in Section 1225(b)(2)(A), and cannot limit the statute to aliens entering the United States. After all, a statute's title is "of use only when [it] shed[s] light on some ambiguous word or phrase";

"the title of a statute and the heading of a section cannot limit the plain meaning of the text." *Trainmen v. Baltimore & Ohio R. Co.*, 331 U.S. 519, 528-29 (1947) (titles "cannot undo or limit that which the text makes plain"); *see Knapp v. U.S. Dep't of Agric.*, 796 F.3d 445, 465 (5th Cir. 2015) (same).

Here, Section 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. Section 1225(a)(1) explicitly deems aliens already "present in the United States who have not been admitted" to be applicants for admission. 8 U.S.C. § 1225(a)(1); *Rojas*, 2025 WL 3033967, at *6, *8. And nothing in Section 1225(b)(2)(A) refers to "arriving aliens." Likewise, Section 1225(b)(1) expedited removal procedures may be applied not just to "arriving" aliens but also to aliens who have been "physically present in the United States" for up to two years, 8 U.S.C. § 1225(b)(1)(A)(i), (iii)(II). 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. *Trainmen*, 331 U.S. 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, Section 1225 covers a multitude of subjects and classes of aliens, including arriving aliens; that the statute's title singles out arriving aliens specifically "cannot limit the plain meaning of the text." *Id.* Even if it could, the title refers to "arriving aliens" in a clause addressing "*expedited removal* of inadmissible … aliens," and expedited removal is governed by subsection (b)(1), not subsection (b)(2). *See* 8 U.S.C. § 1225(b)(2)(B)(ii). If Section 1225's title had a limiting effect—and it does not—it would not extend to subsection (b)(2). *See Mejia Olalde*, 2025 WL 3131942, at *3 (adopting same interpretation).

Nor does the word "inspection" in the heading of Section 1225(b)(2) suggest that it is limited to those who are entering the country. 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 requires 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 any theory that Section 1225(b)(2)(A)'s reference to "crewman" and "stowaways" suggests that the statute is limited to "arrival at a border or port of entry." Yes, Section 1225(b)(2)(A) also applies to certain arriving aliens, which is why excluding "crewm[e]n" and "stowaways" from Section 1225(b)(2)(A) required express exemptions. *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 Section 1225(b)(2)(A) does not otherwise limit the provision's scope.

C. Section 1226(c) Does Not Support the District Courts' Reading.

The district courts also reasoned that the Government's interpretation would render superfluous portions of Section 1226(c), which contains a separate mandatory detention provision for certain aliens. That, too, is wrong. Although Section 1226(c) and Section 1225(b)(2) overlap for some aliens, each provision has independent effect. Mere overlap is no basis for re-writing clear statutory text.

1. As a threshold matter, there could be no colorable argument that the Government's interpretation of Section 1225(b)(2)(A) renders Section 1226(a)'s discretionary detention authority superfluous. Section 1226(a) authorizes the Executive to "arrest[] and detain[]" *any* "alien" pending removal proceedings but provides that the Executive also "may release the alien" on bond or conditional parole. 8 U.S.C. § 1226(a). That provision provides the detention authority for the significant group of aliens who are *not* deemed "applicants for admission" subject to Section 1225(b)(2)(A), *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("the specific governs the general")—that is, aliens who have been admitted to the United States but are now deportable and subject to removal proceedings under Section 1229a. For example, the detention of any of the millions of aliens who have overstayed their visas will be governed by Section 1226(a), because those aliens (unlike Petitioners) *were* lawfully admitted to the United States.

2. Likewise, the Government's reading of Section 1225(b)(2)(A) does not render Section 1226(c) superfluous. As described above, Section 1226(c) is the exception to Section 1226(a)'s discretionary detention regime, which requires the Executive to detain "any alien" who is deportable or inadmissible for having committed specified offenses or engaged in

terrorism-related actions. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Like Section 1226(a), subsection (c) applies to significant groups of aliens *not* encompassed by Section 1225(b)(2).

Most obvious, Section 1226(c)(1) requires the Executive to detain aliens who *have been admitted* to the United States and are now "deportable." *See* 8 U.S.C. § 1226(c)(1)(B)-(C). By contrast, Section 1225(b)(2) has no application to admitted aliens. Next, Section 1226(c)(1) requires detention of aliens who are "inadmissible" on certain grounds. *See* 8 U.S.C. § 1226(c)(1)(A), (D), (E). Those provisions also sweep more broadly than Section 1225(b)(2), because they cover 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)). In this respect, Section 1226(c)(1) applies to admitted aliens, who are not covered by Section 1225(b)(2). Finally, as noted above, Section 1225(b)(2)(A) does "not apply to an alien ... who is a crewman" or "a stowaway." 8 U.S.C. § 1225(b)(2)(B). Section 1226(c) would apply to those aliens if they were inadmissible or deportable on one of the specified grounds.

Moreover, Section 1226(c) narrows the circumstances under which aliens may be *released* from mandatory detention. Recall that, for aliens subject to mandatory detention under Section 1225(b)(2), IIRIRA allows the Executive to "temporarily" parole them "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5); *supra*, p. 11. Section 1226(c)(1) takes that release option off the table for aliens who have also committed the offenses or engaged in the conduct specified in Section 1226(c)(1)(A)-(E). As to those aliens, Section 1226(c) authorizes their release from custody only if "necessary to provide protection to" a witness or a similar person "and the alien satisfies the Attorney General 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).

The Government's reading also does not render superfluous Congress's recent amendment of Section 1226(c) through the Laken Riley Act, contrary to the district court's rationale. ROA.25-40701.260. That law requires mandatory detention of certain criminal aliens who are "inadmissible" under 8 U.S.C. § 1182(a)(6)(A), (a)(6)(C), or (a)(7). *See* 8 U.S.C. § 1226(c)(E)(i)-(ii). As with the other grounds of "inadmissibility" listed in Section 1226(c), both (a)(6)(C) and (a)(7) apply to inadmissible aliens who were admitted in

error, as well as those never admitted. *See Mejia Olalde*, 2025 WL 3131942, at *4 (noting that "the Laken Riley Act may apply to situations where § 1225 does not apply" (citing 8 U.S.C. § 1182(a)(6)(C)(i)). Again, Section 1225(b)(2) has no application to aliens who were admitted in error.

To be sure, the Laken Riley Act's application to aliens who are inadmissible under Section 1182(a)(6)(A)—for being "present … without being admitted or paroled"—overlaps with Section 1225(b)(2)(A). Both statutes mandate detention of "applicants for admission" who fall within the specified grounds of inadmissibility. But again, "[r]edundancies are common in statutory drafting," and are "not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Barton*, 590 U.S. at 223; *see Mejia Olalde*, 2025 WL 3131942, at *4 ("even assuming there was surplusage, that cannot trump the plain meaning of [Section] 1225(b)(2)").

Moreover, the canon against surplusage is "weak" when applied, as here, to "acts of Congress enacted at widely separated times." *Mejia Olalde*, 2025 WL 3131942, at *5; *see Rojas*, 2025 WL 3033967, at *9 ("legislation passed in 2025 has little bearing on the meaning of legislation enacted in 1996"). And that is especially true 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"). After all, this portion of the Laken Riley Act would require detention of aliens physically present in the United States who *are* taking affirmative steps toward admission, as long as they meet the offense criteria, *see* 8 U.S.C. § 1226(c)(1)(E)(ii)—but Petitioners and the district courts would agree that those aliens are subject to Section 1225(b)(2)(A), too. Some redundancy is thus unavoidable.

In any event, Section 1226(c) still does independent work, despite the overlap, by preventing the Executive from releasing the specified aliens on parole. *Supra*, p. 12. In fact, Congress's desire to further limit the parole power with respect to criminal aliens was one of the principal reasons it enacted the Laken Riley Act. The Act was adopted in the wake of a heinous murder committed by an inadmissible alien who was "paroled into this country through a shocking abuse of that power," 171 Cong. Rec. at H278 (daily ed. Jan. 22, 2025) (Rep. McClintock), and an abdication of the Executive's "fundamental duty under the Constitution to defend its citizens," 171 Cong. Rec. at H269 (Rep. Roy). The Act thus reflects a "congressional effort to be double sure," *Barton*, 590 U.S. at 239, that unadmitted criminal aliens are not paroled into the country through an abuse of the narrow parole authority.

D. The District Court's Narrow Interpretation Subverts Congressional Intent.

The district courts' 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*, 2025 WL 3048926, at * 6 ("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. The lower courts' 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. This Court should reject any interpretation that is so transparently subversive of Congress's stated objective. *King*, 576 U.S. at 492.

The Government's reading, by contrast, not only adheres to the statute's text and congressional intent, but 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," and that also includes 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." *The 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; the district court's reading subverts it.

E. The Supreme Court's Decision in *Jennings* Does Not Undermine the Government's Interpretation.

The Government's interpretation is consistent with the Supreme Court's decision in *Jennings*, 583 U.S. 281. *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 groups of aliens subject to Section 1225(b) or Section 1226. Nonetheless, consistent with the Government's reading, the Court recognized in its description of Section 1225(b) that "Section 1225(b)(2) .... serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1)." *Id.* at 287.

To be sure, *Jennings* described the detention authorities in Section 1225(b) and Section 1226, and in that context summarized Section 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 Section 1226 as applying to aliens "once inside the United States"). But "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). When describing the scope of Section 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. The Government's interpretation is perfectly consistent with that understanding: it reads Section 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 Section 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 Sections 1225(b) and 1226.

CONCLUSION

The Court should reverse the district courts' orders granting the writ of habeas corpus.

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I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate ACMS system on January 14, 2026.

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