**UNITED STATES DISTRICT COURT**
**DISTRICT OF MASSACHUSETTS**

JOSE ARNULFO GUERRERO ORELLANA,

Petitioner-Plaintiff,

v.

ANTONE MONIZ, Superintendent, Plymouth Correctional Facility;

Respondents-Defendants.

Civil Action No. 1:25-cv-12664-PBS

**RESPONDENTS' REPLY MEMORANDUM IN SUPPORT OF CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT (ECF 94)**

## I. INTRODUCTION

Petitioner's statutory interpretation conflicts with the text, structure, and purpose of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Under the plain text, all aliens who are present without admission shall be detained for removal proceedings. There is no exception for those not apprehended upon arrival. There is no exception for those who make it to the interior of the country. And there is no exception for those who have evaded detection by immigration authorities for years. Petitioner is asking the Court to create those exceptions out of thin air. If Congress did not want to subject these individuals to mandatory detention under 8 U.S.C. § 1225, then it would not have included them in the definition of Applicant for Admission in § 1225(a)(1). Surely Congress did not intend for aliens who present at a port of entry to be subjected to mandatory detention, while those who illegally enter are eligible for bond. Such a reading creates the type of perverse incentive that IIRIRA was designed to prevent.

## II. ARGUMENT[1]

### A. The best reading of § 1225(b)(2)(A) requires detention of all Applicants for Admission.

#### 1. Under the plain text of § 1225, all Applicants for Admission are necessarily seeking admission.

As an initial matter, Petitioner mischaracterizes the Government's practice of applying § 1225(b)(2)(A) to aliens who have not been admitted as a "reversal" of position. *See* ECF 101 at

[1] Respondents recognize that the Court has rejected their jurisdictional and § 1252(e)(1)(B) arguments in prior rulings in this case but have asserted those arguments to preserve them. *See* ECF 95 at 11-12. Further, as Petitioner recognizes, claims that challenge "decisions to arrest each [class] member" would warrant a different analysis of the applicability of jurisdictional bars and are not properly part of this case. *See* ECF 101 at 3.

11; *see also id.* at 16.[2] Petitioner does not identify any prior Government assertion that § 1225(b)(2)(A) does not apply to such aliens. *See Maldonado v. Bostock*, No. 2:23-cv-760, 2023 WL 5804021, at * 3 (W.D. Wash. Aug. 8, 2023). To the contrary, the Government previously claimed "prosecutorial discretion" to "choose" whether to apply § 1225(b) or § 1226(a). *Id.*; *see also* 8 C.F.R. § 235.3(b)(1)(ii) (Mar. 6, 1997) (asserting that aliens who are "not inspected and admitted or paroled" but establish continual presence for the previous two years "shall be detained in accordance with section 235(b)(2) of the Act"). That is a far cry from Petitioner's position, which is that § 1226(a) *must* apply to those individuals and that § 1225(b)(2)(A) *cannot*.

Petitioner's claim that Applicants for Admission are legally distinct from those "seeking admission" is also unconvincing. *See* ECF 101 at 12. Although the word "or" is often used in the disjunctive, that is not always the case. *See United States v. Woods*, 571 US. 31, 45 (2013). And that is not the case here, because "or" is followed by the word "otherwise." *See* 8 U.S.C. § 1225(a)(3); *see* ECF 95 at 25-26. When considering "the reach of an 'otherwise' clause" in *Fischer*, the Supreme Court recognized that the "phrase can be given a more focused meaning by the terms linked to it." *Fischer v. United States*, 603 U.S. 480, 487 (2024). That is what Congress did here. The meaning of the phrase Applicant for Admission is informed by what succeeds it: being an applicant for admission is one manner of "seeking admission" (or, for that matter, "readmission" or "transit"). *See* 8 U.S.C. § 1225(b)(2)(A). Nor does this reading render either phrase superfluous. Given the complexity of the overall statutory scheme and IIRIRA's changes, Congress's use of the "or otherwise" construction ensured that any alien who is present without admission would be subject to § 1225(a)'s inspection requirement—including aliens who entered

[2] Respondents use the ECF pagination in the upper right-hand corner of the document.

before IIRIRA's effective date. And as explained, some aliens are subject to inspection because they are seeking admission, readmission, or transit, but are not deemed Applicants for Admission under § 1225(a)(1). *See* ECF 95 at 26-27. For example, alien "stowaways" are not "applicants for admission" but are still subject to inspection and grounds of inadmissibility. *See* 8 U.S.C. § 1225(a)(2) ("In no case may a stowaway be considered an applicant for admission[.]"); *id.* § 1182(a)(6)(D) (stating that a stowaway is inadmissible); *cf. In Re: Christopher Carl Williams A.K.A. Richard Perry*, 2015 WL 3932278, at *1 (BIA May 21, 2015).

Petitioner's arguments ignore that § 1225(a)(1) is a "deeming provision, which places some physically-but-not-lawfully present noncitizens into a fictive legal status for purposes of removal proceedings." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020). This "fictive legal status" does not refer to "a real event: an actual application for admission." *Id.* "The key word here is 'deemed.' That term is used in legal materials 'to treat something as if … it were really something else.'" *Sturgeon v. Frost*, 587 U.S. 28, 47 (2019) (quoting Black's Law Dictionary 504 (10th ed. 2014) (cleaned up)). "Legislators (and other drafters) find the word useful when it is necessary to establish a legal fiction, either by deeming something to be what it is not or by deeming something not to be what it is." *Id.* (internal quotations omitted). By deeming an "alien present in the United States who has not been admitted . . . an applicant for admission," Congress established the legal fiction that the alien is "seeking admission." *See id.*; 8 U.S.C. §1225(a)(1), (b)(2)(A).

**2. The structure of § 1225 supports mandatory detention.**

Plaintiffs' assertion that § 1225(b)(2) applies only to aliens seeking "lawful entry, from immigration officers at the border" (ECF 101 at 7) is incorrect for the reasons previously stated, *see* ECF 95 at 28-29, and also conflicts with the statutory structure. Section 1225 establishes that both (1) those who "arrive" in the country, and (2) those who are present without admission are

Applicants for Admission. 8 U.S.C. § 1225(a)(1). "[A]ll" applicants for admission, both those arriving and those present without admission, "shall be inspected by immigration officers." *Id.* § 1225(a)(3). Section 1225(b) is entitled "Inspection of applicants of admission." *Id.* § 1225(b). The first subsection, 1225(b)(1), sets forth procedures governing inspection of "aliens arriving in the United States" and certain other aliens that are designated by the Secretary as subject to expedited removal. *Id.* § 1225(b)(1). And the second subsection, 1225(b)(2), sets forth the provisions governing the inspection of "other aliens" and their placement in Section 1229a removal proceedings. *Id.* § 1225(b)(2). Under Petitioner's reading, Congress created a requirement to inspect all aliens who are applicants for admission in § 1225(a)(3), but provided only procedures for processing aliens who are arriving, and did not provide such procedures in Section 1225(b) for the processing of those present in the United States without admission who are not subject to expedited removal. *See id.* § 1225(a)(3), (b). The Court should "decline to reach a result that [it] can be fully confident Congress did not intend." *Aroostook Band of Micmacs v. Ryan*, 484 F.3d 41, 61 (1st Cir. 2007).

**3. Petitioner ignores the context in which the Laken Riley Act was passed.**

Nor are the Laken Riley Act (LRA) amendments to § 1226(c) rendered meaningless by the Government's interpretation. ECF 95 at 32-34; ECF 101 at 13. Courts must interpret statutory text "not in a vacuum, but with reference to the statutory context, 'structure, history, and purpose.'" *Abramski v. United States*, 573 U.S. 169, 179 (2014). The LRA was enacted against a backdrop in which the Government's position was that it could choose which detention authority applied to Applicants for Admission, which meant that some aliens who were applicants for admission were being detained under § 1226(a), rather than § 1225(b)(2). *See Maldonado*, 2023 WL 5804021, at * 3; *see generally Biden v. Texas*, 597 U.S. 785, 803 (2022) (assuming "for purposes of the

opinion" a claim "that the Government is currently violating its obligations under" § 1225(b)(2)(A)). Congress was likewise concerned with the release on parole of those subject to detention under § 1225(b). ECF 95 at 33-34. Thus, by including some Applicants for Admission in § 1226(c)'s mandatory detention provisions—which provide for release only on limited terms, § 1226(c)(4), Congress was attempting to be "doubly sure" that at least those aliens who committed certain criminal offenses were not released on either bond or parole. *See Barton v. Barr*, 590 U.S. 222, 239 (2020). One Congressman even expressed frustration that "every illegal alien is currently required to be detained by current law throughout the pendency of their asylum claims." 171 Cong. Rec. H278 (statement of Rep. McClintock). The LRA therefore addressed the concern about release on parole, as well as the concern that "individuals who would otherwise be subject to § 1225(b)(2)" were treated as subject to permissive detention under § 1226(a). *See* ECF 101 at 8.

Further, Petitioner's analysis of the LRA amendments misrepresents the statutory text. It is simply not the case that "§ 1226(c) only limits the detention authority of § 1226(a)," ECF 101 at 14, as nothing in § 1226(c) indicates that it can *only* serve as a carve-out from § 1226(a) or can "only operate to limit the scope of § 1226(a)," as Petitioner claims. *See id.* Indeed, even under Petitioner's reading of the statute, § 1226(c) as amended covers some Applicants for Admission—those who are "seeking admission." Petitioner offers no response to that point.

**4. Congress did not intend to treat individuals who enter illegally better than those who follow the law and present at a port of entry.**

Petitioner's claim that, in enacting IIRIRA, Congress did not alter the detention authority for those who evade inspection conflicts with IIRIRA's plain text and legislative history. *See* ECF 101 at 15. If Congress wanted the detention authority to remain the same for such aliens, making

lawful admission the "pivotal factor" is a curious way to do that. *See* H.R. Rep. 104-469, pt. 1 at 225. To be sure, one legislative report notes that § 1226(a) "restates" the prior authority "to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. Rep. 104-828 at 210. But there are millions of aliens who are not lawfully in the United States who were previously admitted. *See* ECF 95 at 31, 32. Although the Government's authority to detain aliens who were previously admitted but were "not lawfully in the United States" remained the same under §1226(a), IIRIRA created *new* authority to detain aliens who had never been admitted in the first place.[3] *See* 8 U.S.C. § 1225(b).

The Court should also reject Petitioner's invitation to apply the doctrine of constitutional avoidance. *See* ECF 101 at 9. "Spotting a constitutional issue does not give a court the authority to rewrite the statue as it pleases." *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018). Courts "relying on that canon still must *interpret* the statute." *Id.* at 286 (emphasis in original). And the best reading of § 1225(b)(2)(A) requires detention for aliens present without admission. *See Loper Bright v. Raimondo*, 603 U.S. 369, 373 (2024) (holding courts must "determine the best reading of the statute"). That interpretation also presents no constitutional issues. *See Demore v. Kim*, 538 U.S. 510, 531 (2003). Mandatory "[d]etention during removal proceedings is a constitutionally permissible part of that process," *id.*, particularly with respect to those never admitted into the country. In exercising "'its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.'" *Id.* at 521 (quoting *Mathews v. Diaz*, 426 U.S. 67, 79–80 (1976)).

---

[3] Equally unpersuasive is Petitioner's point about Congress's considerations of bed space. *See* ECF 101 at 15–16. Even if the plain text of the statute were ambiguous in this respect (it is not), the Court should decline to draw such an attenuated inference from the legislative history.

**B. A Declaratory Judgment that Requires Government Compliance Would Violate § 1252(f)(1).**

Petitioner argues that § 1252(f)(1) does not limit class-wide declaratory relief, but does not deny that his lawsuit seeks to restrain the Government's operation of the immigration detention statutes. *See* ECF 101 at 18. Petitioner primarily points to the First Circuit's *sua sponte* holding in *Brito v. Garland*, but that court did not have the benefit of adversarial presentation on that issue, as the question of whether the declaratory judgment in that case enjoined or restrained the operation of the covered statute was not raised by the Government in that case, which was decided before the Supreme Court analyzed § 1252(f)(1) in *Aleman Gonzalez*. *See* ECF 95 at 24-25 (citing *Brito v. Garland*, 22 F.4th 240, 250 (1st Cir. 2021)).

Petitioner also does not dispute that any class-wide preclusive effect of a declaratory judgment is a restraint on the operation of the detention statutes. *See* ECF 95 at 37-38; ECF 101 at 18. Petitioner only takes issue with the government's assertion, in a footnote, that courts handling future cases brought by individual class members should decline to apply preclusive effect while a declaratory judgment is pending on appeal. Even if a judgment *could* have preclusive effect while on appeal, courts should decline to give judgments such effect pending appeal, given the potential for irreversible consequences. *See* ECF 95 at 37 n.3 (citing 9 A.L.R. 2d 984; Federal Practice & Procedure § 4044).

**C. Notice, Reporting, and Identification of Class Members is Not Warranted or Proper.**

If the Court rules in favor of Petitioner and the class, it should not order the notice and reporting that Petitioner requests. Petitioner has not demonstrated that the Court should require the individualized notice and reporting he seeks. *First*, Petitioner has not shown that posted notice is insufficient. Even if some detainees are transferred out of New England, notice that is posted in

U.S. Immigration and Customs Enforcement (ICE) facilities and ICE-contracted detention facilities where detainees are initially processed or held would still be accessible to those detainees before they are transferred. Class members are also now members of a nationwide class addressing this same issue. *See Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *1 (C.D. Cal. Nov. 25, 2025). While the government believes that class was improperly certified, it was certified based upon a finding that class representatives in that lawsuit "will fairly and adequately protect the interests of the class" (Fed. R. Civ. P. 23(a)(4)), which should negate class counsel's concerns with transfer outside of New England. And providing individualized notice would impose additional burdens on ICE officers and other ICE employees. But if individualized notice is required, it should occur at the time the alien appears before the immigration judge for a bond hearing rather than create a separate individualized notice process.

*Second*, Petitioner provides no adequate justification for a burdensome, ongoing—and indefinite—requirement to identify class members to Class Counsel and notify Class Counsel of transfers in order for counsel to monitor or "assess" "compliance." ECF 91 at 27. Petitioner claims that "[m]onitoring compliance with any declaration that the Court enters is a predicate to successful enforcement." ECF 101 at 8. Such efforts should be unnecessary for a Rule 23(b)(2) class and for a declaratory judgment that is purportedly non-coercive and not subject to enforcement. *See* ECF 95 at 39. Again, if, the declaratory relief Petitioner seeks on behalf of the class does not enjoin or restrain the operation of the detention statutes under § 1252(f)(1), then there is no basis for Class Counsel or the Court to monitor, or facilitate the monitoring of, the status of each class member's detention, bond hearing, or potential transfer. But even if such monitoring was warranted, as noted, given the nationwide class (improperly) certified in *Bautista*, notice of transfer is unnecessary. In any event, not only is the ongoing reporting itself burdensome to the

agency, but some of the detailed information Petitioner seeks about each class member—such as their bond history—requires manual compilation. Finally, the reporting requirement has no appreciable benefit to class members that cannot be accomplished by less burdensome means, such as a posted notice that identifies Class Counsel and provides counsel's contact information.

*Third*, and contrary to Petitioner's contention (ECF 101 at 20), his requested order requiring the Government to identify class members and, particularly, to "notify class counsel 24 hours prior to transfer," ECF 91 at 27, is coercive and injunctive in nature and cannot be squared with § 1252(f). Such an order regarding transfer reporting will certainly—and directly—complicate ICE's detention operations and delay potential transfers. There is no prohibition on transfer of detainees, nor could the Court properly order such a prohibition. And even if the injunction Petitioner seeks were permissible under § 1252(f)(1), Petitioner has made no attempt to meet his burden to show that this injunction is warranted. *See CoxCom, Inc. v. Chaffee*, 536 F.3d 101, 112 (1st Cir. 2008). Nor can it be, given that the ICE has a public detainee locator that can be accessed using an alien's A number and country of birth. *See* https://locator.ice.gov/odls/#/search (last visited Dec. 10, 2025).

Finally, if the Court is inclined to require some form of notice or class-member identification, Defendants respectfully request that the Court allow the parties to meet and confer to come to an agreed method and form of such notice or reports. This would allow the parties to come to a more refined notice and/or identification proposal that better accounts for the operational difficulties and burdens inherent in such tasks.

**D. The Class Should Be Clarified.**

Petitioner concedes that aliens who are encountered upon arrival and initially detained but later released on parole under § 1182(d)(5)(A) are not subject to detention under § 1226(a). ECF

101 at 17 n.3. Petitioner claims that such aliens "are excluded from the class," *id.*, but the class definition does not obviously exclude them. Thus, at minimum, the class definition should be clarified in this regard.

## III. CONCLUSION

The Court should grant summary judgment to Defendants on Count I.

Respectfully submitted,

BRETT A. SHUMATE
*Assistant Attorney General*

DREW C. ENSIGN
*Deputy Assistant Attorney General*

AUGUST E. FLENTJE
*Special Counsel*

*/s/ Katherine J. Shinners*
KATHERINE J. SHINNERS
*Senior Litigation Counsel*
U.S. Department of Justice, Civil Division
Office of Immigration Litigation-GLA
P.O. Box 878, Ben Franklin Station
Washington, DC 20044
202-598-8259
katherine.j.shinners@usdoj.gov

MICHAEL D. ROSS
ANGEL FLEMING
LAURIE WIESNER
*Trial Attorneys*

**CERTIFICATE OF SERVICE**

I, Katherine J. Shinners, hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: December 12, 2025

*/s/ Katherine J. Shinners*
KATHERINE J. SHINNERS
*Senior Litigation Counsel*
U.S. Department of Justice