

Nos. 25-2152, 26-1094

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

JOSE ARNULFO GUERRERO ORELLANA,
Petitioner-Appellee,

v.

ANTONE MONIZ, Superintendent, Plymouth County Correctional Facility,
et at.,
Respondents-Appellants.

On Appeal from the United States District Court
for the District of Massachusetts
No. 1:25-cv-12664 (Saris, J.)

APPELLANTS' OPENING BRIEF

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

DREW C. ENSIGN
Deputy Assistant Attorney
General

AUGUST FLENTJE
Special Counsel

BENJAMIN HAYES
Senior Counsel to the Assistant
Attorney General

KATHERINE J. SHINNERS
Senior Litigation Counsel
Civil Division
U.S. Department of Justice
Office of Immigration
Litigation
P.O. Box 878, Ben Franklin
Station
Washington, DC 20044
Tel: (202) 598-8259

Counsel for Respondents-Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

ORAL ARGUMENT SHOULD BE HEARD1

INTRODUCTION 2

STATEMENT OF JURISDICTION 5

STATEMENT OF THE ISSUE..... 5

STATEMENT OF THE CASE 6

 I. Statutory Framework 6

 A. The Pre-IIRIRA framework gave preferential treatment to aliens who unlawfully entered and were present in the United States..... 6

 B. IIRIRA eliminated the preferential treatment of aliens who unlawfully entered in the United States and mandated detention of “applicants for admission.” 8

 C. The Government applies Section 1225(b)(2)(A) in accordance with its text, to require detention of all applicants for admission pending removal proceedings.15

 II. Factual Background and Procedural History17

 A. Petitioner illegally enters the United States without admission and is later encountered and placed in Section 240 Proceedings.....17

 B. The district court grants a preliminary injunction..... 18

 C. The district court certifies a class. 20

 D. The district court enters a declaratory judgment on the statutory claim in favor of Petitioner and the class.21

SUMMARY OF ARGUMENT 23

STANDARD OF REVIEW 25

ARGUMENT 26

 I. Section 1225(b)(2) Mandates Detention of Aliens, Like
 Petitioner and the Class, Who Are Present in the United
 States Without Having Been Admitted. 26

 A. The plain language of Section 1225(b)(2)(A)
 mandates detention of Applicants for Admission. 26

 B. The district court’s decision disregards the clear text
 of Section 1225(b)(2)(A). 28

 C. Section 1226 does not support the district court’s
 reading. 42

 D. The district court’s interpretation subverts
 congressional intent. 46

 E. The Supreme Court’s decision in *Jennings* supports
 the Government’s interpretation. 48

CONCLUSION51

CERTIFICATE OF SERVICE..... 53

CERTIFICATE OF COMPLIANCE..... 54

TABLE OF AUTHORITIES

CASES

Alcantarillados de Puerto Rico,
279 F.3d 49 (1st Cir. 2002) 5

Att’y Gen. of United States v. Wynn,
104 F.4th 348 (D.C. Cir. 2024) 29

Azumah v. United States Citizenship & Immigr. Servs.,
107 F.4th 272 (4th Cir. 2024).....41, 42

Bankamerica Corp. v. United States,
462 U.S. 122 (1983) 36

Barton v. Barr,
590 U.S. 222 (2020)..... 4, 24, 35, 36, 45, 46

Brito v. Garland,
22 F. 4th 240 (1st Cir. 2021)51

Buenrostro-Mendez v. Bondi,
---F.4th---, 2026 WL 323330 (5th Cir. Feb. 6, 2026)passim

DHS v. Thuraissigiam,
591 U.S. 103 (2020)..... 7, 11, 47

Exxon Mobil Corp. v. Allapattah Servs., Inc.,
545 U.S. 546 (2005) 38, 39

Food Mktg. Inst. v. Argus Leader Media,
588 U.S. 427 (2019)..... 38

Heyman v. Cooper,
31 F.4th 1315 (11th Cir. 2022) 36

Hing Sum v. Holder,
602 F.3d 1092 (9th Cir. 2010) 6, 7, 8, 9

Hose v. I.N.S.,
180 F.3d 992 (9th Cir. 1999) 7

Jennings v. Rodriguez,
583 U.S. 281 (2018).....passim

Kaplan v. Tod,
267 U.S. 228 (1925)..... 47, 48

King v. Burwell,
576 U.S. 473 (2015) 46, 47

Kleber v. CareFusion Corp.,
914 F.3d 480 (7th Cir. 2019)30

Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach,
523 U.S. 26 (1998)..... 27

Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania,
591 U.S. 657 (2020)..... 26

Loper Bright Enters. v. Raimondo,
603 U.S. 369 (2024)..... 37, 38

MacRae v. Mattos,
106 F.4th 122 (1st Cir. 2024)..... 25

Martinez v. Att’y General of U.S.,
693 F.3d 408 (3d Cir. 2012)..... 8

Mejia Olalde v. Noem,
2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) 27, 30, 32, 33, 34, 35

Mejia-Orellana v. Gonzales,
502 F.3d 13 (1st Cir. 2007)..... 42

Microsoft Corp. v. I4I Ltd. P’ship,
564 U.S. 91 (2011)..... 45

<i>Montoya v. Holt</i> , 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025)	27, 30, 33
<i>Nat’l Pork Producers Council v. Ross</i> , 598 U.S. 356 (2023)	49
<i>New York State Dep’t of Soc. Servs. v. Dublino</i> , 413 U.S. 405 (1973)	46
<i>Ortega-Cervantes v. Gonzalez</i> , 501 F.3d 1111 (9th Cir. 2007)	14
<i>Pereira v. Sessions</i> , 585 U.S. 198 (2018)	37
<i>RadLAX Gateway Hotel, LLC v. Amalgamated Bank</i> , 566 U.S. 639 (2012)	43
<i>Rimini St., Inc. v. Oracle USA, Inc.</i> , 586 U.S. 334 (2019)	35
<i>Sanchez v. Roden</i> , 753 F.3d 279 (1st Cir. 2014)	25
<i>Shaughnessy v. United States ex rel. Mezei</i> , 345 U.S. 206 (1953)	47, 48
<i>Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.</i> , 576 U.S. 519 (2015)	29
<i>Torres v. Barr</i> , 976 F.3d 918 (9th Cir. 2020)	8
<i>United States v. Bronstein</i> , 849 F.3d 1101 (D.C. Cir. 2017)	35
<i>Villarreal v. R.J. Reynolds Tobacco Co.</i> , 839 F.3d 958 (11th Cir. 2016)	30

Webster v. Fall,
266 U.S. 507 (1925) 50

Winter v. NRDC,
555 U.S. 7 (2008) 4

Xiaoquan Chen v. Almodovar,
2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025)..... 27

Yamataya v. Fisher,
189 U.S. 86 (1903)..... 48

STATUTES

8 U.S.C. § 1101(a)(13) (1994)..... 6

8 U.S.C. § 1101(a)(13)(A)9, 26, 41

8 U.S.C. § 118214

8 U.S.C. § 1182(a)(6)(A) 15, 17, 44

8 U.S.C. § 1182(a)(6)(C)15

8 U.S.C. § 1182(a)(7)..... 15, 17

8 U.S.C. § 1182(d)(5)5, 16

8 U.S.C. § 1182(d)(5)(A) 13, 14, 44

8 U.S.C. § 1225..... 2

8 U.S.C. § 1225(a) 28

8 U.S.C. § 1225(a)(1).....passim

8 U.S.C. § 1225(a)(3)20, 24, 29

8 U.S.C. § 1225(a)(4) 10, 24, 30, 31, 40

8 U.S.C. § 1225(a)(5)10, 31

8 U.S.C. § 1225(b)(1).....	11, 12, 20, 33
8 U.S.C. § 1225(b)(1).....	11
8 U.S.C. § 1225(b)(2).....	passim
8 U.S.C. § 1225(b)(2)(A).....	passim
8 U.S.C. § 1225(b)(2)(B).....	12
8 U.S.C. § 1225(b)(2)(C).....	12
8 U.S.C. § 1226.....	13
8 U.S.C. § 1226(a).....	passim
8 U.S.C. § 1226(c).....	4, 14, 15, 24, 42, 43, 44, 46
8 U.S.C. § 1226(c)(1).....	14, 43, 44
8 U.S.C. § 1226(c)(1)(B).....	43
8 U.S.C. § 1226(c)(1)(E).....	14, 45
8 U.S.C. § 1226(c)(4).....	15, 44
8 U.S.C. § 1227.....	14
8 U.S.C. § 1227(a).....	49
8 U.S.C. § 1229(a).....	17
8 U.S.C. § 1229a.....	28
8 U.S.C. § 1229a(c).....	9, 40
8 U.S.C. § 1229b(b).....	18, 41
8 U.S.C. § 1252(a) (1994).....	39

8 U.S.C. § 1252(f)(1)51
8 U.S.C. § 1255(b)41
28 U.S.C. § 1291 5
28 U.S.C. § 1292(a)(1)..... 5
Pub. L. 104-208 2, 8
Pub. L. No. 119-115

ADMINISTRATIVE DECISIONS

Matter of Cabrera-Fernandez,
28 I. & N. Dec. 747 (BIA 2023)14
Matter of Lemus-Losa,
25 I & N. Dec. 734 (BIA 2012).....31
Matter of Valenzuela-Felix,
26 I. & N. Dec. 53 (BIA 2012).....40
Matter of Yajure Hurtado,
29 I. & N. Dec. 216 (BIA 2025)passim

RULES

1st Cir. R. 34.0(a).....1
Federal Rule of Appellate Procedure 34(a)(2)1
Federal Rule of Civil Procedure 23 20
Federal Rule of Civil Procedure 54(b)..... 22

REGULATIONS

8 C.F.R. § 235.3(b)(1)(ii) 12, 38

8 C.F.R. § 235.3(b)(2)(iii).....12

8 C.F.R. § 235.3(b)(4)(ii)..... 11

8 C.F.R. § 236.1(c)(8)14

8 C.F.R. § 236.1(d)14

8 C.F.R. § 239.1.....17

8 C.F.R. § 1003.19.....14

8 C.F.R. § 1236.1(d)14

8 C.F.R. § 1239.1(a)..... 18

OTHER AUTHORITIES

The American Heritage Dictionary of the English Language (1980) 33, 40

Webster’s New World College Dictionary (4th ed.)..... 32

62 Fed. Reg. 10,312 (Mar. 6, 1997)..... 37

H.R. Rep. No. 104-469, pt. 1 (1996)..... 8, 9, 38, 39, 47

ORAL ARGUMENT SHOULD BE HEARD

This appeal addresses the interpretation of the Government's immigration detention authority under 8 U.S.C. § 1225(b)(2) with respect to a broad class of aliens. The legal issue has also arisen in hundreds of individual habeas petitions filed within this Circuit over the last several months. Oral argument will aid the Court in evaluating the parties' arguments on the proper interpretation of § 1225(b)(2) and facilitate the Court's resolution of this important question. Oral argument is thus appropriate under Federal Rule of Appellate Procedure 34(a)(2) and 1st Cir. R. 34.0(a).

INTRODUCTION

Before 1996, the federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who had illegally entered and were already unlawfully 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”), Pub. L. 104-208, 110 Stat. 3009, Div. C. (Sept. 30, 1996), in part to end the preferential treatment of aliens who evade inspection and entered the United States unlawfully.

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 of 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 exercises the discretionary parole authority, mandatory detention is the rule for aliens who have never been lawfully admitted.

Petitioner does not contest that he was never admitted into the United States. Petitioner and others like him are “applicant[s] for admission” under § 1225(a) who cannot show that they are “clearly and beyond a doubt” entitled to be admitted. Thus, as the Fifth Circuit held in a published decision issued less than two weeks ago, they are subject to detention under §1225(b)(2)(A). *See Buenrostro-Mendez v. Bondi*, ---F.4th---, 2026 WL 323330 (5th Cir. Feb. 6, 2026). Despite the clear language of § 1225, the district court held that Petitioner and others like him were entitled to a bond hearing. That was error.

The lower court’s reading of § 1225(b)(2) cannot be justified based on the phrase “seeking admission” in § 1225(b)(2)(A). The plain text of § 1225 establishes that applicants for admission, like Petitioner, are seeking admission. Ignoring the words Congress actually used, the lower court urges an agrammatical reading that is at war with numerous other cases interpreting similar language, not to mention the English language. Nor can the district court’s reading be justified out of a desire to avoid rendering “seeking admission” superfluous. 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 court’s atextual reading also is not necessary to give effect to the separate detention authority in § 1226. On its face, that provision applies to numerous aliens *not* subject to § 1225(b)(2)(A), including all *admitted* aliens who are now deportable —such as the multitude of aliens in the United States who were lawfully admitted but overstayed visas. For those aliens, § 1226 alone applies. The mere fact that § 1226(c) may overlap in part with § 1225(b)(2)(A) is insufficient to rewrite clear statutory text.

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

STATEMENT OF JURISDICTION

This is a consolidated brief for two appeals. The first is from the district court's October 3, 2025, order granting a preliminary injunction on Petitioner's habeas petition, requiring Petitioner's release if he was not provided a bond hearing. A001-A030.¹ The Government filed a notice of appeal on December 2, 2025. App-131. This Court has jurisdiction over that appeal under 28 U.S.C. § 1292(a)(1). The second appeal is from the partial final judgment issued on December 19, 2025, and modified on December 31, 2025. A100-A105; App-159. The Government appealed on January 22, 2025. App-160. This Court has jurisdiction over that judgment under 28 U.S.C. § 1291. *E.E.O.C. v. Union Independiente de la Autoridad de Acueductos y Alcantarillados de Puerto Rico*, 279 F.3d 49, 54 (1st Cir. 2002).

STATEMENT OF THE ISSUE

Whether an applicant for admission is eligible for bond under 8 U.S.C. § 1226(a) 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.

¹ Citations to the Addendum appear as "Axxx." Citations to the Appendix appear as "App-xxx."

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, including the creation of proceedings for the removal of aliens who unlawfully enter the United States or are otherwise removable 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 entered the United States illegally. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-24 (BIA 2025) (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 [immigration] proceeding applied,” *Hing Sum*,

602 F.3d at 1099, and whether the alien would be detained pending those proceedings, *Yajure Hurtado*, 29 I. & N. Dec. at 222-23.²

At the time, the INA “provided for two types of removal proceedings: deportation hearings 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, with potential release solely by means of a grant of parole.” *Yajure Hurtado*, 29 I. & N. Dec. at 223; see 8 U.S.C. §§ 1225(a)-(b) (1995), 1226(a) (1995). In contrast, an alien who evaded inspection and physically entered the United States would be placed in deportation proceedings. *Yajure Hurtado*, 29 I. & N. Dec. at 223; *Hing Sum*, 602 F.3d at 1100. Aliens in deportation proceedings, unlike those in exclusion proceedings, “were entitled to request release on bond.” *Yajure 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

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

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.

Yajure 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 (3d Cir. 2012)); see *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 in the United States and mandated detention of “applicants for admission.”

Congress discarded that prior regime through enactment of IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, IIRIRA added § 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).

To that end, IIRIRA replaced the prior focus on physical “entry” and instead made lawful “admission” the touchstone both of whether an alien is subject to inadmissibility or deportability grounds of removal and whether the alien is subject to mandatory detention pending removal proceedings.

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 225 (emphasis added); *see Hing Sum*, 602 F.3d at 1100 (similar).

Additionally, IIRIRA also eliminated the exclusion/deportation dichotomy and consolidated both sets of proceedings into “removal proceedings.” *Yajure Hurtado*, 29 I. & N. Dec. at 223. Nonetheless, IIRIRA retained burdens of proof for aliens in removal proceedings akin to those for excludable and deportable aliens: Under 8 U.S.C. § 1229a(c)(2)(A), an alien who is “applicant for admission” must establish that he is “clearly and beyond a doubt entitled to be admitted” and “not inadmissible,” while the Department has “the burden of establishing by clear and convincing evidence that, in the case of an alien who has been admitted to the United States, the alien is deportable.” 8 U.S.C. § 1229a(c)(3)(A).

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

Section 1225(a): Section 1225(a) codifies Congress’s decision to make lawful “admission,” rather than physical entry, the touchstone. 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). “All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.” *Id.* § 1225(a)(3). The inspection by the immigration officer is designed to determine whether the alien may be lawfully “admitted” to the country or, instead, processed for removal. As part of inspection, “[a]n applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intention of the applicant in seeking admission to the United States” *Id.* § 1225(a)(5). Section 1225 also allows an “alien applying for admission” to “at any time ... withdraw the application for admission” and “depart immediately from the United States.” *Id.* § 1225(a)(4).

Section 1225(b): IIRIRA also provided for expedited removal and “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 so-called “expedited removal proceedings,” *Thuraissigiam*, 591 U.S. at 109-13, which may be applied to a subset of certain aliens—those inadmissible on certain grounds who (1) are “arriving in the United States,” or (2) have “not been admitted or paroled into the United States” and have “not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration officer shall “order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum ... or a fear of persecution.” *Id.* § 1225(b)(1)(A)(i). In that event, the alien “shall be detained pending a final determination of credible fear or persecution and, if found not to have such fear, until removed.” *Id.* § 1225(b)(1)(B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(4)(ii). 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 asylum or a fear of persecution or who is determined not to have a credible fear 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). 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);³ *see* 8 C.F.R. § 235.3(b)(1)(ii) (mirroring 8 U.S.C. § 1225(b)(2)’s detention mandate); *Jennings*, 583 U.S. at 302 (holding that § 1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin”).

³ Section 1225(b)(2)(A) also does not apply to (1) crewmen, (2) aliens subject to § 1225(b)(1), or (3) stowaways. 8 U.S.C. § 1225(b)(2)(B). In addition, the Executive has discretion to return aliens who have arrived on land from a contiguous territory to that territory pending § 1229a removal proceedings (Section 240 proceedings). *Id.* § 1225(b)(2)(C).

Although § 1225(b)(2) does not itself provide for release, the INA grants DHS discretion to exercise its parole authority to temporarily release an applicant for admission “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). Parole, however, “shall not be regarded as an admission of the alien.” *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that “the purposes of such parole ... have been served,” the “alien shall ... be returned to the custody from which he was paroled” and be “dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A).

Section 1226: IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (not “applicants for admission” specifically). *See* 8 U.S.C. § 1226. This provision governs the detention of aliens who were admitted to the country but later become deportable—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.” 8 U.S.C. § 1226(a). Detention under this provision is generally discretionary. The arrested alien “may” either “continue to [be] detain[ed]” or “may” be released 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). The alien may then seek a custody redetermination (a bond hearing) before an immigration judge and can appeal an immigration judge’s decision to the Board of Immigration Appeals (“Board”). 8 C.F.R. §§ 236.1(c)(8), (d), 1003.19, 1236.1(d)(1).

That “default rule” of discretionary detention does not apply to certain aliens who have committed criminal acts or been convicted of certain crimes or for national security concerns. *Jennings*, 583 U.S. at 288; see 8 U.S.C. § 1226(c). 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). Such aliens may be released only in very specific circumstances, for example, if “release of the alien from custody is necessary”

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

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. 8 U.S.C. § 1226(c)(4).

Congress recently amended § 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3 (2025), which additionally limits release from detention on parole for criminal aliens who (1) are inadmissible because they are physically present in the United States without admission or parole (8 U.S.C. § 1182(a)(6)(A)), have committed a material misrepresentation or fraud, (*id.* § 1182(a)(6)(C)), or lack required documentation, (*id.* § 1182(a)(7)); and (2) are “charged with, [] arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of” certain listed offenses. *Id.* § 1226(c)(1)(E).

C. The Government applies Section 1225(b)(2)(A) in accordance with its text, to require detention of all applicants for admission pending removal proceedings.

For many years after IIRIRA, DHS and most immigration judges treated aliens who entered the United States without admission as being eligible for discretionary detention under 8 U.S.C. § 1226(a), rather than mandatory detention under 8 U.S.C. § 1225(b)(2). *Yajure Hurtado*, 29 I. & N. Dec. at 225 n.6. Until this year, however, the Board had not issued any

precedential opinion on the appropriate detention authority for such individuals.

In July 2025, DHS “revisited its legal position on detention and release authorities,” and its component U.S. Immigration and Customs Enforcement (ICE) issued interim guidance that brought the Executive’s practices in line with the statute’s plain text. *See* App-118; App-125. Specifically, DHS concluded that all aliens who enter the country without being admitted are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and may not be released from ICE custody, except by parole under 8 U.S.C. § 1182(d)(5). *Id.* The Board of Immigration Appeals subsequently held the same in *Matter of Yajure Hurtado*. The Board concluded that § 1225(b)(2)’s mandatory detention regime applies to *all* aliens who entered the United States without inspection and admission:

Aliens ... who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an “admission.”

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

II. Factual Background and Procedural History

A. Petitioner illegally enters the United States without admission and is later encountered and placed in Section 240 Proceedings.

Petitioner Guerrero Orellana is a native and citizen of El Salvador who entered the United States at an unknown place and time and was not inspected by an immigration officer. App-085; App-086; App-133–134. Petitioner does not deny that he entered the country illegally, nor does he allege that he has been admitted into the United States. *See generally* App-051; App-134. He claims to have resided unlawfully in the United States for approximately ten years. *See* App-051; App-068; App-127. Petitioner concedes he is an “applicant for admission” under 8 U.S.C. § 1225(a)(1). *See* A017.

On September 18, 2025, U.S. Immigration and Customs Enforcement (“ICE”) conducted a warrantless arrest of Petitioner and detained him pursuant to the authority of 8 U.S.C. § 1225(b)(2). App-085–086. Also on September 18, 2025, ICE served Petitioner with a Notice to Appear in Section 240 proceedings, alleging that he is inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I), explaining he was “not [at the time of entry] admitted or paroled after inspection by an Immigration Officer.” App-073–076; App-086; *see* 8 U.S.C. § 1229(a); 8 C.F.R. § 239.1. ICE also served on Petitioner a Form I-200, titled “Warrant for Arrest of

Alien,” issued by an immigration officer authorized to serve “warrants of arrest for immigration violations.” *See* App-086; App-077. On September 22, 2025, ICE filed the Notice to Appear with the immigration court in Chelmsford, Massachusetts, formally commencing Section 240 proceedings. App-086; App-134; 8 C.F.R. § 1239.1(a). Petitioner’s first hearing in his removal proceedings was held on October 2, 2025. App-086; App-135.

Petitioner does not accede to removal but intends to seek discretionary cancellation of removal under 8 U.S.C. § 1229b(b) in his removal proceedings. *See* App-069; App-135. That provision allows the immigration court to “adjust to the status of an alien lawfully admitted for permanent residence” an otherwise inadmissible or deportable alien who makes various showings, including “exceptional and extremely unusual hardship” to a U.S.-citizen or lawful permanent resident spouse, parent, or child. 8 U.S.C. § 1229b(b)(1). In other words, in his removal proceedings, Petitioner will be seeking to become “admitted for permanent residence.” *Id.*

B. The district court grants a preliminary injunction.

Petitioner filed an individual petition for Writ of Habeas Corpus on September 18, 2025, and soon thereafter filed an amended petition and complaint under the Administrative Procedure Act (APA) on behalf of himself and a putative class. App-027–061. The amended petition

“petition”) generally asserts that the government is incorrectly detaining Petitioner and others like him without a bond hearing in violation of the INA and constitutional due process.

On October 3, 2025, the district court granted Petitioner’s individual motion for a preliminary injunction, ordering him released unless given a bond hearing. The court reasoned that Petitioner was likely to succeed on the merits of his statutory claim (asserted in Count One of his Amended Petition) that his detention without a bond hearing violates § 1226(a) and its associated regulations. A007-A008, A015, A026. According to the district court, Petitioner’s detention was governed by §1226(a), because, in the court’s view, ICE had detained Petitioner “on a warrant.” A015-A016. The court held Petitioner was not detained under § 1225(b)(2)(A) because he was not, in the court’s view, “‘seeking admission’ at the time of arrest.” A018. The court reasoned that to be “seeking admission” for purposes of § 1225(b)(2)(A), an alien must be presently seeking lawful entry at that time rather than seeking to remain in the United States. A017-A018. Thus, the court accepted Petitioner’s view that only those who are “seeking admission at a port of entry or by crossing the border” are subject to § 1225(b)(2)(A). A012.

The government appealed from the preliminary injunction. App-131.

C. The district court certifies a class.

Petitioner also moved to certify a class of individuals who were encountered after entering illegally. On October 30, 2025, the Court granted Petitioner’s motion and certified a class under Federal Rule of Civil Procedure 23 for purposes of the statutory claim in Count One. A066-A067.

In certifying a class, the district court rejected the government’s arguments that Petitioner’s habeas challenge to his immigration detention is not suitable for class treatment. A041-A048. The district court next determined that the requirements of Rule 23(a) were met and that a class could be certified under Rule 23(b)(2). A049–65. The court ruled that the question common to the class was whether § 1225(b)(2)(A) authorizes mandatory detention without a bond hearing for aliens who entered the United States without inspection, were arrested while residing inside the country, and who are not subject to other mandatory detention authorities under § 1225(b)(1) and § 1226(c). A052. It determined that “the existence of a warrant or the warrant’s language does not govern the analysis” of whether an alien is detained under § 1225(b)(2)(A) or § 1226(a). A054. The district court rejected the government’s arguments that Rule 23(b)(2)’s requirements for an injunctive-relief class were not satisfied because of various limitations on class-wide relief in habeas challenges to immigration

detention. A060-A065.

D. The district court enters a declaratory judgment on the statutory claim in favor of Petitioner and the class.

The parties then filed cross-motions for partial summary judgment on the same statutory claim in Count One of the Petition on which the district court had entered preliminary relief for Petitioner and had certified a class. The court granted Petitioner’s motion on December 19, 2025, and entered a declaratory judgment declaring that “Defendants’ policy of subjecting members of the certified class to detention under 8 U.S.C. § 1225(b)(2)(A) without consideration for bond and a custody redetermination (*i.e.*, bond) hearing is unlawful and violates the Immigration and Nationality Act and its regulations”; and that class members are “not subject to detention under 8 U.S.C. § 1225(b)(2)” and “are subject to detention under 8 U.S.C. § 1226(a), including access to consideration for release on bond and/or conditions before immigration officers and Immigration Judges.” A094-A095.

In reaching its ruling on the merits of the statutory claim, the district court relied on the same reasoning as in its prior rulings, concluding that § 1225(b)(2)(A) “only authorizes the detention of noncitizens arriving at a port of entry or crossing the border.” A082-A083. The court entered this declaratory relief on behalf of Petitioner and a slightly modified class,

defined as:

All people who are arrested or detained in Massachusetts, or are detained in a geographical area over which, as of September 22, 2025, an Immigration Court located in Massachusetts is the administrative control court, or who are otherwise subject to the jurisdiction of an Immigration Court located in Massachusetts, where:

- (a) the person is not in any Expedited Removal process under 8 U.S.C. § 1225(b)(1), does not have an Expedited Removal order under 8 U.S.C. § 1225(b)(1), and is not currently in proceedings before an immigration judge due to having been found to have a credible fear of persecution under 8 U.S.C. § 1225(b)(1)(B)(ii);
- (b) for the person's most recent entry into the United States, the government has not alleged that the person was admitted into the United States and has not alleged that person was paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A) at the time of entry or after continuous detention upon arrival;
- (c) the person does not meet the criteria for mandatory detention pursuant to 8 U.S.C. § 1226(c);
- (d) the person is not subject to post-final order detention under 8 U.S.C. § 1231; and
- (e) the person is not a person whose most recent arrest occurred at the border while they were arriving in the United States and has been continuously detained thereafter.

A093-A094.

The Court certified its grant of summary judgment on Count One as final under Federal Rule of Civil Procedure 54(b) and entered partial final

judgment for Petitioner and the Class on that Count. A089-A091; A100-A105. The judgment included requirements for providing potential class members with notice of the declaratory judgment. *See* A102-A103. After the district court made slight modifications to those notice requirements, *see* App-159, the government appealed, *see* App-160.

SUMMARY OF ARGUMENT

The INA’s plain language requires the detention of aliens, like Petitioner and class members, who are present in the United States without admission. The district court’s contrary conclusion flouts the statute’s text and subverts congressional intent. The Court should reverse.

A. 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 or the alien’s distance from the border when apprehended.

B. The phrase “seeking admission” in § 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 required. 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 in § 1225(b)(2)(A); 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*, 590 U.S. at 223.

Even accepting the district court’s reading, Petitioner is still “seeking admission” by virtue of forgoing the option to depart the United States under § 1225(a)(4) and pursuing immigration relief with the ultimate objective of obtaining admission.

C. The Government’s reading of § 1225(b)(2) does not render § 1226(c) superfluous. 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 § 1225(b)(2)—for example, admitted aliens who are deportable. The mere fact that the provisions overlap is not a basis for rewriting § 1225(b)(2)’s clear text. Even as to the areas of overlap,

§ 1226(c) does considerable independent work by generally prohibiting the Executive from granting parole to those aliens it covers.

D. 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.

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

STANDARD OF REVIEW

Summary-judgment decisions and grants or denials of habeas petitions are reviewed *de novo*. *MacRae v. Mattos*, 106 F.4th 122, 132 (1st Cir. 2024); *Sanchez v. Roden*, 753 F.3d 279, 293 (1st Cir. 2014).

ARGUMENT

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

Under the plain language of § 1225(b)(2), DHS is required to detain all aliens who are present in the United States without admission and are subject to Section 240 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 holding that § 1225(b)(2) applies only to aliens “arriving at a port of entry or crossing the border” and not those “who entered the United States without inspection and are later apprehended” has no textual basis and subverts Congress’s manifest purposes in adopting § 1225(b)(2)(A). *See* A082.

A. The plain language of Section 1225(b)(2)(A) 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 just physical entry, but “lawful entry ... after inspection” by immigration authorities. 8 U.S.C. § 1101(a)(13)(A). 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.

In turn, § 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. § 1225(b)(2)(A) (emphasis added). 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 § 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. 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. § 1225(b)(2)(A); *see also, e.g., Buenrostro-Mendez v. Bondi*, --- F.4th ---, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026); *Montoya v. Holt*, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025); *Xiaoquan Chen v. Almodovar*, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Mejia Olalde v. Noem*, 2025 WL 3131942, at *2-3 (E.D. Mo. Nov. 10, 2025).

Petitioner falls squarely within the statute’s definition. He was “present in the United States,” there is no dispute that he has “not been admitted,” and he does not fall within an exception to § 1225(b)(2)(A). 8 U.S.C. § 1225(a), (b)(2)(B); *supra*, p. 17. As the district court acknowledged, Petitioner “does not dispute that he is an ‘applicant for admission’ as defined in the statute.” A017. Moreover, Petitioner cannot—and did not—establish that he was “clearly and beyond a doubt entitled to be admitted” at the time of inspection. 8 U.S.C. § 1225(b)(2)(A); *supra*, p. 17. Therefore, the statute commands that Petitioner and those like him “shall be detained for a proceeding under [8 U.S.C. § 1229a].” 8 U.S.C. § 1225(b)(2)(A).

B. The district court’s decision disregards the clear text of Section 1225(b)(2)(A).

Despite the clear language of § 1225(b)(2), the district court held that Petitioner’s and the class’s detention is governed by § 1226(a). It reasoned that “a noncitizen apprehended while residing in the United States does not satisfy the condition that he be ‘seeking admission.’” A017; *see also* A082. Instead, the court held that the phrase “seeking admission” in § 1225(b)(2)(A) does not apply to all “applicants for admission” but only to those who are engaged in some kind of “continuing” or “present tense action” toward gaining admission at the time they are arrested by presenting themselves at a port of entry or crossing the border. A017–A019; *see* A043–

AO45. That is wrong, as the Fifth Circuit correctly held. *Buenrostro-Mendez*, 2026 WL 323330, at *4. This Court should reverse.

1. The phrase “seeking admission” does not narrow the scope of §1225(b)(2)(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 show that being an “applicant for admission” is a means of “seeking admission.” In other words, every “applicant for admission” is inherently and necessarily “seeking admission.” No additional affirmative step is necessary.

a. Section 1225(a) provides that “[a]ll aliens ... who are applicants for admission *or otherwise* seeking admission or readmission ... shall be inspected.” 8 U.S.C. § 1225(a)(3) (emphasis added). The word “[o]therwise” means “in a different way or manner[.]” *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (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”). Being an “applicant for admission” is thus a particular “way or manner” of seeking admission, so that “an ‘applicant for admission’ is necessarily someone who is ‘seeking admission.’” *Buenrostro-Mendez*, 2026 WL 323330, at *5 (“The use of ‘or otherwise’ suggests that ‘applicants for admission’ are a subset of those ‘seeking admission.’”); *see also Montoya v. Holt*, 2025 WL 3733302, at *8-9 (W.D. Okla. Dec. 26, 2025) (“The word ‘otherwise’ establishes that ‘aliens ... seeking admission’ is the category to which ‘applicants for admission’ belong.”); *Mejia Olalde v. Noem*, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025).

Other provisions of § 1225(a) confirm this understanding. Section 1225(a)(4) states that “[a]n alien applying for admission may ... be permitted to withdraw the application for admission and depart immediately from the United States.” 8 U.S.C. § 1225(a)(4). “A plain language reading of the phrase ‘*applicant* for admission’ alongside the phrase ‘*application* for admission’ lends the inference that the ‘application’ to be ‘withdrawn[]’ is that of the ‘applicant for admission.’” *Montoya v. Holt*, 2025 WL 3733302, at *10 (W.D. Okla. Dec. 26, 2025). “[I]n turn,” that “lends the straightforward inference that ‘applicants for admission’ [are] apply[ing] for

admission until taking the actions prescribed by § 1225(a)(4).” *Id.* That makes sense: Because an alien’s status as an “applicant for admission” turns on his presence “in the United States,” 8 U.S.C. § 1225(a)(1), “depart[ing] ... from the United States” would necessarily “withdraw” status as an “applicant for admission,” *id.* § 1225(a)(4). Thus, an alien is “*applying* for admission” as long as he is an “applicant for admission.”

Next, § 1225(a)(5) states that “[a]n applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the *applicant* in *seeking admission* to the United States ...” 8 U.S.C. § 1225(a)(5) (emphasis added). The statute thus explicitly recognizes that an applicant for admission is seeking an admission to the United States the reasons for which the immigration officer is authorized to examine under oath. “Th[is] language strongly suggests that those who are applicants for admission are ‘seeking admission.’” *Buenrostro-Mendez*, 2026 WL 323330, at *6.

“Seeking admission” thus includes aliens who “entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of section 235(a)(1) of the Act.” *Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 n.6 (BIA 2012) (emphases omitted). As a result, “many people who are not *actually* requesting

permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws.” *Id.* at 743 (emphasis in original). For example, an alien who previously unlawfully entered the United States and is never admitted, departs, and subsequently submits a literal application for admission to the United States—*e.g.*, obtains the appropriate travel documents, such as a visa, and presents at a port of entry for inspection—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 statute’s terms confirms that being an ‘applicant for admission’ is not a condition independent from ‘seeking admission.’” *Buenrostro-Mendez*, 2026 WL 323330, at *4. One may “seek” something without “applying” for it—for example, one who is “seeking” happiness is not “applying” for it. But one *applying* for something is necessarily *seeking* it. Compare Webster’s New World College Dictionary 69 (4th ed.) (“apply” means “To make a formal request (*to* someone *for* something)”), *with id.* at 1299 (“seek” means “to request, ask for”); accord *Mejia Olalde*, 2025 WL 3131942, at *3 (“To ‘seek’ is a synonym of to ‘apply’ for.”). That is especially true when the object is “admission.” Thus, 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. *Buenrostro-Mendez*, 2026 WL 323330, at *4 (adopting same argument); *see also Montoya*, 2025 WL 3733302, at *8, *10 (“What individual is ‘applying’ for a given legal status without ‘seeking’ such status?”).

All of this confirms that neither the duration of an alien’s unlawful presence in the United States nor his distance from the border when apprehended alters the legal reality that an “applicant for admission” is “seeking admission.” “Congress knows how to limit the scope” of the INA “geographically and temporally when it wants to.” *Mejia Olalde*, 2025 WL 3131942, at *4. For example, § 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, § 1225(a)(1)'s inclusion of *both* aliens “arriving” and those “present in the United States” confirms that *all* aliens who are not admitted are “applicants for admission,” regardless of the length of their presence in the country.

b. This interpretation does not render the phrase “seeking admission” redundant in § 1225(b)(2)(A), contrary to the district court’s holding. A019-A020. The structure of § 1225(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 § 1225(a)(1). No portion of the statute is redundant.

Even if it were otherwise, the canon against surplusage “is not a silver bullet.” *Rimini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019). “Redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication.” *Barton*, 590 U.S. at 239. Thus, “[t]he Court has often recognized: Sometimes the better overall reading of a statute contains some redundancy.” *Id.* (quoting *Rimini St., Inc.*, 586 U.S. at 346) (internal quotations omitted). For that reason, “the surplusage canon ... must be applied with statutory context in mind,” *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017), and “redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text,” *Barton*, 590 U.S. at 239.

Those principles apply with full force here. Under a straightforward reading of the statute, being an “applicant for admission” is “seeking admission.” Even if that reading produced some redundancy in

§ 1225(b)(2)(A), that is “not a license to rewrite” § 1225 “contrary to its text.” *Barton*, 590 U.S. at 239; *see also Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) (“Th[e] principle [that drafters 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*, pp. 46-48.

c. To be sure, the Government previously operated under a different application of § 1225(b)(2)(A), such that aliens present in the United States who had entered without admission could be detained under § 1226(a). *See* A022-23. But “authority granted by Congress cannot evaporate through lack of administrative exercise.” *Bankamerica Corp. v. United States*, 462 U.S. 122, 131 (1983). That is especially true where, as here, neither the former INS nor the Department wholly “fail[ed] ... to exercise the power it now claims.” *Id.* Prior administrations still detained the aliens subject to § 1225(b)(2)(A)—just under § 1226(a). And those administrations interpreted and applied § 1225(b)(2)(A) to mandate detention of *some* aliens—just a subset of all those subject to § 1225(b)(2)(A). In any event, the Supreme Court has not hesitated to set aside longstanding agency interpretations and practices, including in the context of IIRIRA

itself, when the agency practice was inconsistent with the statute. *See Pereira v. Sessions*, 585 U.S. 198, 204-05 (2018) (rejecting interpretation of INA consistent with 21-year government practice). As the Fifth Circuit recognized, “[y]ears of consistent practice cannot vindicate an interpretation that is inconsistent with a statute’s plain text.” *Buenrostro-Mendez*, 2026 WL 323330, at *8. “That prior Administrations decided to use less than their full enforcement authority under § 1225(b)(2)(A) does not mean they lacked the authority to do more.” *Id.*

The same essential problem faces the district court’s reliance on post-enactment regulations and agency practice. The court cited to a 1997 interim rule stating that “[d]espite being applicants for admission, aliens who are present without having been admitted or paroled ... will be eligible for bond.” 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). But an agency’s interpretation of a statute may inform the interpretive endeavor only when it is “issued roughly contemporaneously with enactment of the statute *and remained consistent over time.*” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 370 (2024) (emphasis added). Here, the prefatory language just quoted “concedes that unadmitted aliens fell literally within the scope of § 1225.” *Buenrostro-Mendez*, 2026 WL 323330, at *8. And consistent with that acknowledgment, regulations promulgated in 1997 provide for mandatory

detention consistent with Respondents' interpretation:

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

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

Finally, the district court relied on a single sentence from a committee report, stating that “Section 236(a) restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see* A025. Of course, “legislative history [may] never ... be used to ‘muddy’ the meaning of ‘clear statutory language.’” *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 436 (2019). Legislative history is especially weak where there are competing or conflicting sources. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). Here, the same committee report states that Congress was replacing the concept of “entry” with “admission” to dispense with the old

regime under which “illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings”—including a bond hearing—“that are not available to aliens who present themselves for inspection at a port of entry.” H.R. Rep. 104-469, pt. 1, at 225. That purpose is incompatible with Petitioner’s expansive interpretation of § 1226 as simply “restat[ing]” the prior regime. A025. At a minimum, the legislative history is “murky” and “ambiguous.” *Exxon Mobil*, 545 U.S. at 568.

Besides, if § 1226 only restated the pre-existing authority, that would *undermine* the lower court’s holding. After all, § 1226(a)’s predecessor statute—§ 1252(a)—provided for the arrest and detention of aliens “[p]ending a determination of *deportability*.” 8 U.S.C. § 1252(a) (1994) (emphasis added). Reading § 1226(a) to apply only to aliens removable on a ground of “deportability” means that it *does not* apply to aliens, like Petitioner, who were never admitted to the United States. That directly *contradicts* the district court’s reading.

2. Alternatively, Petitioner is “seeking admission” under the district court’s reading.

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.” Petitioner fits

squarely within this category.

Section 1225(b)(2)(A) applies to an alien who is present in the United States without admission, even for years, and 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 attempt 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," 8 U.S.C. § 1229a(c)(2)(A), (c)(4)—is plainly "endeavor[ing] to obtain" admission to the United States. American Heritage Dictionary, *supra*, at 1174. Thus, Petitioner and others like him,

who are not voluntarily leaving or subjecting themselves to removal, are seeking admission.

Petitioner not only seeks to remain in the United States, but he intends to apply for cancellation of removal in his Section 240 proceedings. A018. If that application is successful, it will allow him to adjust his status to that of an alien “lawfully admitted for permanent residence.” 8 U.S.C. § 1229b(b)(1). The district court acknowledged that “[a] grant of cancellation of removal would result in his adjustment of status to permanent residence,” but thought that his application for that relief cannot constitute “seeking admission” because it would not mean his “entry into the country” was “lawful.” A018; *see* 8 U.S.C. § 1101(a)(13)(A). But a grant of lawful permanent resident (LPR) status *is admission*. *See* 8 U.S.C. § 1229b(b)(1) (providing that adjustment of status under the provision is to an alien “lawfully *admitted* for permanent residence”) (emphasis added); *id.* § 1229b(b)(3) (providing that, for an alien whose status is adjusted to that of an LPR under § 1229b(b)(1), “the Attorney General shall record the alien’s lawful *admission* for permanent residence as of the date of the Attorney General’s cancellation of removal”) (emphasis added); *id.* § 1255(a)-(b) (same, as to aliens seeking adjustment to LPR status under 8 U.S.C. § 1255(b)); *Azumah v. United States Citizenship & Immigr. Servs.*, 107 F.4th

272, 274 (4th Cir. 2024) (for purposes of eligibility for naturalization, an alien “is regarded as having been ‘lawfully’ *admitted* for permanent resident status ... if he was legally entitled to that status when it was granted.”) (emphasis added); *Mejia-Orellana v. Gonzales*, 502 F.3d 13, 16 (1st Cir. 2007) (referring to being “lawfully admitted for permanent residence” as an “admission”). Under any plausible conception of “seeking admission,” an alien who seeks immigration relief that is the first step on the path to admission is “seeking admission.”

C. Section 1226 does not support the district court’s reading.

The district court based its interpretation in part on its view that the Government’s interpretation of § 1225(b)(2)(A) would render superfluous portions of § 1226(c), which contains a separate mandatory detention provision for certain aliens. That, too, is wrong. Although § 1226(c) and § 1225(b)(2) overlap for some aliens, each provision has independent effect. Mere overlap is not a basis for rewriting unambiguous statutory text.

1. As a threshold matter, the Government’s interpretation of § 1225(b)(2)(A) does not render superfluous the discretionary detention authority in § 1226(a). 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* “applicants for admission” subject to § 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 Section 240 removal proceedings. For example, the detention of any of the millions of aliens who have overstayed their visas is governed by § 1226(a), because those aliens (unlike Petitioner and the class) *were* admitted to the United States. *See Buenrostro-Mendez*, 2026 WL 323330, at *7 (“the government’s interpretation does not render portions of § 1226 superfluous”).

2. Likewise, the Government’s reading of § 1225(b)(2)(A) does not render § 1226(c) superfluous. That provision 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).

Most obvious, § 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). By contrast, § 1225(b)(2) has no application to admitted aliens. In addition, § 1226(c) differs from § 1225(b)(2) by

narrowing the circumstances under which aliens may be *released* from mandatory detention. Recall that, for aliens subject to mandatory detention under § 1225(b)(2), IIRIRA allows the 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)(A); *supra*, p. 13. Section 1226(c)(1) largely takes that option of release from detention off the table for aliens who have also committed the offenses or engaged in the conduct specified in § 1226(c)(1)(A)-(E). As to those aliens, § 1226(c) authorizes their release 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); *see Buenrostro-Mendez*, 2026 WL 323330, at *7 & n.12 (noting that § 1226(c)(4) “eliminates the option of parole for those to whom it applies”).

The district court’s reliance on the Laken Riley Act is equally flawed. *See* A020. To be sure, the Laken Riley Act’s application to aliens who are inadmissible under § 1182(a)(6)(A)—for being “present ... without being admitted or paroled”—overlaps with § 1225(b)(2)(A). But again, “[r]edundancies are common in statutory drafting,” and are “not a license to rewrite or eviscerate another portion of the statute contrary to its text.”

Barton, 590 U.S. at 239; see *Mejia Olalde*, 2025 WL 3131942, at *4 (“even assuming there were surplusage, that cannot trump the plain meaning of [Section] 1225(b)(2)”). 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. And it is especially weak where, as here, there will be overlap under *any* possible reading of the statute. See *Microsoft Corp. v. I4I Ltd. P’ship*, 564 U.S. 91, 106 (2011) (“[T]he canon against superfluity assists only where a competing interpretation gives effect to every clause and word of a statute”) (internal quotation omitted). After all, even if § 1225(b)(2)(A)’s detention requirement applied only to aliens arriving at the border (and not also those present in the United States, as Petitioner argues), this portion of the Laken Riley Act would apply to those aliens, too, as long as they met the offense criteria. See 8 U.S.C. § 1226(c)(1)(E)(ii). Some redundancy between the two groups is unavoidable.

Moreover, the Laken Riley Act was enacted against a backdrop in which the Government was treating aliens like Petitioner as bond-eligible. See *supra*, pp. 15-16, 36-37. Thus, “the [Laken Riley] Act did have a substantial effect when passed insofar as it required the detention without bond or parole of certain aliens the administration was *then* treating as bond-

eligible.” *Buenrostro-Mendez*, 2026 WL 323330, at *7 (emphasis added). The Act thus reflects a “congressional effort to be doubly sure,” *Barton*, 590 U.S. at 239, that unadmitted criminal aliens are not released into the country through any method. In any event, § 1226(c) still does independent work, despite any overlap, by limiting the Executive’s ability to release from detention the specified aliens on parole. *Supra*, pp. 14-15, 44.

D. The district court’s interpretation subverts congressional intent.

The district court’s reading is not only textually baseless, but also subverts IIRIRA’s express goal of eliminating preferential treatment for aliens who enter the country unlawfully. *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; *supra*, pp. 8-9. The lower court’s

interpretation would restore the regime Congress sought to discard: 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 but also “better honors [the] predominant goal in the enactment of IIRIRA.” *Buenrostro-Mendez*, 2026 WL 323330, at *9. The government’s interpretation likewise promotes the application of the “entry fiction” to all aliens who have not been admitted and avoids giving favorable treatment to aliens who enter without inspection. Under the entry-fiction doctrine, all “aliens who arrive at ports of entry ... are treated for due process purposes as if stopped at the border,” including aliens “paroled elsewhere in the country for years pending removal” who have developed significant ties to the country. *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). For example, *Kaplan*

v. Tod, 267 U.S. 228 (1925), held that an alien who was paroled for nine years into the United States was still “regarded as stopped at the boundary line” and “had gained no foothold in the United States.” *Id.* at 230; *see also Mezei*, 345 U.S. at 214-15. The “entry fiction” thus prevents favorable treatment of aliens who have not been admitted—including those who have “entered the country clandestinely.” *Yamataya v. Fisher*, 189 U.S. 86, 100 (1903). IIRIRA sought to implement that same principle with respect to detention. The Government’s reading is true to that purpose; the district court’s reading subverts it.

E. The Supreme Court’s decision in *Jennings* supports the Government’s interpretation.

The Government’s interpretation is also 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 §§ 1225(b) and 1226. 583 U.S. at 292. The Court held that neither provision is so limited. *Id.* In reaching that holding, the Court did not—and did not need to—resolve the precise groups of aliens subject to § 1225(b)(2) or § 1226. *See Buenrostro-Mendez*, 2026 WL 323330, at *7 (explaining that the language on which Petitioner relies “is part of a general description” and is “[a]t most ... dicta”). Indeed, the district court here acknowledged that *Jennings*

“did not directly address the interplay between § 1225(b)(2)(A) and § 1226.” A022. Even so, consistent with the Government’s reading, the Court recognized in its description of § 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).” *Jennings*, 583 U.S. at 287; accord *Buenrostro-Mendez*, 2026 WL 323330, at *8.

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

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

583 U.S. at 289 (cited in part at A022); *see also* 583 U.S. at 288 (characterizing § 1226 as applying to aliens “once inside the United States”). But when describing the scope of § 1226 in particular, *Jennings* refers to aliens “present in the country” who are removable under 8 U.S.C. § 1227(a)—a provision that applies *only* to admitted aliens. *See* 583 U.S. at 288. In any case, “[t]he 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)

(quotation omitted).

The Government’s interpretation is perfectly consistent with that understanding: it recognizes that § 1226 is the exclusive source of detention authority for the substantial category of aliens who are were admitted into the United States but are now deportable. *Supra*, pp. 42-44. Moreover, nothing in the quoted language from *Jennings* suggests that § 1226 is the *sole* detention authority for *every* “alien[] already in the country,” and the passage’s use of the word “certain” conveys the opposite. At a minimum, the quoted language is ambiguous and such uncertain dicta is insufficient to displace the statute’s text and the manifest congressional purpose; that is especially so, as no part of the holding in *Jennings* required resolution of the precise scope of § 1225(b) and § 1226. *See Webster v. Fall*, 266 U.S. 507, 511 (1925) (“Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.”).

* * *

For these reasons, the Court should reverse and vacate the district court’s grant of preliminary relief to Petitioner and its declaratory judgment concerning the statutory authority governing the detention of Petitioner and

the class.⁵

CONCLUSION

The Court should thus reverse and vacate the preliminary injunction and partial final judgment.

⁵ The Government does not independently challenge on appeal the district court's class certification ruling or the scope of relief. However, the Government preserves for further review its position that 8 U.S.C. § 1252(f)(1) prohibits the class-wide declaratory judgment entered by the district court. The Government acknowledges that its position on this issue is likely foreclosed by this Court's holding in *Brito v. Garland*, 22 F. 4th 240, 252 (1st Cir. 2021).

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General

YAAKOV M. ROTH
*Principal Deputy Assistant
Attorney General*

DREW C. ENSIGN
*Deputy Assistant Attorney
General*

AUGUST FLENTJE
Special Counsel

BENJAMIN HAYES
*Senior Counsel to the Assistant
Attorney General*

s/ Katherine J. Shinnars
KATHERINE J. SHINNERS
Senior Litigation Counsel
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, DC 20044
TEL: (202) 598-8259

February 17, 2026

*Counsel for Respondents-
Appellants*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the CM/ECF system on February 17, 2026.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished via the CM/ECF system or by the preference indicated by the party on PACER's service list.

s/ Katherine J. Shinnors
KATHERINE J. SHINNERS
Senior Litigation Counsel
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, DC 20044
TEL: (202) 598-8259

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 10,869 words, excluding the portions of the brief exempted by Federal Rule of Appellate Procedure 32(f). I further certify that this brief complies with the typeface and typestyle requirements of Federal Rule of Appellate Procedure 32(a)(5) and (a)(6) because it has been prepared in proportionally spaced 14-point Georgia type.

s/ Katherine J. Shinnors
Katherine J. Shinnors
Senior Litigation Counsel
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, DC 20044
TEL: (202) 598-8259

ADDENDUM

TABLE OF CONTENTS

Document	Page
Memorandum and Order Granting Petitioner's Motion for Preliminary Injunction (Dkt. No. 54)	A001
Memorandum and Order Granting Class Certification (Dkt. No. 81)	A031
Memorandum and Order Granting Petitioner's Motion for Partial Summary Judgment (Dkt. No. 112)	A069
Partial Final Judgment (Dkt. No. 113)	A100
8 U.S.C. § 1225	A106
8 U.S.C. § 1226	A116
8 C.F.R. § 235.3(b)(1)	A120

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

<hr/>)
JOSE ARNULFO GUERRERO ORELLANA,))
on behalf of himself and others))
similarly situated,))
))
Petitioner-Plaintiff,))
))
v.	)	Civil Action
	)	No. 25-cv-12664-PBS
ANTONE MONIZ, Superintendent,))
Plymouth County Correctional))
Facility, et al.,))
))
Respondents-Defendants.))
<hr/>)

MEMORANDUM AND ORDER

October 3, 2025

Saris, J.

INTRODUCTION

Petitioner-Plaintiff Jose Arnulfo Guerrero Orellana was detained by U.S. Immigration and Customs Enforcement ("ICE") on September 18, 2025. The U.S. Department of Homeland Security ("DHS") subsequently initiated removal proceedings against Guerrero Orellana on the basis that he is present in the United States without being admitted or paroled. Before his arrest, Guerrero Orellana resided in Massachusetts with his wife and their one-year-old U.S. citizen daughter. He has worked to support himself and his family, including as a landscaper, and has no

criminal record. He intends to apply for cancellation of removal during his removal proceedings.

Despite Guerrero Orellana's longstanding residence in the United States and his lack of criminal history, DHS has asserted that he -- and all other noncitizens apprehended while residing in the United States who were not admitted or paroled and who are not subject to expedited removal -- must be detained without a bond hearing throughout their removal proceedings as "applicants for admission" under 8 U.S.C. § 1225(b)(2)(A).¹ The Board of Immigration Appeals ("BIA") adopted this interpretation of the statute in a precedential decision issued on September 5, 2025. See Matter of Hurtado, 29 I. & N. Dec. 216, 220 (B.I.A. 2025).

Guerrero Orellana filed this petition for writ of habeas corpus and putative class action complaint to challenge his detention without a bond hearing and the government's policy of subjecting this group of noncitizens to mandatory detention. He argues that his detention without a bond hearing is unlawful for three reasons: 1) the government has misclassified him as subject to mandatory detention under § 1225(b)(2)(A) when he is actually subject to discretionary detention under § 1226(a); 2) his detention violates his constitutional right to due process; and 3) the BIA's decision in Matter of Hurtado is contrary to law and

¹ The Court uses the terms "noncitizen" and "alien" interchangeably.

arbitrary and capricious in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq. Guerrero Orellana now moves for a preliminary injunction requiring the government to provide him with a bond hearing in immigration court. The government opposes the motion.

After hearing, the Court **ALLOWS** Guerrero Orellana's motion for a preliminary injunction (Dkt. 14).

BACKGROUND

The following facts are undisputed. Guerrero Orellana, a citizen of El Salvador, entered the United States without inspection in June 2013. He lives in Massachusetts with his wife and their one-year-old U.S. citizen daughter. He has no criminal record and has worked to support himself and his family, most recently as a landscaper.

On September 18, 2025, Guerrero Orellana was taken into ICE custody during a traffic stop. Shortly after his arrest, DHS served Guerrero Orellana with a Form I-200 arrest warrant. The warrant is addressed to "[a]ny immigration officer authorized pursuant to section 236 [8 U.S.C. § 1226] and 287 [8 U.S.C. § 1357] of the Immigration and Nationality Act ["INA"] . . . to serve warrants of arrest for immigration violations." Dkt. 16-1 at 6. DHS also served Guerrero Orellana with a notice to appear charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for being present in the United States without admission or parole and under 8 U.S.C.

§ 1182(a)(7)(A)(i) for lacking valid entry documents. Guerrero Orellana intends to apply for cancellation of removal during his removal proceedings.

Guerrero Orellana has been detained since his arrest at the Plymouth County Correctional Facility in Massachusetts. The government asserts that it is detaining Guerrero Orellana as an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A). Based on the government's position, Guerrero Orellana is subject to mandatory detention and ineligible for a bond hearing before an immigration judge under the BIA's decision in Matter of Hurtado. Because of Guerrero Orellana's categorical ineligibility for release under BIA precedent, he has not requested a bond hearing.

LEGAL STANDARD

"A preliminary injunction is an extraordinary remedy never awarded as of right." Sosa v. Mass. Dep't of Corr., 80 F.4th 15, 25 (1st Cir. 2023) (quoting Me. Forest Prods. Council v. Cormier, 51 F.4th 1, 5 (1st Cir. 2022)). To secure a preliminary injunction, the moving party "'must establish' the following four factors: 'that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.'" Id. (quoting Dist. 4 Lodge of the Int'l Ass'n of Machinists Loc. Lodge 207 v. Raimondo, 40 F.4th 36, 39 (1st Cir. 2022)). The moving party's likelihood of success on

the merits is “the ‘sine qua non’ for preliminary injunctive relief.” Cormier, 51 F.4th at 5 (quoting Ryan v. U.S. Immigr. & Customs Enf’t, 974 F.3d 9, 18 (1st Cir. 2020)).

DISCUSSION

I. Likelihood of Success on the Merits

The Court begins with Guerrero Orellana’s likelihood of success on the merits. The Court first describes the statutory provisions in the INA that undergird the parties’ dispute over the lawfulness of Guerrero Orellana’s detention without a bond hearing. The Court then determines that Guerrero Orellana has shown that he is likely to prevail in establishing that his detention is unlawful.

A. Statutory Framework for Detention During Removal Proceedings

The crux of this case is a question of statutory interpretation involving the interplay between 8 U.S.C. §§ 1225 and 1226. The former provision establishes procedures for inspection of an “applicant for admission,” that is, a noncitizen “present in the United States who has not been admitted or who arrives in the United States.” 8 U.S.C. § 1225(a)(1). After inspection by an immigration officer, certain applicants for admission who are deemed inadmissible are subject to expedited removal, unless they express a fear of persecution or an intent to apply for asylum. See id. § 1225(b)(1)(A)(i); see also Dep’t of

Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 108-11 (2020) (describing expedited removal). Otherwise, § 1225(b)(2)(a) provides that “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” removal proceedings. 8 U.S.C. § 1225(b)(2)(A). A noncitizen detained under this provision may be paroled “for urgent humanitarian reasons or significant public benefit.” Id. § 1182(d)(5)(A); see Jennings v. Rodriguez, 583 U.S. 281, 300 (2018). In all other cases where § 1225(b)(2)(A) applies, the provision “mandate[s] detention of applicants for admission until [removal] proceedings have concluded.” Jennings, 583 U.S. at 297.

Section 1226 permits the government “to detain certain aliens already in the country pending the outcome of removal proceedings.” Id. at 289. Under § 1226(a), “[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.” 8 U.S.C. § 1226(a). The government then “may continue to detain the arrested” noncitizen during removal proceedings or “may release” the noncitizen on bond or conditional parole. Id. § 1226(a)(1)-(2). A noncitizen whom the government decides to detain under this discretionary provision may seek review of that decision via a bond (i.e., custody redetermination) hearing before an immigration

judge. See 8 C.F.R. § 236.1(d)(1); Johnson v. Guzman Chavez, 594 U.S. 523, 527 (2021); Hernandez-Lara v. Lyons, 10 F.4th 19, 26 (1st Cir. 2021). At that hearing, the immigration judge must release the noncitizen unless the government establishes either “by clear and convincing evidence that [he] poses a danger to the community” or “by a preponderance of the evidence that [he] poses a flight risk.” Hernandez-Lara, 10 F.4th at 41.

Section 1226(c), however, “‘carves out a statutory category of aliens who may not be released’ during removal proceedings, outside of certain limited circumstances.” Reid v. Donelan, 17 F.4th 1, 4 (1st Cir. 2021) (quoting Jennings, 583 U.S. at 289); see 8 U.S.C. § 1226(a) (authorizing discretionary detention “[e]xcept as provided in subsection (c)”). This mandatory detention provision applies to noncitizens who are inadmissible or deportable on certain criminal or terrorist grounds. See Johnson, 594 U.S. at 527 n.2; Reid, 17 F.4th at 4.

B. Analysis

Guerrero Orellana argues that his detention without a bond hearing is unlawful for three reasons: 1) the government has misclassified him as subject to mandatory detention under § 1225(b)(2)(A) when he is actually subject to discretionary detention under § 1226(a); 2) his detention violates his constitutional right to due process; and 3) the BIA’s decision in Matter of Hurtado, which subjects him to mandatory detention under

§ 1225(b)(2)(A), is contrary to law and arbitrary and capricious in violation of the APA. The Court agrees with Guerrero Orellana's statutory argument that § 1225(b)(2)(A) does not authorize the government to detain him without a bond hearing and, thus, need not address Guerrero Orellana's remaining arguments.

1. *Jurisdiction*

The government raises a threshold contention that the Court lacks jurisdiction over Guerrero Orellana's claims. The government asserts that Guerrero Orellana's claims and his request for a preliminary injunction are "a collateral attack on his removal proceedings dressed up as a request for a bond hearing." Dkt. 46 at 16. Multiple provisions of the INA, the government continues, strip the Court of jurisdiction to adjudicate such a collateral attack on a noncitizen's removal proceedings.

The Court concludes that none of the jurisdiction-stripping provisions cited by the government apply to Guerrero Orellana's claims. The government first invokes 8 U.S.C. § 1252(b)(9), which provides as follows:

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or

nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9). Section 1252(b)(9)'s purpose is "to consolidate and channel review of all legal and factual questions that arise from the removal of an alien into the administrative process, with judicial review of those decisions vested exclusively in the courts of appeals." Aguilar v. U.S. Immigr. & Customs Enf't Div. of the Dep't of Homeland Sec., 510 F.3d 1, 9 (1st Cir. 2007). This provision does not, however, deprive district courts of jurisdiction over "claims that are independent of, or wholly collateral to, the removal process, or that bear only a remote or attenuated connection to the removal of an alien." Kong v. United States, 62 F.4th 608, 614 (1st Cir. 2023) (cleaned up).

The First Circuit has held that "[a]mong [the] 'collateral' claims" that § 1252(b)(9) does not bar are "claims seeking review of the legality of a [noncitizen]'s detention." Id. (quoting Aguilar, 510 F.3d at 11). Contrary to the government's argument, Guerrero Orellana's claims directly challenge the legality of his ongoing immigration detention without a bond hearing and are not a collateral attack on his removal proceedings. Nor does Guerrero Orellana "challeng[e] the decision to detain [him] in the first place." Jennings, 583 U.S. at 294 (plurality opinion). Section

§ 1252(b)(9) poses no obstacle to the Court's consideration of this lawsuit.

The same is true with regard to 8 U.S.C. § 1252(g). This provision states that:

[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

Id. § 1252(g). "Despite the seeming breadth of the statutory language, the Supreme Court has cautioned against reading th[is] provision to preclude jurisdiction over all claims related to removal." Kong, 62 F.4th at 612. Instead, § 1252(g) only bars "judicial review of the [government]'s discrete acts of commencing proceedings, adjudicating cases, and executing removal orders."

Id. (cleaned up). And as with § 1252(b)(9), the First Circuit has held that § 1252(g) does not strip courts of jurisdiction over "challenges to detentions where . . . a noncitizen does not attack the decision to execute the removal order." Id. at 617. Guerrero Orellana's suit raises a challenge to the legality of his ongoing detention without a bond hearing that does not directly implicate any decision to commence proceedings, adjudicate cases, or execute removal orders.

Finally, the government cites 8 U.S.C. § 1252(a)(2)(B)(ii), which precludes judicial review of “any . . . decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security.” Guerrero Orellana’s claims do not, however, challenge a discretionary decision by the government to detain him instead of releasing him. Instead, they “challenge the extent of the [government’s] authority under the . . . detention statute[s],” which “is not a matter of discretion.” Zadvydas v. Davis, 533 U.S. 678, 688 (2001).

2. *Scope of § 1225(b)(2)(A) and § 1226*

The Court now turns to the merits of Guerrero Orellana’s statutory argument.² The government does not contend that Guerrero

² Although the government contends in passing that Guerrero Orellana has failed to administratively exhaust his APA argument by not asking an immigration judge for a bond hearing, the government does not make this same contention in connection with Guerrero Orellana’s statutory argument. In any event, the Court waives any exhaustion requirement. See Anversa v. Partners Healthcare Sys., Inc., 835 F.3d 167, 176 (1st Cir. 2016) (“Where, as here, Congress has not mandated exhaustion, federal courts have some leeway to relax this requirement.”). The BIA made its position on the scope of § 1225(b)(2)(A) crystal clear in Matter of Hurtado such that “further agency proceedings would be futile,” Portela-Gonzalez v. Sec’y of the Navy, 109 F.3d 74, 78 (1st Cir. 1997), and, as discussed below, requiring Guerrero Orellana to exhaust administrative remedies would subject him to irreparable harm in the form of his ongoing detention, see Brito v. Garland, 22 F.4th 240, 255 (1st Cir. 2021) (noting that “exhaustion might not be required if” an individual is “challenging h[is] incarceration or

The Court does not resolve this dispute on a blank slate. At least six other judges in this district have rejected the government's argument regarding the scope of § 1225(b)(2)(A). See Morales v. Plymouth Cnty. Corr. Facility, No. 25-cv-12602 (D. Mass. Sep. 30, 2025), Dkt. 15 (Burroughs, J.); Inlago Tocagon v. Moniz, ___ F. Supp. 3d ___, ___ (D. Mass. 2025) [2025 WL 2778023, at *3] (Joun, J.); Sampiao v. Hyde, ___ F. Supp. 3d ___, ___ (D. Mass. 2025) [2025 WL 2607924, at *8] (Kobick, J.); Encarnacion v. Moniz, No. 25-cv-12237 (D. Mass. Sep. 5, 2025), Dkt. 16 at 5 (Sorokin, J.); Doe v. Moniz, ___ F. Supp. 3d ___, ___ (D. Mass. 2025) [2025 WL 2576819, at *5] (Talwani, J.); Romero v. Hyde, ___ F. Supp. 3d ___, ___ (D. Mass. 2025) [2025 WL 2403827, at *1] (Murphy, J.). But see Pena v. Hyde, No. 25-cv-11983, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025) (stating that "[t]he authority of ICE to detain aliens who are present in the country unlawfully derives from 8 U.S.C. § 1225" but not analyzing the relationship between § 1225 and § 1226). So has almost every other district court nationwide that has addressed this issue either on the merits or on a preliminary injunction. See, e.g., Rodriguez v. Bostock, ___ F. Supp. 3d ___, ___ (W.D. Wash. 2025) [2025 WL 2782499, at *27]; Lepe v. Andrews, ___ F. Supp. 3d ___, ___ (E.D. Cal. 2025) [2025 WL 2716910, at *9]; Hasan v. Crawford, ___ F. Supp. 3d ___, ___ (E.D. Va. 2025) [2025 WL 2682255, at *9]; Pablo Sequen v. Kaiser, ___ F. Supp. 3d ___, ___ (N.D. Cal. 2025) [2025 WL 2650637, at *7-8];

Jimenez v. FCI Berlin, Warden, __ F. Supp. 3d __, __ (D.N.H. 2025) [2025 WL 2639390, at *10]; Lopez-Campos v. Raycraft, __ F. Supp. 3d __, __ (E.D. Mich. 2025) [2025 WL 2496379, at *8]; Francisco T. v. Bondi, __ F. Supp. 3d __, __ (D. Minn. 2025) [2025 WL 2629839, at *3-4]; Lopez Benitez v. Francis, __ F. Supp. 3d __, __ (S.D.N.Y. 2025) [2025 WL 2371588, at *3]. But see Chavez v. Noem, __ F. Supp. 3d __, __ (S.D. Cal. 2025) [2025 WL 2730228, at *4-5].

Determining the relationship between § 1225(b)(2)(A) and § 1226 reduces to a question of statutory interpretation. When construing the meaning of a statute, courts “strive ‘to effectuate congressional intent.’” United States v. Freeman, 147 F.4th 1, 13 (1st Cir. 2025) (quoting City of Providence v. Barr, 954 F.3d 23, 37 (1st Cir. 2020)). The analysis “start[s] . . . with the text of the statute.” Bartenwerfer v. Buckley, 598 U.S. 69, 74 (2023) (quoting Van Buren v. United States, 593 U.S. 374, 381 (2021)). Courts “assume, absent sufficient indication to the contrary, that Congress intends the words in its enactments to carry ‘their ordinary, contemporary, common meaning.’” Pub. Int. Legal Found., Inc. v. Bellows, 92 F.4th 36, 45 (1st Cir. 2024) (quoting Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship, 507 U.S. 380, 388 (1993)). “[T]he words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” City of San Francisco v. EPA, 604 U.S. 334, 350 (2025) (quoting Utility Air Regul. Grp. v. EPA, 573 U.S. 302, 320 (2014)).

Courts also “read statutes, whenever possible, to give effect to every word and phrase” and “generally ought not to interpret statutes in a way that renders words or phrases either meaningless or superfluous.” City of Providence, 954 F.3d at 37 (quoting Narragansett Indian Tribe v. Rhode Island, 449 F.3d 16, 26 (1st Cir. 2006) (en banc)). Finally, while “[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority,” agency “interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute’s meaning.” Loper Bright Enters. v. Raimondo, 603 U.S. 369, 394, 412 (2024).

Under the plain language of the statutory provisions, Guerrero Orellana’s detention is governed by § 1226(a) rather than § 1225(b)(2)(A). As noted, § 1226(a) 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.” 8 U.S.C. § 1226(a). This provision, which imposes discretionary detention, describes Guerrero Orellana’s circumstances: ICE is detaining him “[o]n a warrant,” and his detention is “pending a decision” in his removal proceedings “on whether [he] is to be removed from the United States.” Id.; see Sampiao, ___ F. Supp. 3d at ___ [2025 WL 2607924, at *7].

Section 1226(a) states that the government's authority to detain noncitizens pending removal proceedings is discretionary "[e]xcept as provided in subsection (c)." 8 U.S.C. § 1226(a). Section 1226(c), in turn, imposes mandatory detention on noncitizens who are inadmissible or deportable on various criminal or terrorism grounds. See id. § 1226(c); Johnson, 594 U.S. at 527 n.2; Reid, 17 F.4th at 4. By contrast, § 1226(a) does not mention § 1225(b)(2)(A) as an exception to its discretionary detention authority. The "express exception" to § 1226(a)'s discretionary detention authority in § 1226(c) "implies that there are no other circumstances under which" a noncitizen detained under § 1226 is subject to mandatory detention. Jennings, 583 U.S. at 300; see Rodriguez, ___ F. Supp. 3d at ___ [2025 WL 2782499, at *17]; Pablo Sequen, ___ F. Supp. 3d at ___ [2025 WL 2650637, at *7]; Sampiao, ___ F. Supp. 3d at ___ [2025 WL 2607924, at *7]; see also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010) (deeming "[t]he fact that Congress has created specific exceptions to" a rule to indicate that the rule otherwise "appl[ies] generally").

Although DHS's issuance of a warrant alone supports the conclusion that Guerrero Orellana is detained under § 1226(a), the Court's holding does not turn on the existence of a warrant or the warrant's language. That is because § 1225(b)(2)(A)'s plain terms do not encompass noncitizens like Guerrero Orellana who entered

the United States unlawfully and are apprehended while residing in the country. That provision requires detention “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.” 8 U.S.C. § 1225(b)(2)(A). As other courts have explained, “for [§] 1225(b)(2)(A) to apply, several conditions must be met -- in particular, an ‘examining immigration officer’ must determine that the individual is: (1) an ‘applicant for admission’; (2) ‘seeking admission’; and (3) ‘not clearly and beyond a doubt entitled to be admitted.’” Martinez v. Hyde, __ F. Supp. 3d __, __ (D. Mass. 2025) [2025 WL 2084238, at *2]; see Lopez Benitez, __ F. Supp. 3d at __ [2025 WL 2371588, at *6].

Guerrero Orellana does not dispute that he is an “applicant for admission” as defined in the statute because he is “present in the United States” but has “not been admitted.” 8 U.S.C. § 1225(a)(1). As he argues, however, § 1252(b)(2)(A) does not apply to all “applicant[s] for admission.” Rather, a noncitizen apprehended while residing in the United States does not satisfy the condition that he be “seeking admission.” The word “seeking” is a present participle, which “is used to signal present and continuing action.” Westchester Gen. Hosp., Inc. v. Evanston Ins. Co., 48 F.4th 1298, 1307 (11th Cir. 2022); see Shell v. Burlington N. Santa Fe Ry. Co., 941 F.3d 331, 336 (7th Cir. 2019). And the

INA defines "admission" as "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).

While Guerrero Orellana is treated under the statutory definition as an "applicant for admission" because he never lawfully entered the United States, that does not mean he was "seeking admission" at the time of arrest. See Lepe, ___ F. Supp. 3d at ___ [2025 WL 2716910, at *5]; Romero, ___ F. Supp. 3d at ___ [2025 WL 2403827, at *10]; Lopez Benitez, ___ F. Supp. 3d at ___ [2025 WL 2371588, at *6]. Instead, Guerrero Orellana was detained twelve years after he entered the country and now seeks to remain here. Nor does the fact that Guerrero Orellana is applying for cancellation of removal in his removal proceedings compel a different result. That relief contains a set of statutory eligibility criteria distinct from the question of admissibility. See 8 U.S.C. § 1229b(b)(1). A grant of cancellation of removal would result in his adjustment of status to permanent residence while he remains within the United States, see id., not his lawful entry into the country. Treating Guerrero Orellana as "seeking admission" impermissibly expands the scope of the statute beyond the ordinary meaning of its text.

The government disputes this interpretation of the phrase "seeking admission," arguing that that phrase and the term "applicant for admission" are synonymous (or at least that any

"applicant for admission" is also "seeking admission"). In support, the government notes that the BIA has construed the statutory definition of "applicant for admission" as meaning that "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." Matter of Lemus-Losa, 25 I. & N. Dec. 734, 743 (B.I.A. 2012).

The government's argument about the meaning of "seeking admission" suffers from a number of fatal flaws. Equating the terms "applicant for admission" and "seeking admission" ignores the plain meaning of the latter phrase, which again implies some present action. Such an interpretation also violates multiple canons of statutory construction. See Lopez Benitez, ___ F. Supp. 3d at ___ [2025 WL 2371588, at *6]. For one, courts presume that "[i]n a given statute, . . . different terms usually have different meanings." Pulsifer v. United States, 601 U.S. 124, 149 (2024). For another, interpreting "seeking admission" as coextensive with "applicant for admission" would improperly render the former phrase without effect in § 1225(b)(2)(A). See City of Providence, 954 F.3d at 37 (explaining that courts "must read statutes, whenever possible, to give effect to every word and phrase" (quoting Narragansett Indian Tribe, 449 F.3d at 26)). After all, § 1225(b)(2)(A) requires that the noncitizen be both an "applicant for admission" and "seeking admission." 8 U.S.C.

§ 1225(b)(2)(A). If the provision “were intended to apply to all ‘applicant[s] for admission,’ there would be no need to include the phrase ‘seeking admission’ in the statute.” Lopez Benitez, ___ F. Supp. 3d at ___ [2025 WL 2371588, at *6] (alteration in original); see Jimenez, ___ F. Supp. 3d at ___ [2025 WL 2639390, at *8] (reasoning that the phrase “seeking admission” should “be given meaning independent of the requirement that the person be an applicant for admission”).

Additionally, adopting the government’s interpretation of § 1225(b)(2)(A) would impermissibly render superfluous part of Congress’s recent amendment to § 1226(c) in the Laken Riley Act. See Sampiao, ___ F. Supp. 3d at ___ [2025 WL 2607924, at *8]; Lopez Benitez, ___ F. Supp. 3d at ___ [2025 WL 2371588, at *7]. “When Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect.” United States v. Quality Stores, Inc., 572 U.S. 141, 148 (2014) (quoting Stone v. INS, 514 U.S. 386, 397 (1995)). The Laken Riley Act created a new category of noncitizens subject to mandatory detention under § 1226(c), namely any noncitizen who “is inadmissible under paragraph (6)(A), (6)(C), or (7) of [8 U.S.C. § 1182(a)]” and “is charged with, is arrested for, is convicted of, admits having committed, or admits committing” certain crimes. Laken Riley Act, Pub. L. No. 199-1, § 2(1)(C), 139 Stat. 3, 3 (2025) (codified at 8 U.S.C. § 1226(c)(1)(E)). One of these inadmissibility grounds

-- 8 U.S.C. § 1182(a)(6)(A)(i) -- covers noncitizens "present in the United States without being admitted or paroled."³

Yet if, as the government posits, all noncitizens present without admission or parole are subject to mandatory detention under § 1225(b)(2)(A) regardless of criminal history, "there would have been no need for Congress to specify in [the Laken Riley Act] that such noncitizens are subject to mandatory detention" under § 1226(c) when they met certain criminal conduct criteria. Sampiao, __ F. Supp. 3d at __ [2025 WL 2607924, at *8]. While statutes do sometimes contain surplusage 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, 239 (2020), the Court declines to construe § 1225(b)(2)(A) and § 1226, two components of a single statutory scheme, in a manner that would render language in the latter section to be meaningless. See City of Chicago v. Fulton, 592 U.S. 154, 159 (2021) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." (quoting Yates v. United States, 574 U.S. 528, 543 (2015))).

³ The other inadmissibility grounds listed in the Laken Riley Act apply to noncitizens who procure or try to procure an immigration benefit via fraud or misrepresentation or who lack valid entry documents. See 8 U.S.C. § 1182(a)(6)(C)(i), (7).

Although the Supreme Court's decision in Jennings did not directly address the interplay between § 1225(b)(2)(A) and § 1226, Jennings' description of the statutory provisions is largely consistent with Guerrero Orellana's argument. See Rodriguez, __ F. Supp. 3d at __ [2025 WL 2782499, at *23]; Lepe, __ F. Supp. 3d at __ [2025 WL 2716910, at *6]; Hasan, __ F. Supp. 3d at __ [2025 WL 2682255, at *8]. The Court explained that § 1225 is part of the immigration process "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible," and that the statute "authorizes the Government to detain certain aliens seeking admission into the country." Jennings, 583 U.S. at 287, 289. By contrast, the Court noted that § 1226 "authorizes the Government to detain certain aliens already in the country." Id. at 289.

Lastly, construing § 1226 rather than § 1225(b)(2)(A) to apply to noncitizens while residing inside in the United States aligns with longstanding agency practice. See Rodriguez, __ F. Supp. 3d at __ [2025 WL 2782499, at *25]; Hasan, __ F. Supp. 3d at __ [2025 WL 2682255, at *9]; Lopez Benitez, __ F. Supp. 3d at __ [2025 WL 2371588, at *8]. Congress enacted the current statutory scheme in the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") in 1996. See Pub. L. No. 104-208, §§ 302-03, 110 Stat. 3009, 3009-579 to -587 (1996). When the Department of Justice issued implementing regulations months after passage of IIRIRA,

the agency explained that “[d]espite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.” Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Until changing their positions this year, the relevant agencies consistently applied § 1226, not § 1225(b)(2)(A), to noncitizens who entered without inspection and were later apprehended within the country. See Rodriguez, ___ F. Supp. 3d at ___ [2025 WL 2782499, at *24]; Hasan, ___ F. Supp. 3d at ___ [2025 WL 2682255, at *9]; Martinez, ___ F. Supp. 3d at ___ [2025 WL 2084238, at *4, *8].

The government does not dispute the existence of this established agency practice but argues that it carries no weight in the analysis. This Court, of course, “must exercise [its] independent judgment in deciding whether [the government] has acted within its statutory authority.” Loper Bright, 603 U.S. at 412. Still, “the longstanding practice of the government” that § 1226 governs the detention of noncitizens in Guerrero Orellana’s position “can inform a court’s determination of what the law is.” Id. at 386 (cleaned up). While not conclusive, the government’s longstanding position that noncitizens who entered without inspection and were later apprehended within the country were subject to detention under § 1226 rather than § 1225(b)(2)(A)

supports the Court's interpretation of the scope of the government's statutory authority.⁴

The government's remaining arguments are unpersuasive. Recognizing that the circumstances of Guerrero Orellana's detention fall within the plain language of § 1226(a), the government asserts that § 1225(b)(2)(A) is a more specific provision that trumps § 1226(a)'s general detention authority. The government is correct that when "a general permission or prohibition is contradicted by a specific prohibition or permission" in a statute, "the specific provision is construed as an exception to the general one." RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645 (2012). But at least in the context of a noncitizen apprehended inside the United States, the two provisions do not conflict. Rather, for the reasons discussed above, § 1226 applies, and § 1225(b)(2) does not. See Sampiao, ___ F. Supp. 3d at ___ [2025 WL 2607924, at *8] ("Section 1225(b)(2) is not 'more specific' than [§] 1226(a); these provisions simply apply in different circumstances.").

The government further contends that its interpretation of § 1225(b)(2)(A) better aligns with Congress's purpose in enacting

⁴ The government does not dispute that the Court need not defer to the BIA's recent interpretation of the law in Matter of Hurtado. See Loper Bright, 603 U.S. at 413. For the reasons explained in this opinion, the Court does not find the BIA's analysis of the issue to be persuasive.

IIRIRA. Specifically, some courts have held that one aim of IIRIRA was to replace the concept of “entry” with “admission” in order to put noncitizens who entered the country unlawfully in the same position as those who were attempting to lawfully enter the country. See Torres v. Barr, 976 F.3d 918, 927–28 (9th Cir. 2020); Martinez v. Att’y Gen., 693 F.3d 408, 413 n.5 (3d Cir. 2012). This resort to IIRIRA’s “[p]urpose cannot override [the] text” of the statute. Waithaka v. Amazon.com, Inc., 966 F.3d 10, 25 (1st Cir. 2020). In any event, the legislative history suggests that Congress did not intend to alter the detention authority for noncitizens who entered the country unlawfully. A congressional report issued during the debate over IIRIRA indicates that the new version of § 1226(a) “restates the current provisions . . . regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States.” H.R. Rep. No. 104-828, at 210 (1996); see H.R. Rep. No. 104-469, pt. I, at 229 (1996) (explaining the same for an earlier iteration of the legislation). Under the pre-IIRIRA statutory scheme, noncitizens who entered the country unlawfully were subject to discretionary detention with the possibility of release. See 8 U.S.C. § 1252(a)(1) (1994); Rodriguez, ___ F. Supp. 3d at ___ [2025 WL 2782499, at *23]; Jimenez, ___ F. Supp. 3d at ___ [2025 WL 2639390, at *9].

Accordingly, the Court concludes that Guerrero Orellana is likely to succeed on the merits of his claim that the government is unlawfully detaining him under § 1225(b)(2)(A) without a bond hearing rather than under § 1226(a) with the right to a bond hearing.

II. Remaining Preliminary Injunction Factors

The remaining preliminary injunction factors also weigh in Guerrero Orellana's favor.⁵ Guerrero Orellana persuasively argues that he will suffer irreparable harm in the absence of preliminary relief based on his ongoing detention without a bond hearing. Guerrero Orellana intends to apply for cancellation of removal during his removal proceedings. According to declarations submitted by Guerrero Orellana, it typically takes an immigration judge between six months and a year to adjudicate an application for relief from removal in a detained case. Any appeal that follows the immigration judge's decision may last six more months.

Guerrero Orellana thus faces a prolonged period of mandatory detention without a bond hearing, likely in violation of the statutory scheme. During this time, he would be separated from his wife and child, whom he supports financially. The toll of this detention and family separation was evident at the preliminary injunction hearing, where Guerrero Orellana became emotional. This

⁵ The government does not argue that a preliminary injunction is an improper form of relief in this case.

loss of liberty in the absence of preliminary injunctive relief would constitute irreparable harm. See Sampiao, ___ F. Supp. 3d at ___ [2025 WL 2607924, at *6]; Romero, ___ F. Supp. 3d at ___ [2025 WL 2403827, at *8]; see also Ferrera v. United States, 370 F. Supp. 2d 351, 360 (D. Mass. 2005) (“Obviously, the loss of liberty is a . . . severe form of irreparable injury.”).

The remaining preliminary injunction factors -- the balance of equities and the public interest -- “merge when the Government is the opposing party.” Nken v. Holder, 556 U.S. 418, 435 (2009); see Devitri v. Cronen, 289 F. Supp. 3d 287, 297 (D. Mass. 2018). The government argues that granting Guerrero Orellana preliminary injunctive relief would interfere with its important interest in enforcing the immigration laws and executing removal orders. The First Circuit has, however, repeatedly rejected similar arguments about executive power where, as here, the government is likely acting unlawfully. See New York v. Trump, 133 F.4th 51, 71 (1st Cir. 2025); New Jersey v. Trump, 131 F.4th 27, 40-41 (1st Cir. 2025). Relatedly, it is well-settled that “there is generally no public interest in the perpetuation of unlawful agency action.” Rhode Island v. Trump, ___ F.4th ___, ___ (1st Cir. 2025) [2025 WL 2621593, at *10] (quoting Somerville Pub. Schs. v. McMahon, 139 F.4th 63, 76 (1st Cir. 2025)).

Moreover, Guerrero Orellana asks the Court to order the government to provide him with a bond hearing before an immigration

judge, not to release him from detention outright. Providing bond hearings to noncitizens in Guerrero Orellana's position was the government's consistent practice until very recently, so a preliminary injunction here merely returns the parties to that status quo. And the government may continue to detain Guerrero Orellana if it shows at this bond hearing either "by clear and convincing evidence that [Guerrero Orellana] poses a danger to the community" or "by a preponderance of the evidence that [he] poses a flight risk." Hernandez-Lara, 10 F.4th at 41. The government's ability to continue to detain Guerrero Orellana if it proves detention is justified reduces any harm that preliminary injunctive relief would inflict on the government's ability to enforce the immigration laws and execute removal orders. Cf. id. at 32 ("The government fails to explain why its proffered interest in securing appearance at removal proceedings and for deportation holds sway where a noncitizen is not a flight risk.").

Guerrero Orellana has therefore shown that the irreparable harm, balance of equities, and public interest factors favor issuance of a preliminary injunction.

III. Injunction Bond

Finally, the government asks the Court to require Guerrero Orellana to post a bond under Federal Rule of Civil Procedure 65(c). That rule authorizes a court to "issue a preliminary injunction or a temporary restraining order only if the movant

gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). This provision is “not mandatory,” and “a district court retains substantial discretion to dictate the terms of an injunction bond.” Pineda v. Skinner Servs., Inc., 22 F.4th 47, 57 (1st Cir. 2021) (quoting Int’l Ass’n of Machinists & Aerospace Workers v. E. Airlines, Inc., 925 F.2d 6, 9 (1st Cir. 1991)). The Court concludes that an injunction bond is not warranted here because Guerrero Orellana seeks to vindicate an important statutory right that implicates his liberty, the injunction will not cause the government any financial loss, and requiring security may interfere with Guerrero Orellana’s right to judicial review of the government’s actions. See Ass’n of Am. Univs. v. Dep’t of Def., ___ F. Supp. 3d ___, ___ (D. Mass. 2025) [2025 WL 2022628, at *28]; Schiff v. U.S. Off. of Pers. Mgmt., 784 F. Supp. 3d 380, 400-01 (D. Mass. 2025).

ORDER

For the foregoing reasons, Guerrero Orellana’s motion for a preliminary injunction (Dkt. 14) is **ALLOWED**. The Court **ORDERS** that the government release Guerrero Orellana unless he is provided a bond hearing that complies with the standards outlined in Hernandez-Lara v. Lyons, 10 F.4th 19 (1st Cir. 2021), within seven business days of the date of this order.

SO ORDERED.

/s/ PATTI B. SARIS
Hon. Patti B. Saris
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

<hr/>)
JOSE ARNULFO GUERRERO ORELLANA,))
on behalf of himself and others))
similarly situated,))
))
Petitioner-Plaintiff,))
))
v.	)	Civil Action
	)	No. 25-cv-12664-PBS
ANTONE MONIZ, Superintendent,))
Plymouth County Correctional))
Facility, et al.,))
))
Respondents-Defendants.))
<hr/>)

MEMORANDUM AND ORDER

October 30, 2025

Saris, J.

INTRODUCTION

This case concerns the scope of the government’s authority to detain noncitizens pending their removal proceedings without the opportunity for release on bond under 8 U.S.C. § 1225(b) (2) (A). In recent months, the government has asserted that all noncitizens who entered the United States without inspection and are later apprehended inside the country must be detained without a bond hearing during their removal proceedings, regardless of how long they have resided in the United States or whether they have a criminal history. Specifically, the government has taken the position that such noncitizens remain “applicants for admission”

and, thus, are subject to mandatory detention throughout their removal proceedings under § 1225(b)(2)(A) rather than discretionary detention under 8 U.S.C. § 1226(a). The Board of Immigration Appeals ("BIA") adopted this interpretation of the statute in a precedential decision issued on September 5, 2025. See Matter of Hurtado, 29 I. & N. Dec. 216, 220 (B.I.A. 2025).

Petitioner Jose Arnulfo Guerrero Orellana, the proposed class representative, entered the United States without inspection in 2013. On September 18, 2025, he was detained by U.S. Immigration and Customs Enforcement ("ICE") and placed into removal proceedings. He subsequently filed this petition for writ of habeas corpus and putative class action complaint to challenge his detention without a bond hearing and the government's recent interpretation of the scope of § 1225(b)(2)(A). He argues that his detention without a bond hearing is unlawful for three reasons: 1) the government has misclassified him as subject to mandatory detention under § 1225(b)(2)(A) when he is actually subject to discretionary detention under § 1226(a); 2) his detention violates his constitutional right to due process; and 3) the BIA's decision in Matter of Hurtado is contrary to law and arbitrary and capricious in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.

On October 3, 2025, the Court issued a preliminary injunction requiring the government to release Guerrero Orellana unless it

provided him with a bond hearing. See Guerrero Orellana v. Moniz, ___ F. Supp. 3d ___, ___ (D. Mass. 2025) [2025 WL 2809996, at *10]. The Court concluded that Guerrero Orellana was likely to succeed in demonstrating that the government lacked statutory authority to detain him without a bond hearing under § 1225(b)(A)(2). See id. at ___ [2025 WL 2809996, at *9]. He has since been released on bond by an immigration judge.

Guerrero Orellana now moves for class certification under Federal Rule of Civil Procedure 23. He seeks to certify a class of noncitizens subject to mandatory detention under the government's recent interpretation of § 1225(b)(2)(A) who are either detained within Massachusetts or subject to the jurisdiction of an immigration court in Massachusetts. The government opposes the motion.

After hearing, the Court **ALLOWS** Guerrero Orellana's motion for class certification (Dkt. 31).

BACKGROUND

I. Statutory Framework

As the Court has previously explained, "[t]he crux of this case is a question of statutory interpretation involving the interplay between 8 U.S.C. §§ 1225 and 1226." Id. at ___ [2025 WL 2809996, at *2]. The former provision establishes procedures for inspection of an "applicant for admission," that is, a noncitizen "present in the United States who has not been admitted or who

arrives in the United States.” 8 U.S.C. § 1225(a)(1). After inspection by an immigration officer, certain applicants for admission who are deemed inadmissible are subject to expedited removal, unless they express a fear of persecution or an intent to apply for asylum. See id. § 1225(b)(1)(A)(i); see also Dep’t of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 108–11 (2020) (describing expedited removal). Otherwise, § 1225(b)(2)(a) provides that “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” removal proceedings. 8 U.S.C. § 1225(b)(2)(A). A noncitizen detained under this provision may be paroled “for urgent humanitarian reasons or significant public benefit.” Id. § 1182(d)(5)(A); see Jennings v. Rodriguez, 583 U.S. 281, 300 (2018). In all other cases where § 1225(b)(2)(A) applies, the provision “mandate[s] detention of applicants for admission until [removal] proceedings have concluded.” Jennings, 583 U.S. at 297.

Section 1226 permits the government “to detain certain aliens already in the country pending the outcome of removal proceedings.” Id. at 289. Under § 1226(a), “[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.” 8 U.S.C. § 1226(a). The government then “may continue to detain the

arrested” noncitizen during removal proceedings or “may release” the noncitizen on bond or conditional parole. Id. § 1226(a)(1)-(2). A noncitizen whom the government decides to detain under this discretionary provision may seek review of that decision via a bond (i.e., custody redetermination) hearing before an immigration judge. See 8 C.F.R. § 236.1(d)(1); Johnson v. Guzman Chavez, 594 U.S. 523, 527 (2021); Hernandez-Lara v. Lyons, 10 F.4th 19, 26 (1st Cir. 2021). At that hearing, the immigration judge must release the noncitizen unless the government establishes either “by clear and convincing evidence that [he] poses a danger to the community” or “by a preponderance of the evidence that [he] poses a flight risk.” Hernandez-Lara, 10 F.4th at 41.

Section 1226(c), however, “‘carves out a statutory category of aliens who may not be released’ during removal proceedings, outside of certain limited circumstances.” Reid v. Donelan, 17 F.4th 1, 4 (1st Cir. 2021) (quoting Jennings, 583 U.S. at 289); see 8 U.S.C. § 1226(a) (authorizing discretionary detention “[e]xcept as provided in subsection (c)”). This mandatory detention provision applies to noncitizens who are inadmissible or deportable on certain criminal or terrorist grounds. See Johnson, 594 U.S. at 527 n.2; Reid, 17 F.4th at 4.

II. Factual Background

The following facts are undisputed. Guerrero Orellana, a citizen of El Salvador, entered the United States without

inspection in June 2013. He lives in Massachusetts with his wife and their one-year-old U.S. citizen daughter. He has no criminal record and has worked to support himself and his family, most recently as a landscaper.

On September 18, 2025, Guerrero Orellana was taken into ICE custody during a traffic stop. Shortly after his arrest, the U.S. Department of Homeland Security ("DHS") served Guerrero Orellana with a Form I-200 arrest warrant. DHS also served Guerrero Orellana with a notice to appear charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for being present in the United States without admission or parole and under 8 U.S.C. § 1182(a)(7)(A)(i) for lacking valid entry documents. Guerrero Orellana intends to apply for cancellation of removal during his removal proceedings.

Guerrero Orellana was detained following his arrest at the Plymouth County Correctional Facility in Massachusetts. The government asserted that it had been detaining Guerrero Orellana as an "applicant for admission" under § 1225(b)(2)(A). Based on the government's position, Guerrero Orellana was subject to mandatory detention and ineligible for a bond hearing before an immigration judge under the BIA's decision in Matter of Hurtado.

III. Procedural History

On September 18, 2025, Guerrero Orellana filed a habeas petition under 28 U.S.C. § 2241 to challenge the legality of his ongoing detention without a bond hearing. He subsequently filed an

amended complaint and habeas petition asserting both individual and class claims.

On October 3, 2025, the Court issued a preliminary injunction requiring the government to release Guerrero Orellana unless he was provided with a bond hearing before an immigration judge within seven business days. See Guerrero Orellana, ___ F. Supp. 3d at ___ [2025 WL 2809996, at *10]. The Court rejected the government's position that any noncitizen who entered the United States without inspection is subject to mandatory detention pending removal proceedings under § 1225(b)(2)(A). See id. at ___ [2025 WL 2809996, at *4-9]. The Court concluded that the government's authority to detain Guerrero Orellana rested instead on § 1226(a) and, thus, that Guerrero Orellana had a right to a bond hearing in immigration court. See id. at ___ [2025 WL 2809996, at *9]. On October 9, 2025, an immigration judge held a hearing and ordered Guerrero Orellana released on bond. Guerrero Orellana posted bond the following day and was released from custody.

In parallel with briefing on his motion for a preliminary injunction, Guerrero Orellana also moved for class certification under Rule 23. Guerrero Orellana seeks to certify the following class:

All people who are arrested or detained in Massachusetts, or are detained in a geographical area over which, as of September 22, 2025, an Immigration Court located in Massachusetts is the administrative control court, or who are otherwise subject to the

jurisdiction of an Immigration Court located in Massachusetts, where:

- (a) the person is not in any Expedited Removal process under 8 U.S.C. § 1225(b)(1), does not have an Expedited Removal order under 8 U.S.C. § 1225(b)(1), and is not currently in proceedings before an immigration judge due to having been found to have a credible fear of persecution under 8 U.S.C. § 1225(b)(1)(B)(ii);
- (b) for the person's most recent entry into the United States, the government has not alleged that the person was admitted into the United States and has not alleged that person was paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A) at the time of entry;
- (c) the person does not meet the criteria for mandatory detention pursuant to 8 U.S.C. § 1226(c); and
- (d) the person is not subject to post-final order detention under 8 U.S.C. § 1231.

Dkt. 31 at 1. In a supplemental filing, Guerrero Orellana proposed the addition of the following exclusion from the class definition: "(e) the person is not a person whose most recent arrest occurred at the physical border while they were arriving in the United States and has been continuously detained thereafter." Dkt. 78 at 2.

LEGAL STANDARD

A class may be certified pursuant to Rule 23 only if the plaintiff shows that the following four prerequisites are met:

- (1) the class is so numerous that joinder of all members is impracticable;

- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a); see Comcast Corp. v. Behrend, 569 U.S. 27, 33 (2013). The plaintiff must also establish that the class satisfies one of the prongs of Rule 23(b). See Comcast Corp., 569 U.S. at 33; Smilow v. Sw. Bell Mobile Sys., Inc., 323 F.3d 32, 38 (1st Cir. 2003). Here, Guerrero Orellana seeks certification under Rule 23(b)(2), which requires that “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.”¹ Fed. R. Civ. P. 23(b)(2).

These requirements for class certification are not “a mere pleading standard.” Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011). Rather, a plaintiff “seeking to maintain a class action ‘must affirmatively demonstrate his compliance’ with Rule 23” via “evidentiary proof.” Comcast Corp., 569 U.S. at 33 (quoting Wal-Mart, 564 U.S. at 350). This analysis may “entail ‘overlap with

¹ For at least certain types of class actions, the First Circuit requires that the class members be “ascertainable” from the class definition. In re Nexium Antitrust Litig., 777 F.3d 9, 19 (1st Cir. 2015); see Orr v. Trump, 786 F. Supp. 3d 397, 413 (D. Mass. 2025). The government does not argue that the proposed class cannot be certified because its membership is not ascertainable.

the merits of the plaintiff's underlying claim.'" Id. at 33-34 (quoting Wal-Mart, 564 U.S. at 351); see Amgen Inc. v. Conn. Ret. Plans & Tr. Funds, 568 U.S. 455, 466 (2013) ("Merits questions may be considered to the extent -- but only to the extent -- that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied."). "[C]ertification is proper only if 'the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23[] have been satisfied.'" Comcast Corp., 569 U.S. at 33 (quoting Wal-Mart, 564 U.S. at 350-51).

DISCUSSION

Guerrero Orellana seeks to certify the proposed class for all three of his claims. For the reasons discussed below, certification is warranted with respect to the claim that the government lacks statutory authority to subject noncitizens who entered the United States without inspection and are detained while residing inside the country to mandatory detention under § 1225(b)(2)(A). The Court will address whether the class should be certified with regard to Guerrero Orellana's due process and APA claims at a later stage should it become necessary to do so to resolve this case.

I. Threshold Issues Regarding Class Certification

A. Mootness

The Court begins with a brief comment regarding the effect of Guerrero Orellana's release on bond on the permissibility of class certification. Although the government does not argue that

Guerrero Orellana's release poses an obstacle to class certification, the Court has an independent duty to consider the issue insofar as it implicates mootness. See Brito v. Garland, 22 F.4th 240, 247 (1st Cir. 2021).

A class action "ordinarily must be dismissed as moot if no decision on class certification has occurred by the time that the individual claims of all named plaintiffs have been fully resolved." Id. (quoting Cruz v. Farquharson, 252 F.3d 530, 533 (1st Cir. 2001)). But Guerrero Orellana's individual claim is not fully resolved at this stage: his release resulted from the issuance of only preliminary relief, and he "face[s] the threat of re-arrest and mandatory detention" should the Court eventually decline to issue permanent relief. Nielsen v. Preap, 586 U.S. 392, 403 (2019) (plurality opinion). And even if Guerrero Orellana's individual claim were moot, class certification would still be proper under the "inherently transitory" exception to the mootness doctrine, Brito, 22 F.4th at 247 (quoting Genesis Healthcare Corp. v. Symczyk, 569 U.S. 66, 76 (2013)), which courts regularly apply to claims concerning immigration detention during removal proceedings, see Preap, 586 U.S. at 403-04 (plurality opinion); Brito, 22 F.4th at 247.

B. 8 U.S.C. § 1252 (e) (1) (B)

The government raises a threshold argument that 8 U.S.C. § 1252(e)(1)(B) bars the Court from certifying a class in this

case. That provision states that “[w]ithout regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may . . . certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under a subsequent paragraph of this subsection.” 8 U.S.C. § 1252(e)(1)(B). 8 U.S.C. § 1252(e)(3)(A), in turn, provides that “[j]udicial review of determinations under section 1225(b) of [Title 8] and its implementation is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of” the constitutionality or lawfulness of the statutory section, implementing regulations, or written policies or procedures. Id. § 1252(e)(3)(A).² The government contends that because Guerrero Orellana is seeking judicial review of a policy implementing § 1225(b)(2)(A), a provision within § 1225(b) that provides for

² Any systemic challenge brought in the District of Columbia under this statutory subsection “must be filed no later than 60 days after the date the challenged section, regulation, directive, guideline, or procedure . . . is first implemented.” 8 U.S.C. § 1252(e)(3)(B). At the class certification hearing, the government stated that “it might be too late” to bring such an action, Dkt. 76 at 26, presumably because DHS issued an internal memorandum in July 2025 that deemed § 1225 to govern the detention of all “applicants for admission.” See Romero v. Hyde, ___ F. Supp. 3d ___, ___ & n.19 (D. Mass. 2025) [2025 WL 2403827, at *7 & n.19]. The Court takes no position on this timeliness question but notes that this avenue for judicial review of the government’s interpretation of § 1225(b)(2)(A) may be a dead end.

mandatory detention, § 1252(e)(1)(B) prohibits class certification in this case.

Guerrero Orellana responds that the entirety of § 1252(e), including the judicial review provision in § 1252(e)(3)(A), applies only to claims about expedited removal under § 1225(b)(1) and not to claims regarding § 1225(b)(2). While the government emphasizes that § 1252(e)(3)(A) refers to “section 1225(b)” generally, *id.*, Guerrero Orellana points out that § 1252(e) is titled “Judicial review of orders under section 1225(b)(1),” *id.* § 1252(e) (emphasis added), and that the other provisions within § 1225(e) all specifically refer to “section 1225(b)(1),” *id.* § 1252(e)(1)(A), (2), (4)(A), (5). He also cites a House of Representatives report stating that § 1252(e)(3) “provides for limited judicial review of the validity of procedures under section 235(b)(1) [*i.e.*, § 1225(b)(1)].” H.R. Rep. No. 104-828, at 220 (1996) (Conf. Rep.).

Although Guerrero Orellana has a strong argument that § 1252(e)(3)(A) only applies to claims about expedited removal, the government raises a strong countervailing point based on the provision’s plain language. The Court need not resolve this complicated dispute over statutory construction. In the Court’s view, § 1252(e)(3)(A) does not limit judicial review of Guerrero Orellana’s claim that the government is unlawfully subjecting him and the other class members to mandatory detention under

§ 1225(b)(2)(A) because the mandatory detention provision does not apply at all. In allowing Guerrero Orellana's preliminary injunction motion, the Court rejected the government's argument that § 1225(b)(2)(A) authorized it to detain Guerrero Orellana without a bond hearing and concluded that Guerrero Orellana's detention was instead governed by the discretionary authority in § 1226(a). See Guerrero Orellana, ___ F. Supp. 3d at ___ [2025 WL 2809996, at *9]. Because § 1225(b)(2)(A) does not govern the detention of individuals in Guerrero Orellana's position in the first place, he is not seeking judicial review of the "implementation" of § 1225(b).

The government asserts that this rationale is contrary to the Supreme Court's decision in Garland v. Aleman Gonzalez, 596 U.S. 543 (2022). This Court disagrees. In Aleman Gonzalez, the Supreme Court addressed the scope of 8 U.S.C. § 1252(f)(1), which strips district courts of jurisdiction "to enjoin or restrain the operation of" certain statutory sections in the Immigration and Nationality Act ("INA") on a class-wide basis. 8 U.S.C. § 1252(f)(1). The Supreme Court rejected the argument "that 'the operation' of the covered immigration provisions means the operation of those provisions 'as properly interpreted' and that what § 1252(f)(1) bars are class-wide injunctions that prohibit the Government from doing what the statute allows or commands." Aleman Gonzalez, 596 at 552-54. Put differently, the Supreme Court

held that § 1252(f)(1) applies to injunctions barring the government from acting contrary to its statutory authority. See id. In Aleman Gonzalez, however, there was no question that the government had authority to detain the plaintiffs under the statutory provision at issue, 8 U.S.C. § 1231(a); instead, the dispute concerned how the government was enforcing that provision, namely, whether the statute required the government to give bond hearings to the plaintiffs after six months of detention. See id. at 547. Here, by contrast, Guerrero Orellana correctly asserts that § 1225(b) does not apply to individuals in his position at all.

C. Class Certification in Habeas Proceedings

The government next contends that Guerrero Orellana's claim at core seeks a writ of habeas corpus and that habeas claims are not suitable to resolution on a class-wide basis. Guerrero Orellana does not dispute that his claim sounds in habeas corpus.

The Supreme Court has left open the question of whether Rule 23 "is applicable to petitions for habeas corpus relief," Schall v. Martin, 467 U.S. 253, 261 n.10 (1984), and two justices in a dissenting opinion recently expressed doubt that habeas claims may be resolved in a class action, see A.A.R.P. v. Trump, 605 U.S. 91, 107-09 (2025) (Alito, J., dissenting). Nonetheless, the broad consensus among the circuit courts is that representative actions akin to a class action may be brought in habeas corpus proceedings.

See Betschart v. Oregon, 103 F.4th 607, 615 (9th Cir. 2024); LoBue v. Christopher, 82 F.3d 1081, 1085 (D.C. Cir. 1996); United States ex rel. Morgan v. Sielaff, 546 F.2d 218, 220 (7th Cir. 1976); Napier v. Gertrude, 542 F.2d 825, 827 n.2 (10th Cir. 1976); Bonner v. Cir. Ct., 526 F.2d 1331, 1335 n.4 (8th Cir. 1975); United States ex rel. Sero v. Preiser, 506 F.2d 1115, 1125-27 (2d Cir. 1974); cf. Hamama v. Adducci, 912 F.3d 869, 879 (6th Cir. 2018) (“[T]here is nothing barring a class from seeking a traditional writ of habeas corpus”). While some circuits have noted that these representative habeas actions are not technically Rule 23 class actions, those courts use the same factors applicable under Rule 23 to evaluate whether to permit a representative habeas action to proceed. See Morgan, 546 F.2d at 221 & n.5; Napier, 542 F.2d at 827 n.2; Sero, 506 F.2d at 1125-27, 1127 n.9.

Based on this uniform circuit precedent, the Court concludes that habeas claims are suitable for class treatment if the standards of Rule 23 are met.

D. Future Class Members

In its final threshold argument, the government asserts that the Court cannot certify the proposed class because it encompasses future members, *i.e.*, noncitizens who will be arrested and detained in the future. In the government’s view, these future class members lack an actual or imminent injury sufficient to support Article III standing. See Castro v. Scanlan, 86 F.4th 947, 951 (1st Cir.

2023) (explaining that Article III standing requires, *inter alia*, an “injury in fact” that is “both concrete and particularized and actual or imminent, not conjectural or hypothetical” (quoting Efreom v. McKee, 46 F.4th 9, 21 (1st Cir. 2022))).

This argument is unavailing. For one, courts do not “require[] every class member to demonstrate standing when a class is certified.” In re Asacol Antitrust Litig., 907 F.3d 42, 58 (1st Cir. 2018). The analysis focuses instead on whether a named plaintiff has standing. See Brito, 22 F.4th at 252; see also William B. Rubenstein, Newberg and Rubenstein on Class Actions § 2:3 (6th ed. 2025) [hereinafter “Newberg on Class Actions”] (“[I]n cases seeking injunctive or other equitable relief[,] it is well settled that . . . the standing inquiry focuses solely on the named plaintiff or proposed class representative.”). For another, “the inclusion of future class members in a class is not itself unusual or objectionable, because when the future persons referenced become members of the class, their claims will necessarily be ripe.” Betschart, 103 F.4th at 616 n.7 (cleaned up); see O.A. v. Trump, 404 F. Supp. 3d 109, 160 (D.D.C. 2019) (deeming it not “unusual or improper for a Rule 23(b)(2) class to include future members”). The future members of the class will suffer an actual injury when they are detained and join the class. The existence of future class members poses no obstacle to certification. See CASA, Inc. v. Trump, __ F. Supp. 3d __, __ (D.

Md. 2025) [2025 WL 2263001, at *14-15] (rejecting comparable argument about future class members).

E. Class Definition

Before addressing the class certification requirements under Rule 23(a), the Court comments on the proposed class definition. Guerrero Orellana stresses that his proposed "class is not intended to include people whose most recent arrest occurred at the physical border while arriving in the United States and were continuously detained thereafter." Dkt. 78 at 1-2. His proposed class definition, however, does not expressly exclude all such individuals. The Court therefore adds the following exclusion to the class definition as suggested by Guerrero Orellana: "(e) the person is not a person whose most recent arrest occurred at the border while they were arriving in the United States and has been continuously detained thereafter."³

The government argues that two phrases in this addition to the class definition -- "at the border" and "while they were arriving" -- are imprecise. The latter phrase clearly refers to individuals coming to the United States from outside the country. With respect to the former phrase, the government contends that "there is no clear line demarcating when an alien who entered

³ Guerrero Orellana's proposed exclusion employs the phrase "physical border." The Court uses the term "border" instead because Guerrero Orellana has not explained the distinction between a "physical" and non-"physical" border.

without inspection stops the process of entering the country.” Dkt. 64 at 28. In Thuraissigiam, the Supreme Court addressed the rights of noncitizens “apprehended at or near the border.” 591 U.S. at 106; see id. at 107 (holding that a noncitizen “apprehended just 25 yards from the border . . . has no entitlement to procedural rights other than those afforded by statute”). The phrase “at the border” plainly covers anyone at or near the border. The Court need not determine how many feet from the border the noncitizen must be when he is detained. The parties may propose a more specific definition at a later stage in the case, at which point the Court may modify the class definition. See Fed. R. Civ. P. 23(c)(1)(C) (“An order that grants or denies class certification may be altered or amended before final judgment.”); Brown v. Colegio de Abogados de P.R., 613 F.3d 44, 50 (1st Cir. 2010) (“Courts may alter [class] certification orders prior to final judgment”).

II. Rule 23(a) Requirements

Having resolved the government’s threshold arguments against class certification, the Court turns to the requirements under Rule 23(a). The government does not contest Guerrero Orellana’s contention that the proposed class satisfies numerosity,⁴ but it

⁴ A class that exceeds forty members is generally considered sufficiently numerous, see García-Rubiera v. Calderón, 570 F.3d 443, 460 (1st Cir. 2009), and a court assessing numerosity “may draw reasonable inferences from the facts presented,” McCuin v.

does challenge the commonality, typicality, and adequacy requirements. The Court addresses these three requirements in turn.

A. Commonality

The commonality element requires that there be “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). This element may be satisfied via the existence of only one common question. See Wal-Mart, 564 U.S. at 359. “A question is common if it is ‘capable of classwide resolution -- which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.’” Parent/Pro. Advoc. League v. City of Springfield, 934 F.3d 13, 28 (1st Cir. 2019) (quoting Wal-Mart, 564 U.S. at 350).

Sec’y of Health & Hum. Servs., 817 F.2d 161, 167 (1st Cir. 1987). In fiscal year 2024, DHS charged over 33,000 noncitizens in Massachusetts immigration courts as removable on the basis that they entered the country without inspection. Many of these individuals would be members of the proposed class. Additionally, during a period of less than two weeks between September 30 and October 10, 2025, judges in this district granted habeas relief to almost forty noncitizens based on the same argument that Guerrero Orellana has raised regarding the scope of § 1225(b)(2)(A). The Court readily infers from these facts that the class contains at least forty members. And joinder of all class members would be impracticable because the specific composition of the class is in constant flux as the government makes additional arrests and class members’ removal proceedings conclude. See A.B. v. Haw. State Dep’t of Educ., 30 F.4th 828, 838 (9th Cir. 2022) (“[W]hen . . . a class’s membership changes continually over time, that factor weighs in favor of concluding that joinder of all members is impracticable.”); J.D. v. Azar, 925 F.3d 1291, 1322 (D.C. Cir. 2019) (similar).

Thus, “what really matters to class certification is not the raising of common questions as much as the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation.” Id. (cleaned up). Such “common answers typically come in the form of a particular and sufficiently well-defined set of allegedly illegal policies or practices that work similar harm on the class plaintiffs.” Id. (cleaned up). At core, commonality asks whether “the class members ‘have suffered the same injury.’” Wal-Mart, 564 U.S. at 350 (quoting Gen. Tel. Co. of the Sw. v. Falcon, 457 U.S. 147, 157 (1982)).

The proposed class shares a common question capable of class-wide resolution because its members are all detained without a bond hearing pursuant to the same allegedly unlawful government policy. The government has determined that all noncitizens who qualify as “applicants for admission” are subject to mandatory detention during their removal proceedings under § 1225(b)(2)(A) rather than discretionary detention under § 1226(a). The term “applicant for admission” includes any noncitizen “present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). The members of the proposed class of immigration detainees are all “applicants for admission” because one criterion for membership in the class is that “for the person’s most recent entry into the United States, the government has not alleged that the person was admitted into the United States.” Dkt. 31 at 1. The proposed class

also excludes "applicants for admission" who are not injured by the government's policy regarding the scope of § 1225(b) (2) (A) and § 1226(a) because their detention is governed by a different statutory provision (i.e., noncitizens ordered removed under § 1231, paroled into the country on humanitarian grounds under § 1182(d) (5) (A), subject to expedited removal proceedings under § 1225(b) (1), or subject to mandatory detention based on their criminal histories under § 1226(c)). Finally, as noted above, the Court modifies the proposed class definition to exclude noncitizens who have been continually detained since being arrested at the border, a set of individuals whom Guerrero Orellana does not dispute may lawfully be detained without a bond hearing under § 1225(b) (2) (A).

Accordingly, the proposed class presents the following common question of law: does § 1225(b) (2) (A) authorize mandatory detention without a bond hearing during removal proceedings for noncitizens who entered the United States without inspection, were arrested while residing inside the country, and who are not subject to the expedited removal process under § 1225(b) (1), parole revocation under § 1182(d) (5) (A), or mandatory detention under § 1226(c)? This "question satisfie[s] the requirements of Rule 23(a) (2) because its adjudication would 'resolve an issue that is central to the validity of each one of the claims in one stroke.'" Reid, 17 F.4th at 10 (quoting Reid v. Donelan, No. 13-cv-30125,

2018 WL 5269992, at *5 (D. Mass. Oct. 23, 2018)). That is, “if the answer” to this common question is “‘yes,’ each individual would get a [bond] hearing automatically” under § 1226(a), “while a ‘no’ would leave each person as before.” Id.

The government asserts that the proposed class lacks commonality because the Court would have to answer individualized questions to determine whether each class member is properly subject to mandatory detention under § 1225(b)(2)(A) or discretionary detention under § 1226(a). As noted, the former provision states that “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” removal proceedings, 8 U.S.C. § 1225(b)(2)(A), while § 1226(a) 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). The government argues that determining which of these two statutory provisions applies to a given class member would require an individualized determination of 1) whether the person was arrested on a warrant and, if so, what language was on the warrant; 2) whether the person was subject to an “examination” by an immigration officer; and 3) whether the person is “seeking admission.”

This effort to defeat commonality is not persuasive. As an initial matter, the Court notes that it has already determined that at least “the existence of a warrant or the warrant’s language” does not govern the analysis of whether a noncitizen is detained under § 1225(b)(2)(A) or § 1226(a). Guerrero Orellana, ___ F. Supp. 3d at ___ [2025 WL 2809996, at *6]. In any event, under the interpretation of § 1225(b)(2)(A) advanced by Guerrero Orellana, the factual differences identified by the government have no bearing on whether § 1225(b)(2)(A) authorizes detention without a bond hearing for the class members. That is because, in Guerrero Orellana’s view, § 1225(b)(2)(A) “is all about border processing, and a person arrested inside the United States after entry -- whether lawful or unlawful -- is neither undergoing an ‘examination’ nor ‘seeking admission’ at the border.” Dkt. 72 at 11. Addressing whether this interpretation of the statutory provision is correct is a common legal question that binds the class together, as an affirmative answer would mean that all class members cannot lawfully be detained under § 1225(b)(2)(A) and, thus, are entitled to bond hearings under § 1226(a).

B. Typicality

The typicality requirement calls upon the plaintiff to show that his claims or defenses “are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). This requirement is met when the plaintiff’s “claims ‘arise[] from the same event or

practice or course of conduct that gives rise to the claims of other class members, and . . . are based on the same legal theory.’” García-Rubiera v. Calderón, 570 F.3d 443, 460 (1st Cir. 2009) (alterations in original) (quoting In re Am. Med. Sys., Inc., 75 F.3d 1069, 1082 (6th Cir. 1996)). The typicality element “is designed to align the interests of the class and the class representatives so that the latter will work to benefit the entire class through the pursuit of their own goals.” Bowers v. Russell, 766 F. Supp. 3d 136, 148 (D. Mass. 2025) (quoting In re Pharm. Indus. Average Wholesale Price Litig., 230 F.R.D. 61, 78 (D. Mass. 2005)).

For substantially the same reasons discussed in the context of commonality, Guerrero Orellana’s proposed class meets the typicality requirement. See Wal-Mart, 564 U.S. at 349 n.5 (“The commonality and typicality requirements of Rule 23(a) tend to merge.” (quoting Falcon, 457 U.S. at 157 n.13)). The claims of Guerrero Orellana and the absent class members arise from the same governmental policy subjecting certain noncitizens to mandatory detention without a bond hearing during their removal proceedings. Guerrero Orellana presses the same statutory claim on behalf of himself and the class as a whole. By pressing this claim, Guerrero Orellana is advancing both his own interests and those of the absent class members.

As with commonality, the government argues that typicality is defeated because of factual differences among the class as to whether each member was issued an arrest warrant, was subject to an "examination," and is "seeking admission." This argument fares no better with regard to typicality. Again, Guerrero Orellana's claim posits that such factual differences are immaterial to the applicability of § 1225(b)(2)(a), so his individual claim is identical to those of the rest of the class.

C. Adequacy

The adequacy prong demands that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This inquiry is two-fold: 1) "the interests of the representative party" must "not conflict with the interests of any of the class members" and 2) "counsel chosen by the representative party" must be "qualified, experienced and able to vigorously conduct the proposed litigation." Andrews v. Bechtel Power Corp., 780 F.2d 124, 130 (1st Cir. 1985). The government does not contest the adequacy of proposed class counsel, who have extensive experience in complex civil litigation, immigration law, and class actions.

The government does argue that Guerrero Orellana is not an adequate class representative because he seeks a form of individual relief -- an injunction requiring the government to provide him with a bond hearing -- that 8 U.S.C. § 1252(f)(1) prohibits the

Court from awarding on a class-wide basis. Section 1252(f)(1) provides as follows:

Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of [8 U.S.C. §§ 1221-1232], . . . other than with respect to the application of such provisions to an individual alien against whom proceedings under such [sections] have been initiated.

8 U.S.C. § 1252(f)(1). This provision “generally prohibits lower courts from entering [class-wide] injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions.” Aleman Gonzalez, 596 U.S. at 550. Guerrero Orellana does not dispute that § 1252(f)(1) bars the Court from issuing a class-wide version of the injunction he received on an individual basis, i.e., an injunction requiring the government to provide bond hearings to all class members.

“[W]hen a class includes members whose claims are for a different type of relief than the claims of the putative class representatives, it is possible that the differences create a conflict of interest disabling the representative from adequately representing the entire class.” Newberg on Class Actions § 3:59; see In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig., 827 F.3d 223, 233 (2d Cir. 2016) (finding conflict between class members “pursuing solely monetary relief” and those “seeking

only injunctive relief"). Rule 23(a)(4) does not, however, mandate "perfect symmetry of interest among the class," and only conflicts among class members that "are fundamental to the suit and go to the heart of the litigation" fall afoul of the adequacy requirement. Cohen v. Brown Univ., 16 F.4th 935, 945-46 (1st Cir. 2021) (cleaned up). A court must ask whether the conflict is "so substantial as to overbalance the common interests of the class members as a whole." Murray v. Grocery Delivery E-Servs. USA Inc., 55 F.4th 340, 346 (1st Cir. 2022) (quoting Matamoros v. Starbucks Corp., 699 F.3d 129, 138 (1st Cir. 2012)). Put differently, "intra-class conflict is unacceptable when it presents an actual and substantial risk of skewing available relief in favor of some subset of class members." Cohen, 16 F.4th at 950.

The fact that § 1252(f)(1) bars class-wide injunctive relief does not create a fundamental conflict between Guerrero Orellana and the absent class members. Guerrero Orellana and the absent class members all have suffered or will suffer the same injury from the government's uniform policy imposing mandatory detention without a bond hearing on them during their removal proceedings. And Guerrero Orellana seeks a class-wide declaratory judgment that this policy violates the INA, a remedy that, as discussed in more depth below, is permitted by § 1252(f)(1). See infra Section III. There is no risk that Guerrero Orellana's ability to seek injunctive relief on an individual basis will conflict with the

class's interest in securing a declaratory judgment. The difference in the form of equitable relief that the Court can issue for Guerrero Orellana individually and for the class as a whole does not outweigh the common interest among the entire class in challenging the government's uniform policy.

III. Rule 23(b) (2)

The Court next addresses whether the proposed class satisfies Rule 23(b) (2). This provision permits class certification when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b) (2). The crux of this requirement is "the indivisible nature of the injunctive or declaratory remedy warranted -- the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them." Wal-Mart, 564 U.S. at 360 (quoting Richard A. Nagareda, Class Certification in the Age of Aggregate Proof, 84 N.Y.U. L. Rev. 97, 132 (2009)). It follows that "Rule 23(b) (2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class." Id.

Guerrero Orellana's proposed class satisfies Rule 23(b) (2). The government has adopted a uniform interpretation of § 1225(b) (2) (A) that imposes detention without a bond hearing

during removal proceedings on all noncitizens who entered the United States without inspection, are apprehended while residing inside the country, and are not subject to parole revocation under § 1182(d)(5)(A) or mandatory detention under § 1225(b)(1) or § 1226(c). This policy prevents all members of the proposed class from seeking release from detention from an immigration judge at a bond hearing. Guerrero Orellana asks for a class-wide declaratory judgment that the government's imposition of mandatory detention under § 1225(b)(2)(A) on this category of noncitizens is unlawful and that those noncitizens are entitled to bond hearings in immigration court. This "single . . . declaratory judgment would provide relief to each member of the class." Wal-Mart, 564 U.S. at 360.

The government raises a slew of counterarguments to this straightforward conclusion. First, the government asserts that 8 U.S.C. § 1252(f)(1) bars the class-wide declaratory relief that Guerrero Orellana seeks because that relief would "restrain" the operation of § 1225(b)(2)(A). As noted, § 1252(f)(1) provides as follows:

Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of [8 U.S.C. §§ 1221-1232], . . . other than with respect to the application of such provisions to an individual alien against whom proceedings under such [sections] have been initiated.

8 U.S.C. § 1252(f)(1). Although the Supreme Court has held that § 1252(f)(1) prohibits certain class-wide injunctions, it has not addressed whether the provision also bars a district court from issuing declaratory relief in connection with a class claim concerning the operation of one of the covered statutory sections. See Aleman Gonzalez, 596 U.S. at 550, 551 n.2. The First Circuit, however, has resolved this question, holding that § 1252(f)(1) does not prohibit such class-wide declaratory relief. See Brito, 22 F.4th at 252. The government disputes this interpretation of the statute, but this Court is bound by (and agrees with) the First Circuit's holding. See Eulitt ex rel. Eulitt v. Me., Dep't of Educ., 386 F.3d 344, 349 (1st Cir. 2004) ("Until a court of appeals revokes a binding precedent, a district court within the circuit is hard put to ignore that precedent unless it has unmistakably been cast into disrepute by supervening authority."), abrogated on other grounds by, Carson ex rel. O.C. v. Makin, 596 U.S. 767 (2022).⁵

Second, the government contends that declaratory relief is not a permissible remedy in habeas proceedings. Insofar as the

⁵ Guerrero Orellana argues that § 1252(f)(1) also does not bar courts from vacating agency action under the APA or issuing class-wide habeas relief. Because the permissibility of class-wide declaratory relief is sufficient to certify the class under Rule 23(b)(2), the Court need not address at this stage whether § 1252(f)(1) permits these other remedies or whether these remedies are appropriate in this case.

government argues that the only remedy available in a habeas case is an order of release, it is wrong. See Trump v. J.G.G., 604 U.S. 670, 672 (2025) (per curiam) (“[I]mmediate physical release is not the only remedy under the federal writ of habeas corpus.” (cleaned up)); Boumediene v. Bush, 553 U.S. 723, 779 (2008) (explaining that in a habeas proceeding “release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted”). And the cases the government cites in its brief establish only narrower limitations on the use of declaratory judgment actions as substitutes for habeas proceedings. See Calderon v. Ashmus, 523 U.S. 740, 746-49 (1998) (holding that a prisoner cannot use a declaratory judgment action to adjudicate an affirmative defense that could arise in a habeas proceeding challenging his conviction); Fusco v. Grondolsky, No. 17-1062, 2019 WL 13112044, at *1 (1st Cir. June 18, 2019) (rejecting a federal prisoner’s attempt to challenge his conviction or sentence via a declaratory judgment action); LoBue, 82 F.3d at 1082 (holding that a petitioner cannot use a declaratory judgment action to secure judicial review of his detention in a district other than where he is detained); Monk v. Sec’y of Navy, 793 F.2d 364, 366, 368 (D.C. Cir. 1986) (declining to allow an individual convicted via court-martial to challenge his conviction via a declaratory judgment action rather than a habeas petition). None of these cases hold that a court cannot award a declaratory judgment in a properly

filed habeas proceeding. Indeed, the First Circuit has affirmed a portion of a class-wide declaratory judgment in a similar lawsuit challenging the government's immigration detention policies. See Brito, 22 F.4th at 256-57.

Third, the government contends that certification of a class is impermissible because, after receiving a class-wide declaratory judgment, each class member would have to file an individual habeas petition to secure an order requiring the government to provide a bond hearing in his or her specific case. The government's contention appears to be that this prospect of future individual habeas petitions means that the class does not satisfy Rule 23(b)(2)'s requirement that "final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). But it provides no support for the notion that a Rule 23(b)(2) class action is improper under such circumstances. A final declaratory judgment establishing a right to a bond hearing would be appropriate on a class-wide basis, and each class member could then secure a coercive remedy enforcing that right in an individual action. Rule 23(b)(2) squarely permits this procedure. See Fed. R. Civ. P. 23 advisory committee's note to 1966 amendment (explaining that "[d]eclaratory relief 'corresponds' to injunctive relief when as a practical matter it affords injunctive relief or serves as a basis for later injunctive relief" (emphasis added)).

Fourth, the government argues that a declaratory judgment would not provide effective relief to the class members because principles of res judicata would bar them from pursuing individual habeas petitions after this case concludes. The premise of this argument -- that class members would not be able to seek individual relief if the Court issues a declaratory judgment -- is incorrect. The Declaratory Judgment Act specifically provides that “[f]urther necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.” 28 U.S.C. § 2202; see Unión de Empleados de Muelles de P.R., Inc. v. Int’l Longshoremen’s Ass’n, AFL-CIO, 884 F.3d 48, 59 (1st Cir. 2018) (explaining that this provision allows courts to issue additional relief “pursuant to the [declaratory] judgment, even if such relief was not requested in the complaint”). Moreover, the rule barring a plaintiff from bringing a second action based on the same transaction does not apply if “[t]he plaintiff was unable . . . to seek a certain remedy or form of relief in the first action because of the limitations on the subject matter jurisdiction of the courts or restrictions on their authority to entertain . . . demands for multiple remedies or forms of relief in a single action, and the plaintiff desires in the second action . . . to seek that remedy or form of relief.” Restatement (Second) of Judgments § 26(1)(c) (A.L.I. 1982); see Marrese v. Am.

Acad. of Orthopaedic Surgeons, 470 U.S. 373, 382 (1985) (recognizing this exception to claim preclusion); see also Foss v. E. States Exposition, 67 F.4th 462, 469 (1st Cir. 2023) (describing the Restatement “as the preeminent authority on issues of claim preclusion” (cleaned up)); Havercombe v. Dep’t of Educ., 250 F.3d 1, 4 (1st Cir. 2001) (noting that the First Circuit’s “approach to res judicata . . . follows the Restatement”). Class members may therefore file individual actions to seek relief that § 1252(f)(1) strips the Court of jurisdiction to issue on a class-wide basis.

Lastly, the government points again to the individualized questions it argues are material to determining whether a noncitizen is properly detained under § 1225(b)(2)(A) or § 1226(a) and asserts that there is therefore no single class-wide declaratory judgment the Court can issue. The government specifically stresses the individualized question of whether each class member is “seeking admission.” Yet if, as Guerrero Orellana argues, none of the class members are “seeking admission” because § 1225(b)(2)(A) applies solely to noncitizens apprehended at the border and the class definition expressly excludes such individuals, the Court can declare unlawful the government’s application of that statutory provision as to all the class members. Of course, the government may argue on the merits that certain categories of noncitizens arrested within the United States are “seeking admission.” Should the Court agree with the

government on that point, it will modify the class definition to exclude such individuals before issuing a declaratory judgment.

IV. Notice

Finally, the parties disagree as to whether the Court should order that notice be provided to members of the certified class. When a court certifies a Rule 23(b)(2) class, it may, but normally need not, direct notice to the class members. See Fed. R. Civ. P. 23(c)(2)(A); Wal-Mart, 564 U.S. at 363; In re Google Inc. Cookie Placement Consumer Priv. Litig., 934 F.3d 316, 323 (3d Cir. 2019). For such classes, “courts generally limit certification notice . . . to exceptional situations involving due process concerns.” Newberg on Class Actions § 8:3. Providing notice to the class members at this point is premature, but the Court will revisit the question of notice when it issues class-wide relief. Cf. Brito v. Barr, 415 F. Supp. 3d 258, 271 (D. Mass. 2019) (ordering the government to provide a copy of the Court’s declaratory judgment and permanent injunction to all class members), aff’d in part, vacated in part, 22 F.4th 240 (1st Cir. 2021).

ORDER

For the foregoing reasons, Guerrero Orellana’s motion for class certification (Dkt. 31) is ALLOWED. The Court certifies the following class for the statutory claim (Count I):

All people who are arrested or detained in Massachusetts, or are detained in a geographical area over which, as of September 22, 2025, an Immigration Court located in Massachusetts is the administrative control court, or who are otherwise subject to the jurisdiction of an Immigration Court located in Massachusetts, where:

- (a) the person is not in any Expedited Removal process under 8 U.S.C. § 1225(b)(1), does not have an Expedited Removal order under 8 U.S.C. § 1225(b)(1), and is not currently in proceedings before an immigration judge due to having been found to have a credible fear of persecution under 8 U.S.C. § 1225(b)(1)(B)(ii);
- (b) for the person's most recent entry into the United States, the government has not alleged that the person was admitted into the United States and has not alleged that person was paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A) at the time of entry;
- (c) the person does not meet the criteria for mandatory detention pursuant to 8 U.S.C. § 1226(c);
- (d) the person is not subject to post-final order detention under 8 U.S.C. § 1231; and
- (e) the person is not a person whose most recent arrest occurred at the border while they were arriving in the United States and has been continuously detained thereafter.

The Court appoints the following counsel as class counsel under Federal Rule of Civil Procedure 23(g): Foley Hoag LLP; the American Civil Liberties Union Foundation of Massachusetts, Inc.; the American Civil Liberties Union Foundation; the American Civil Liberties Union of New Hampshire; the American Civil Liberties

Union of Maine Foundation; Araujo & Fisher, LLC; and the Harvard Immigration and Refugee Clinical Program.

SO ORDERED.

/s/ PATTI B. SARIS
Hon. Patti B. Saris
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

<hr/>)
JOSE ARNULFO GUERRERO ORELLANA,))
on behalf of himself and others))
similarly situated,))
))
Petitioner-Plaintiff,))
))
v.	)	Civil Action
	)	No. 25-cv-12664-PBS
ANTONE MONIZ, Superintendent,))
Plymouth County Correctional))
Facility, et al.,))
))
Respondents-Defendants.))
<hr/>)

MEMORANDUM AND ORDER

December 19, 2025

Saris, J.

INTRODUCTION

This class action concerns the scope of the government’s authority to detain noncitizens pending their removal proceedings without the opportunity for release on bond under 8 U.S.C. § 1225(b)(2)(A). Since July 2025, the U.S. Department of Homeland Security (“DHS”) has asserted that all noncitizens who entered the United States without inspection and are later apprehended inside the country must be detained without a bond hearing during their removal proceedings, regardless of how long they have resided in the United States or whether they have a criminal history. Specifically, DHS has taken the position that such noncitizens

remain "applicants for admission" and, thus, are subject to mandatory detention throughout their removal proceedings under § 1225(b)(2)(A) rather than discretionary detention under 8 U.S.C. § 1226(a). The Board of Immigration Appeals ("BIA") adopted this interpretation of the statute in a precedential decision issued on September 5, 2025. See Matter of Hurtado, 29 I. & N. Dec. 216, 220 (B.I.A. 2025).

DHS's recent application of § 1225(b)(2)(A) and the BIA's decision in Matter of Hurtado are contrary to the longstanding agency interpretation that mandatory detention under § 1225(b)(2)(A) applies only to noncitizens seeking admission at the border or a port of entry. The Seventh Circuit and most district courts to have addressed the issue have rejected the government's new, more expansive interpretation of § 1225(b)(2)(A). See Castañón-Nava v. U.S. Dep't of Homeland Sec., ___ F.4th ___, ___ (7th Cir. 2025) [2025 WL 3552514, at *8-10] (addressing the issue on a motion to stay pending appeal); Barco Mercado v. Francis, ___ F. Supp. 3d ___, ___ (S.D.N.Y. 2025) [2025 WL 3295903, at *4 & nn.22-23, *13-14] (collecting district court decisions).

Petitioner-Plaintiff Jose Arnulfo Guerrero Orellana, the class representative, entered the United States without inspection in 2013. He has no criminal record. On September 18, 2025, he was detained by DHS and placed into removal proceedings. He

subsequently filed this petition for writ of habeas corpus and class action complaint to challenge his detention without a bond hearing and the government's recent interpretation of the scope of § 1225(b)(2)(A). He alleges that his and the class members' detention without a bond hearing is unlawful for three reasons: 1) the government has misclassified them as subject to mandatory detention under § 1225(b)(2)(A) when the statute only authorizes their discretionary detention under § 1226(a) (Count I); 2) their detention violates their constitutional right to due process (Counts II-IV); and 3) the BIA's decision in Matter of Hurtado is contrary to law and arbitrary and capricious in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq. (Count V).

On October 3, 2025, the Court issued a preliminary injunction requiring the government to release Guerrero Orellana unless it provided him with a bond hearing. See Guerrero Orellana v. Moniz (Guerrero Orellana I), __ F. Supp. 3d __, __ (D. Mass. 2025) [2025 WL 2809996, at *10]. The Court found that Guerrero Orellana was likely to succeed on the merits of Count I, namely that the government lacked statutory authority to detain him without a bond hearing under § 1225(b)(A)(2) and that he was subject to the government's discretionary detention authority in § 1226(a). See id. at __ [2025 WL 2809996, at *9]. He was subsequently released on bond by an immigration judge. The Court then certified a class

of noncitizens subject to mandatory detention under the government's recent interpretation of § 1225(b)(2)(A) who are either detained within Massachusetts or subject to the jurisdiction of an immigration court in Massachusetts. See Guerrero Orellana v. Moniz (Guerrero Orellana II), ___ F. Supp. 3d ___, ___ (D. Mass. 2025) [2025 WL 3033769, at *14].

The parties have now filed cross-motions for partial summary judgment on Count I. After hearing and for the reasons explained below, the Court agrees with Guerrero Orellana that § 1225(b)(2)(A) does not authorize the mandatory detention of the class members without a bond hearing. Accordingly, the Court **ALLOWS** Guerrero Orellana's motion for partial summary judgment (Dkt. 90) and **DENIES** the government's cross-motion for partial summary judgment (Dkt. 94).

BACKGROUND

I. Statutory Framework

As the Court has previously explained, "[t]he crux of this case is a question of statutory interpretation involving the interplay between 8 U.S.C. §§ 1225 and 1226." Guerrero Orellana I, ___ F. Supp. 3d at ___ [2025 WL 2809996, at *2]. The former provision establishes procedures for inspection of an "applicant for admission," that is, a noncitizen "present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1). After inspection by an immigration officer,

certain applicants for admission who are deemed inadmissible are subject to expedited removal, unless they express a fear of persecution or an intent to apply for asylum. See id. § 1225(b)(1)(A)(i); see also Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 108-11 (2020) (describing expedited removal). Otherwise, § 1225(b)(2)(a) provides that "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" removal proceedings. 8 U.S.C. § 1225(b)(2)(A). A noncitizen detained under this provision may be paroled "for urgent humanitarian reasons or significant public benefit." Id. § 1182(d)(5)(A); see Jennings v. Rodriguez, 583 U.S. 281, 300 (2018). In all other cases where § 1225(b)(2)(A) applies, the provision "mandate[s] detention of applicants for admission until [removal] proceedings have concluded." Jennings, 583 U.S. at 297.

Section 1226 permits the government "to detain certain aliens already in the country pending the outcome of removal proceedings." Id. at 289. Under § 1226(a), "[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." 8 U.S.C. § 1226(a). The government then "may continue to detain the arrested" noncitizen during removal proceedings or "may release"

the noncitizen on bond or conditional parole. Id. § 1226(a)(1)-(2). A noncitizen whom the government decides to detain under this discretionary provision may seek review of that decision via a bond (i.e., custody redetermination) hearing before an immigration judge. See 8 C.F.R. § 236.1(d)(1); Johnson v. Guzman Chavez, 594 U.S. 523, 527 (2021); Hernandez-Lara v. Lyons, 10 F.4th 19, 26 (1st Cir. 2021). At that hearing, the immigration judge must release the noncitizen unless the government establishes either “by clear and convincing evidence that [he] poses a danger to the community” or “by a preponderance of the evidence that [he] poses a flight risk.” Hernandez-Lara, 10 F.4th at 41.

Section 1226(c), however, “‘carves out a statutory category of aliens who may not be released’ during removal proceedings, outside of certain limited circumstances.” Reid v. Donelan, 17 F.4th 1, 4 (1st Cir. 2021) (quoting Jennings, 583 U.S. at 289); see 8 U.S.C. § 1226(a) (authorizing discretionary detention “[e]xcept as provided in subsection (c)”). This mandatory detention provision applies to noncitizens who are inadmissible or deportable on certain criminal or terrorist grounds. See Johnson, 594 U.S. at 527 n.2; Reid, 17 F.4th at 4.

II. Factual Background

The following facts are undisputed. Guerrero Orellana, a citizen of El Salvador, entered the United States without inspection in 2013. He lives in Massachusetts with his family,

including his one-year-old U.S. citizen daughter. He has no criminal record.

On September 18, 2025, DHS arrested Guerrero Orellana during a vehicle stop in Everett, Massachusetts, which is not at the border. Shortly after his arrest, DHS served Guerrero Orellana with a notice to appear charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for being present in the United States without admission or parole and under 8 U.S.C. § 1182(a)(7)(A)(i) for lacking valid entry documents. Guerrero Orellana intends to apply for cancellation of removal during his removal proceedings.

Guerrero Orellana was detained following his arrest at the Plymouth County Correctional Facility in Massachusetts. The government asserted that it was detaining Guerrero Orellana as an “applicant for admission” under § 1225(b)(2)(A). Based on the government’s position, Guerrero Orellana was subject to mandatory detention and ineligible for a bond hearing before an immigration judge under the BIA’s decision in Matter of Hurtado.

III. Procedural History

On the day of his arrest, Guerrero Orellana filed a habeas petition under 28 U.S.C. § 2241 to challenge the legality of his ongoing detention without a bond hearing. He subsequently filed an amended complaint and habeas petition asserting both individual claims and claims on behalf of a class of noncitizens subject to mandatory detention under the government’s interpretation of

§ 1225(b)(2)(A). He alleges that his and the class members' detention without a bond hearing is unlawful for three reasons: 1) the government has misclassified them as subject to mandatory detention under § 1225(b)(2)(A) when they are actually subject to discretionary detention under § 1226(a) (Count I); 2) their detention violates their constitutional right to due process (Counts II-IV); and 3) the BIA's decision in Matter of Hurtado is contrary to law and arbitrary and capricious in violation of the APA (Count V).

On October 3, 2025, the Court issued a preliminary injunction requiring the government to release Guerrero Orellana unless he was provided with a bond hearing before an immigration judge. See Guerrero Orellana I, ___ F. Supp. 3d at ___ [2025 WL 2809996, at *10]. In finding that Guerrero Orellana was likely to succeed on the merits of Count I, the Court rejected the government's position that any noncitizen who entered the United States without inspection is subject to mandatory detention pending removal proceedings under § 1225(b)(2)(A). See id. at ___ [2025 WL 2809996, at *4-9]. The Court concluded that the government's authority to detain Guerrero Orellana rested instead on § 1226(a) and, thus, that he had a right to a bond hearing in immigration court. See id. at ___ [2025 WL 2809996, at *9]. Six days later, an immigration judge held a hearing and ordered Guerrero Orellana released on

bond. Guerrero Orellana posted bond the following day and was released from custody.

Guerrero Orellana also moved for class certification under Federal Rule of Civil Procedure 23. The Court certified the following class for Count I only:

All people who are arrested or detained in Massachusetts, or are detained in a geographical area over which, as of September 22, 2025, an Immigration Court located in Massachusetts is the administrative control court, or who are otherwise subject to the jurisdiction of an Immigration Court located in Massachusetts, where:

- (a) the person is not in any Expedited Removal process under 8 U.S.C. § 1225(b)(1), does not have an Expedited Removal order under 8 U.S.C. § 1225(b)(1), and is not currently in proceedings before an immigration judge due to having been found to have a credible fear of persecution under 8 U.S.C. § 1225(b)(1)(B)(ii);
- (b) for the person's most recent entry into the United States, the government has not alleged that the person was admitted into the United States and has not alleged that person was paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A) at the time of entry;
- (c) the person does not meet the criteria for mandatory detention pursuant to 8 U.S.C. § 1226(c);
- (d) the person is not subject to post-final order detention under 8 U.S.C. § 1231; and
- (e) the person is not a person whose most recent arrest occurred at the border while they were arriving in the United States and has been continuously detained thereafter.

Guerrero Orellana II, ___ F. Supp. 3d at ___ [2025 WL 3033769, at *14]. The parties' cross-motions for partial summary judgment on Count I followed.

LEGAL STANDARD

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A genuine dispute is one which 'a reasonable jury could resolve . . . in the favor of the non-moving party,' and a material issue is one with the 'potential to affect the outcome . . . under the applicable law.'" Kinzer v. Whole Foods Mkt., Inc., 99 F.4th 105, 108 (1st Cir. 2024) (alterations in original) (quoting Cherkaoui v. City of Quincy, 877 F.3d 14, 23-24 (1st Cir. 2017)). In determining whether to grant summary judgment, a court must construe "the facts in the light most favorable to the non-moving party" and "draw[] all reasonable inferences" in his favor. Id. (quoting Harley-Davidson Credit Corp. v. Galvin, 807 F.3d 407, 408 (1st Cir. 2015)).

This standard does "not change where the parties file cross-motions for summary judgment." Roberge v. Travelers Prop. Cas. Co. of Am., 112 F.4th 45, 51 (1st Cir. 2024). On cross-motions, a court must "determine whether either of the parties deserves judgment as a matter of law on facts that are not disputed." Johansen v.

Liberty Mut. Grp., 118 F.4th 142, 149 (1st Cir. 2024) (quoting Anvar v. Dwyer, 82 F.4th 1, 7 (1st Cir. 2023)).

DISCUSSION

I. Jurisdiction

The government first presses various challenges to the Court's jurisdiction over this action. The government asserts that 8 U.S.C. § 1252(b)(9) and (g) bar Guerrero Orellana's suit because he contests decisions about immigration detention that are inextricably tied to, and arise from, the commencement and pendency of removal proceedings. The government also argues that 8 U.S.C. § 1252(e) prohibits class certification in this case and required Guerrero Orellana to file his class action in the U.S. District Court for the District of Columbia within sixty days of the government's implementation of its new policy regarding the scope of § 1225(b)(2)(A).

The Court rejected identical jurisdictional arguments in its preliminary injunction and class certification decisions and does so again here for the same reasons. See Guerrero Orellana I, ___ F. Supp. 3d at ___ [2025 WL 2809996, at *3-4]; Guerrero Orellana II, ___ F. Supp. 3d at ___ [2025 WL 3033769, at *5-6]. In short, the First Circuit has held that neither § 1252(b)(9) nor § 1252(g) strips district courts of jurisdiction over claims like Guerrero Orellana's that concern "the legality of a petitioner's detention" and are collateral to removal proceedings or the execution of

removal orders. Kong v. United States, 62 F.4th 608, 614-15 (1st Cir. 2023).

Moreover, § 1252(e)'s restrictions on judicial review -- which apply in relevant part to systemic challenges to "determinations under [§] 1225(b) . . . and its implementation," 8 U.S.C. § 1252(e)(3)(A) -- do "not limit judicial review of Guerrero Orellana's claim that the government is unlawfully subjecting him and the other class members to mandatory detention under § 1225(b)(2)(A) because the mandatory detention provision does not apply at all." Guerrero Orellana II, ___ F. Supp. 3d at ___ [2025 WL 3033769, at *6]. In other words, since § 1225(b)(2)(A) "does not govern the detention of individuals in Guerrero Orellana's position in the first place, he is not seeking judicial review of the 'implementation' of § 1225(b)." Id. Since this Court first held in its class certification decision that § 1252(e) does not apply to this lawsuit, a number of other district courts have similarly interpreted the scope of that jurisdictional provision. See Barron Moncada v. Noem, No. 25-cv-3354, 2025 WL 3458894, at *1 (W.D. Mo. Dec. 2, 2025); Ardon-Quiroz v. Assistant Field Dir., No. 25-cv-25290, 2025 WL 3451645, at *2-3 (S.D. Fla. Dec. 1, 2025); Lieogo v. Freden, No. 25-cv-06615, 2025 WL 3290694, at *2 (W.D.N.Y. Nov. 26, 2025); Bautista v. Santacruz, ___ F. Supp. 3d ___, ___ (C.D. Cal. 2025) [2025 WL 3289861, at *4].

The Court therefore has jurisdiction over Count I of Guerrero Orellana's lawsuit. The Court now turns to the merits of that claim.

II. Scope of § 1252(b)(2)(A)

Count I of Guerrero Orellana's amended complaint alleges that the government has misclassified the class members as subject to mandatory detention under § 1225(b)(2)(A) instead of discretionary detention under § 1226 in contravention of the relevant statutory provisions. At core, this claim poses a question of statutory interpretation regarding the scope of § 1225(b)(2)(A). "Questions of statutory interpretation are questions of law," Hernández-Miranda v. Empresas Díaz Massó, Inc., 651 F.3d 167, 170 (1st Cir. 2011), so Guerrero Orellana's claim is appropriately resolved on summary judgment, see Brown v. United States, 557 F.3d 1, 3 (1st Cir. 2009) (recognizing that "a question of law" is "grist for the summary judgment mill").

The parties offer dueling constructions of the scope of § 1225(b)(2)(A). That provision states that "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 [removal] proceeding." 8 U.S.C. § 1225(b)(2)(A). The government argues that this provision applies to any "applicant for admission" -- including any noncitizen who

entered the United States without inspection, regardless of how long he or she has been present in the country -- who is not subject to the expedited removal process under § 1225(b)(1). It is undisputed that the class members are all "applicants for admission" because they were neither admitted nor paroled, see id. § 1225(a)(1), so, under the government's interpretation, they are all subject to mandatory detention under § 1225(b)(2)(A).

Guerrero Orellana interprets the relevant statutory provisions differently. In his view, mandatory detention under § 1225(b)(2)(A) only applies to noncitizens "seeking admission" at a port of entry or by crossing the border, while § 1226(a)'s discretionary authority governs the detention of noncitizens arrested within the United States, whether or not they entered the country unlawfully.

The Court addressed the question of statutory interpretation at the heart of this claim in its preliminary injunction decision in this case. There, the Court agreed with Guerrero Orellana's argument that § 1225(b)(2)(A) only authorizes the detention of noncitizens arriving at a port of entry or crossing the border and does not apply to noncitizens who entered the United States without inspection and are later apprehended while residing in the country. See Guerrero Orellana I, ___ F. Supp. 3d at ___ [2025 WL 2809996, at *4-9]. The Court's conclusion rested on the plain and ordinary meaning of § 1225(b)(2)(A)'s text, namely the requirement that the

noncitizen be “seeking admission”; the presumption against construing the statutory provision in a manner that would render superfluous language in the provision itself and in Congress’s recent amendment to § 1226(c); the description of the government’s pre-removal order detention authority in the Supreme Court’s decision in Jennings, see 583 U.S. at 287-89; and longstanding agency practice. See Guerrero Orellana I, ___ F. Supp. 3d at ___ [2025 WL 2809996, at *6-9]. Following the Court’s preliminary injunction decision, the Seventh Circuit, the only court of appeals to have addressed the issue, held that the government is not likely to succeed in its argument about § 1225(b)(2)(A)’s scope. See Castañon-Nava, ___ F.4th at ___ [2025 WL 3552514, at *8-10].

Because the parties’ arguments at this stage largely rehash those presented in their preliminary injunction briefing, the Court need not analyze those arguments at length. For the reasons provided in its preliminary injunction decision, the Court concludes that § 1225(b)(2)(A) does not authorize the mandatory detention of noncitizens who entered the United States without inspection and are detained while residing in the country. See Guerrero Orellana I, ___ F. Supp. 3d at ___ [2025 WL 2809996, at *6-9].

The Court briefly responds to two of the government’s arguments that it has not yet addressed. First, the government points to language in an implementing regulation for § 1225(b)

providing that “[a]n alien who was not inspected and admitted or paroled into the United States but who establishes that he or she has been continuously physically present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility [i.e., is not subject to expedited removal] shall be detained in accordance with [§ 1225(b)(2)].” 8 C.F.R. § 235.3(b)(1)(ii). In the government’s view, this language indicates that § 1225(b)(2)(A) applies to all “applicants for admission” not subject to the expedited removal process and is a “contemporaneous[]” agency interpretation “useful in determining [§ 1225(b)(2)(A)]’s meaning.” Loper Bright Enters. v. Raimondo, 603 U.S. 369, 394 (2024).

Despite the government’s reliance on this regulatory language, the Court is ultimately unpersuaded to alter its interpretation of § 1225(b)(2)(A). As an initial matter, questions of statutory interpretation rest with the court, which must “independently interpret the statute and effectuate the will of Congress subject to constitutional limits.” Id. at 395. Additionally, the language cited by the government appears in the subsection of the regulation addressing expedited removal. See 8 C.F.R. § 235.3(b). By contrast, the subsection that actually implements § 1225(b)(2) applies more narrowly to “any arriving alien who appears to the inspecting officer to be inadmissible, and who is placed in [regular] removal proceedings.” 8 C.F.R.

§ 235.3(c)(1) (emphasis added). An “arriving alien,” in turn, is “an applicant for admission coming or attempting to come into the United States.” Id. § 1.2. As many other district courts have noted, § 235.3(c)(1) thus “treats ‘arriving alien’ as roughly interchangeable with an ‘applicant . . . seeking admission’” under § 1225(b)(2)(A). Martinez v. Hyde, 792 F. Supp. 3d 211, 219 (D. Mass. 2025) (alteration in original), appeal filed, No. 25-1902 (1st Cir. Sep. 29, 2025); see, e.g., Valencia Zapata v. Kaiser, ___ F. Supp. 3d ___, ___ (N.D. Cal. 2025) [2025 WL 2741654, at *10], appeal filed, No. 25-7472 (9th Cir. Nov. 26, 2025); Lopez Benitez v. Francis, 795 F. Supp. 3d 475, 489 (S.D.N.Y. 2025). This interpretation of § 1225(b)(2)(A) finds further support in longstanding agency practice, which for decades after the enactment of the statutory provision applied § 1226 to noncitizens who entered without inspection and were detained while residing in the United States. See Castañon-Nava, ___ F.4th at ___ [2025 WL 3552514, at *9 n.13]; Guerrero Orellana I, ___ F. Supp. 3d at ___ [2025 WL 2809996, at *8]. The government has not, therefore, identified a persuasive agency interpretation that has “remained consistent over time.” Loper Bright, 603 U.S. at 394.

Second, the government argues that all “applicants for admission” are by definition “seeking admission” and are, thus, subject to mandatory detention under § 1225(b)(2)(A). The strongest language the government offers on this point is another

provision in § 1225 that refers to noncitizens “who are applicants for admission or otherwise seeking admission.” 8 U.S.C. § 1225(a)(3) (emphasis added). Yet if all “applicants for admission” are “seeking admission,” Congress would not have specified that § 1225(b)(2)(A) applies “in the case of an alien who is an applicant for admission” and who is “seeking admission.” Id. § 1225(b)(2)(A). Adopting the government’s construction of the statute would improperly render meaningless the phrase “seeking admission” in § 1225(b)(2)(A). See Castañon-Nava, ___ F.4th at ___ [2025 WL 3552514, at *9]; Guerrero Orellana I, ___ F. Supp. 3d at ___ [2025 WL 2809996, at *7]; see also City of Providence v. Barr, 954 F.3d 23, 37 (1st Cir. 2020) (“Courts generally ought not to interpret statutes in a way that renders words or phrases either meaningless or superfluous.”).

In sum, the Court holds that § 1225(b)(2)(A) does not authorize mandatory detention pending removal proceedings for noncitizens who enter the United States without inspection and are later apprehended while residing within the country. The detention of any such noncitizen during the pendency of his removal proceedings is instead governed by § 1226(a), unless he is subject to the expedited removal process under § 1225(b)(1), humanitarian parole revocation under § 1182(d)(5)(A), or mandatory detention based on criminal or terrorist grounds under § 1226(c). The Court therefore grants summary judgment to Guerrero Orellana on his claim

that the government lacks statutory authority to subject the class members to mandatory detention without a bond hearing.

The government does, however, raise one meritorious argument regarding the proper scope of the class. The class definition that the Court certified excludes any noncitizen who, “for [his] most recent entry into the United States, the government has not alleged . . . was paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A) at the time of entry.” Guerrero Orellana II, __ F. Supp. 3d at __ [2025 WL 3033769, at *14]. This exclusion reflects that when a noncitizen’s humanitarian parole ends, he “shall forthwith return or be returned to the custody from which he was paroled.” 8 U.S.C. § 1182(d)(5)(A). Thus, a noncitizen who is detained under § 1225(b)(2)(A) upon entry into the United States, is released on humanitarian parole, and is again detained upon the end of his parole returns to mandatory detention under § 1225(b)(2)(A). As the government points out, this rationale applies to any noncitizen released on humanitarian parole, whether he receives parole “at the time of entry” or subsequently. The Court therefore modifies this aspect of the class definition to exclude any noncitizen who “for [his] most recent entry into the United States, the government has not alleged . . . was paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A) at the time of entry or after continuous detention upon arrival.” See Fed. R. Civ. P. 23(c)(1)(C) (“An order that grants or denies class

certification may be altered or amended before final judgment.”); Brown v. Colegio de Abogados de P.R., 613 F.3d 44, 50 (1st Cir. 2010) (“Courts may alter [class] certification orders prior to final judgment”).

III. Declaratory Judgment

Having resolved the merits of Count I in Guerrero Orellana’s favor, the Court turns to the question of remedy. Guerrero Orellana seeks a declaration that the class members are subject to discretionary detention under § 1226(a), not mandatory detention under § 1225(b)(2)(A), and that they are entitled to an initial custody determination by an immigration officer and, upon request, a custody redetermination (i.e., bond) hearing before an immigration judge. See 8 C.F.R. § 236.1(c)(8), (d)(1). Apart from challenging the merits of Guerrero Orellana’s claim, the government does not contest the language of the proposed declaratory judgment.

The government does, though, renew its argument that the Court lacks jurisdiction to issue a class-wide declaratory judgment because such relief “restrain[s] the operation of” § 1225(b)(2)(A) in violation of 8 U.S.C. § 1252(f)(1). As the Court explained in its class certification decision, binding First Circuit precedent forecloses the government’s argument that § 1252(f)(1) bars declaratory relief. See Guerrero Orellana II, ___ F. Supp. 3d at ___ [2025 WL 3033769, at *12]; see also Brito v. Barr, 22 F.4th 240,

252 (1st Cir. 2021) (“[D]eclaratory relief remains available under [§] 1252(f)(1).”). The Court will therefore issue a declaratory judgment in favor of the class.

IV. Certification of Partial Final Judgment

Guerrero Orellana next asks the Court to issue partial final judgment on Count I under Federal Rule of Civil Procedure 54(b). The government agrees to this relief should the Court conclude, as it does, that partial summary judgment is warranted in Guerrero Orellana’s favor. Rule 54(b) provides that in an action with “more than one claim for relief . . . or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.” Fed. R. Civ. P. 54(b).

To certify a partial final judgment under this provision, a court “first must ensure that the ruling underlying the proposed judgment is final.” Nystedt v. Nigro, 700 F.3d 25, 29 (1st Cir. 2012). This “finality requirement is satisfied as long as the ‘trial court action underlying the judgment disposed of all the rights and liabilities of at least one party as to at least one claim.’” Amyndas Pharms., S.A. v. Zealand Pharma A/S, 48 F.4th 18, 28 (1st Cir. 2022) (quoting Credit Francais Int’l, S.A. v. Bio-Vita, Ltd., 78 F.3d 698, 706 (1st Cir. 1996)). Here, the entry of

partial summary judgment on Count I fully resolves that claim and, thus, is sufficiently final.

Rule 54(b) also requires the court to find that “there is no just reason for delay” in entering judgment on the resolved claims. Fed. R. Civ. P. 54(b); see Amyndas, 48 F.4th at 28. This standard calls for “an individualized assessment of the desirability and effect of an immediate appeal.” Quinn v. City of Boston, 325 F.3d 18, 26 (1st Cir. 2003). The court must bear in mind the “long-settled and prudential policy against the scattershot disposition of litigation.” Amyndas, 48 F.4th at 28 (quoting Spiegel v. Trs. of Tufts Coll., 843 F.2d 38, 42 (1st Cir. 1988)). Other relevant factors include “whether the disputed ruling raises legal or factual issues that overlap with any claims that remain pending in the district court” and “how the equities and efficiencies of piecemeal review would compare to those in a single proceeding.” Britton v. Maloney, 196 F.3d 24, 27 n.2 (1st Cir. 1999).

The Court concludes that there is no just reason for delay in entering judgment on Count I. Guerrero Orellana’s victory on this count and the issuance of a declaration in the class’s favor may well obviate the need to address the remaining counts, which allege that the class members’ mandatory detention without a bond hearing is unlawful for other reasons. See Quinn, 325 F.3d at 27 (explaining that such circumstances “mean[] that, in all probability, there will be no significant duplication of effort in

litigating one set of claims to a conclusion and then addressing the remaining set of claims"). More importantly, Guerrero Orellana has "establish[ed] a compelling reason for accelerated appellate review." Amyndas, 48 F.4th at 29. This action implicates the liberty interests of the class members. Delaying entry of judgment while the Court resolves all the claims brought by Guerrero Orellana would force class members to endure ongoing irreparable harm as they continue to be unlawfully subject to mandatory detention without a bond hearing. See Guerrero Orellana I, __ F. Supp. at __ [2025 WL 2809996, at *9]; see also Ferrara v. United States, 370 F. Supp. 2d 351, 360 (D. Mass. 2005) ("Obviously, the loss of liberty is a . . . severe form of irreparable injury."). Put differently, "the nature of the rights at issue here . . . factors in favor of speedier review." Amyndas, 48 F.4th at 29.

Having concluded that there is no just reason for delay, the Court will enter partial final judgment on Count I.

V. Notice and Identification of Class Members

Finally, Guerrero Orellana requests that the Court order the government to 1) provide individualized notice to class members of the action and their right to seek release from detention; 2) identify to class counsel all present members of the class and then identify new class members on a weekly basis; and 3) notify class counsel of the transfer of any class member out of Massachusetts, Maine, Rhode Island, Vermont, or New Hampshire at

least twenty-four hours prior to transfer or, if such notice is not reasonably practicable, within twenty-four hours of initiation of the transfer. The government opposes these requests.

A district court has discretion to “require -- to protect class members and fairly conduct the action -- giving appropriate notice to some or all class members of . . . any step in the action.” Fed. R. Civ. P. 23(d)(1)(B)(i); see id. advisory committee’s note to 1966 amendment (noting that this provision “does not require notice at any stage, but rather calls attention to its availability and invokes the court’s discretion”). The Court concludes that simply posting notice of the declaratory judgment in detention facilities, as the government suggests, would not adequately ensure that class members are informed of their rights in light of DHS’s ability to transfer class members between facilities and the fact that many class members may not speak English or have counsel. Thus, individualized notice of the declaratory judgment is also warranted at this stage. Cf. Brito v. Barr, 415 F. Supp. 3d 258, 271 (D. Mass. 2019) (ordering the government to provide a copy of the court’s declaratory judgment and permanent injunction to all class members in a case concerning immigration detention), aff’d in part, vacated in part, 22 F.4th 240 (1st Cir. 2021). The government argues that identifying the applicable detention authority for each immigration detainee -- and, thus, determining who should receive individualized notice as

a class member -- is an onerous undertaking for DHS. Accordingly, the Court orders the government to give notice to all noncitizens whom the government reasonably believes may be members of the class.

At the hearing on the cross-motions for summary judgment, the parties extensively debated the feasibility and burden of requiring Defendants to identify to class counsel information about class members and the transfers of any class member outside the region. Based on the current record, the Court lacks adequate information on these topics to determine what identification and reporting obligations to class counsel, if any, are appropriate. At this stage, then, the Court does not impose any identification and reporting obligations on the government. The parties shall file supplemental briefs on this issue by January 7, 2026, and are encouraged in the interim to confer to see if they can reach any agreement.

ORDER

For the foregoing reasons, Guerrero Orellana's motion for partial summary judgment (Dkt. 90) is **ALLOWED**, and the government's cross-motion for partial summary judgment (Dkt. 94) is **DENIED**.

The Court modifies the class definition to read as follows:

All people who are arrested or detained in Massachusetts, or are detained in a geographical area over which, as of September 22, 2025, an Immigration Court located in Massachusetts is the administrative control court, or who are otherwise subject to the

jurisdiction of an Immigration Court located in Massachusetts, where:

- (a) the person is not in any Expedited Removal process under 8 U.S.C. § 1225(b)(1), does not have an Expedited Removal order under 8 U.S.C. § 1225(b)(1), and is not currently in proceedings before an immigration judge due to having been found to have a credible fear of persecution under 8 U.S.C. § 1225(b)(1)(B)(ii);
- (b) for the person's most recent entry into the United States, the government has not alleged that the person was admitted into the United States and has not alleged that person was paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A) at the time of entry or after continuous detention upon arrival;
- (c) the person does not meet the criteria for mandatory detention pursuant to 8 U.S.C. § 1226(c);
- (d) the person is not subject to post-final order detention under 8 U.S.C. § 1231; and
- (e) the person is not a person whose most recent arrest occurred at the border while they were arriving in the United States and has been continuously detained thereafter.

By January 7, 2026, the parties shall file supplemental briefs of no more than ten pages on any identification or reporting obligations the Court should impose.

The Court issues the following declaratory judgment and will enter a separate partial final judgment on Count I.

DECLARATORY JUDGMENT

The Court declares that the members of the certified class are not subject to detention under 8 U.S.C. § 1225(b)(2).

Defendants' policy of subjecting members of the certified class to detention under 8 U.S.C. § 1225(b) (2) (A) without consideration for bond and a custody redetermination (i.e., bond) hearing is unlawful and violates the Immigration and Nationality Act and its regulations. The members of the certified class are subject to detention under 8 U.S.C. § 1226(a), including access to consideration for release on bond and/or conditions before immigration officers and Immigration Judges. After joining the class, the member of the certified class shall remain subject to this order notwithstanding any subsequent change in their location, facility of detention, or venue of immigration proceeding.

The Court also orders that:

1. The notice of the declaratory judgment that Defendants are ordered to give shall be in the form attached in the appendix hereto. Defendants shall forthwith translate the notice into, at minimum, Spanish, Portuguese, and Haitian Creole.
2. Within seven days, Defendants shall post the notice in English, Spanish, Portuguese, and Haitian Creole in common areas of any facility holding immigration detainees in Massachusetts or in any geographic area over which, as of September 22, 2025, an Immigration

Court located in Massachusetts is the administrative control court.

3. Within fourteen days, Defendants shall serve the notice on all noncitizens already in immigration detention who Defendants reasonably believe may be members of the class. The notice shall be in a language the noncitizen understands. Should Defendants not have the notice translated into a language the noncitizen understands, they shall secure an interpreter to translate the notice as soon as feasible.
4. Starting no later than seven days after the date of this order, Defendants shall promptly serve the notice on all noncitizens who are newly arrested or detained by immigration officers and who Defendants reasonably believe may be members of the class. The notice shall be given at the time the noncitizen is processed in a language the noncitizen understands. Should Defendants not have the notice translated into a language the noncitizen understands, they shall secure an interpreter to translate the notice as soon as feasible.
5. Defendants shall record the service of each notice and retain a copy of each such notice served.

6. Defendants shall provide the noncitizen with access to a telephone to call an attorney within one hour after the noncitizen receives the notice.

SO ORDERED.

/s/ PATTI B. SARIS
Hon. Patti B. Saris
United States District Judge

APPENDIX

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)	
JOSE ARNULFO GUERRERO ORELLANA,)	
on behalf of himself and others)	
similarly situated,)	
)	
Petitioner-Plaintiff,)	
)	
v.)	Civil Action
)	No. 25-cv-12664-PBS
ANTONE MONIZ, Superintendent,)	
Plymouth County Correctional)	
Facility, et al.,)	
)	
Respondents-Defendants.)	
_____)	

CLASS ACTION NOTICE

You may be a member of a class that has been certified by the United States District Court for the District of Massachusetts in Guerrero Orellana v. Moniz, No. 25-cv-12664 (D. Mass. 2025). On December 19, 2025, the District Court issued a ruling that certain immigration detainees may be unlawfully detained and may seek release on bond or conditional parole under 8 U.S.C. § 1226(a). Therefore, you may be entitled to request release on bond or conditional parole by immigration officers; you may also be entitled to a bond hearing upon your request to the Immigration Court. At the bond hearing, the Immigration Judge may determine that you are eligible to be released on bond while your removal proceedings are pending.

If you have questions about your potential membership in the class or your rights under the District Court's ruling, you may call the attorneys representing the class at (857) 347-5502.

Served on date: _____

Served at location: _____

Name of person served: _____

Alien number of person served: _____

Name of officer serving notice: _____

ID number of officer serving notice: _____

Signed by serving officer: _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

<hr/>)
JOSE ARNULFO GUERRERO ORELLANA,))
on behalf of himself and others))
similarly situated,))
))
Petitioner-Plaintiff,))
))
v.	)	Civil Action
	)	No. 25-cv-12664-PBS
ANTONE MONIZ, Superintendent,))
Plymouth County Correctional))
Facility, et al.,))
))
Respondents-Defendants.))
<hr/>)

PARTIAL FINAL JUDGMENT

December 19, 2025

Saris, J.

In accordance with the Court’s Memorandum and Order dated December 19, 2025 (Dkt. 112), allowing Petitioner-Plaintiff Jose Arnulfo Guerrero Orellana’s motion for partial summary judgment and denying Respondents-Defendants’ cross-motion for partial summary judgment, it is hereby **ORDERED** that judgment is entered in favor of Guerrero Orellana and the certified class on Count I.

The class includes the following individuals:

All people who are arrested or detained in Massachusetts, or are detained in a geographical area over which, as of September 22, 2025, an Immigration Court located in Massachusetts is the administrative control court, or who are otherwise subject to the jurisdiction of an Immigration Court located in Massachusetts, where:

- (a) the person is not in any Expedited Removal process under 8 U.S.C. § 1225(b)(1), does not have an Expedited Removal order under 8 U.S.C. § 1225(b)(1), and is not currently in proceedings before an immigration judge due to having been found to have a credible fear of persecution under 8 U.S.C. § 1225(b)(1)(B)(ii);
- (b) for the person's most recent entry into the United States, the government has not alleged that the person was admitted into the United States and has not alleged that person was paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A) at the time of entry or after continuous detention upon arrival;
- (c) the person does not meet the criteria for mandatory detention pursuant to 8 U.S.C. § 1226(c);
- (d) the person is not subject to post-final order detention under 8 U.S.C. § 1231; and
- (e) the person is not a person whose most recent arrest occurred at the border while they were arriving in the United States and has been continuously detained thereafter.

DECLARATORY JUDGMENT

The Court declares that the members of the certified class are not subject to detention under 8 U.S.C. § 1225(b)(2). Defendants' policy of subjecting members of the certified class to detention under 8 U.S.C. § 1225(b)(2)(A) without consideration for bond and a custody redetermination (i.e., bond) hearing is unlawful and violates the Immigration and Nationality Act and its regulations. The members of the certified class are subject to detention under 8 U.S.C. § 1226(a), including access to consideration for release on bond and/or conditions before

immigration officers and Immigration Judges. After joining the class, the member of the certified class shall remain subject to this order notwithstanding any subsequent change in their location, facility of detention, or venue of immigration proceeding.

The Court also orders that:

1. The notice of the declaratory judgment that Defendants are ordered to give shall be in the form attached in the appendix hereto. Defendants shall forthwith translate the notice into, at minimum, Spanish, Portuguese, and Haitian Creole.
2. Within seven days, Defendants shall post the notice in English, Spanish, Portuguese, and Haitian Creole in common areas of any facility holding immigration detainees in Massachusetts or in any geographic area over which, as of September 22, 2025, an Immigration Court located in Massachusetts is the administrative control court.
3. Within fourteen days, Defendants shall serve the notice on all noncitizens already in immigration detention who Defendants reasonably believe may be members of the class. The notice shall be in a language the noncitizen understands. Should Defendants not have the notice

translated into a language the noncitizen understands, they shall secure an interpreter to translate the notice as soon as feasible.

4. Starting no later than seven days after the date of this order, Defendants shall promptly serve the notice on all noncitizens who are newly arrested or detained by immigration officers and who Defendants reasonably believe may be members of the class. The notice shall be given at the time the noncitizen is processed in a language the noncitizen understands. Should Defendants not have the notice translated into a language the noncitizen understands, they shall secure an interpreter to translate the notice as soon as feasible.
5. Defendants shall record the service of each notice and retain a copy of each such notice served.
6. Defendants shall provide the noncitizen with access to a telephone to call an attorney within one hour after the noncitizen receives the notice.

SO ORDERED.

/s/ PATTI B. SARIS
Hon. Patti B. Saris
United States District Judge

APPENDIX

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)	
JOSE ARNULFO GUERRERO ORELLANA,)	
on behalf of himself and others)	
similarly situated,)	
)	
Petitioner-Plaintiff,)	
)	
v.	)	Civil Action
	)	No. 25-cv-12664-PBS
ANTONE MONIZ, Superintendent,)	
Plymouth County Correctional)	
Facility, et al.,)	
)	
Respondents-Defendants.)	
_____)	

CLASS ACTION NOTICE

You may be a member of a class that has been certified by the United States District Court for the District of Massachusetts in Guerrero Orellana v. Moniz, No. 25-cv-12664 (D. Mass. 2025). On December 19, 2025, the District Court issued a ruling that certain immigration detainees may be unlawfully detained and may seek release on bond or conditional parole under 8 U.S.C. § 1226(a). Therefore, you may be entitled to request release on bond or conditional parole by immigration officers; you may also be entitled to a bond hearing upon your request to the Immigration Court. At the bond hearing, the Immigration Judge may determine that you are eligible to be released on bond while your removal proceedings are pending.

If you have questions about your potential membership in the class or your rights under the District Court's ruling, you may call the attorneys representing the class at (857) 347-5502.

Served on date: _____

Served at location: _____

Name of person served: _____

Alien number of person served: _____

Name of officer serving notice: _____

ID number of officer serving notice: _____

Signed by serving officer: _____

8 U.S.C. § 1225 - Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing

(a) Inspection

(1) Aliens treated as applicants for admission

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

(2) Stowaways

An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted and shall be ordered removed upon inspection by an immigration officer. Upon such inspection if the alien indicates an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview under subsection (b)(1)(B). A stowaway may apply for asylum only if the stowaway is found to have a credible fear of persecution under subsection (b)(1)(B). In no case may a stowaway be considered an applicant for admission or eligible for a hearing under section 1229a of this title.

(3) Inspection

All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.

(4) Withdrawal of application for admission

An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States.

(5) Statements

An applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States, including the applicant's intended length of stay and whether the applicant intends to remain permanently or become a United States citizen, and whether the applicant is inadmissible.

(b) Inspection of applicants for admission

(1) Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled

(A) Screening

(i) In general

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the 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 under section 1158 of this title or a fear of persecution.

(ii) Claims for asylum

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title and the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B).

(iii) Application to certain other aliens

(I) In general

The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

(II) Aliens described

An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has 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 under this subparagraph.

(B) Asylum interviews

(i) Conduct by asylum officers

An asylum officer shall conduct interviews of aliens referred under subparagraph (A)(ii), either at a port of entry or at such other place designated by the Attorney General.

(ii) Referral of certain aliens

If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.

(iii) Removal without further review if no credible fear of persecution

(I) In general

Subject to subclause (III), if the officer determines that an alien does not have a credible fear of persecution, the

officer shall order the alien removed from the United States without further hearing or review.

(II) Record of determination

The officer shall prepare a written record of a determination under subclause (I). Such record shall include a summary of the material facts as stated by the applicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in the light of such facts, the alien has not established a credible fear of persecution. A copy of the officer's interview notes shall be attached to the written summary.

(III) Review of determination

The Attorney General shall provide by regulation and upon the alien's request for prompt review by an immigration judge of a determination under subclause (I) that the alien does not have a credible fear of persecution. Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by telephonic or video connection. Review shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I).

(IV) Mandatory detention

Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.

(iv) Information about interviews

The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who

may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process.

(v) “Credible fear of persecution” defined

For purposes of this subparagraph, the term “credible fear of persecution” means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title.

(C) Limitation on administrative review

Except as provided in subparagraph (B)(iii)(III), a removal order entered in accordance with subparagraph (A)(i) or (B)(iii)(I) is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order under subparagraph (A)(i) against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of Title 28, after having been warned of the penalties for falsely making such claim under such conditions, to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section 1157 of this title, or to have been granted asylum under section 1158 of this title.

(D) Limit on collateral attacks

In any action brought against an alien under section 1325(a) of this title or section 1326 of this title, the court shall not have jurisdiction to hear any claim attacking the validity of an order of removal entered under subparagraph (A)(i) or (B)(iii).

(E) “Asylum officer” defined

As used in this paragraph, the term “asylum officer” means an immigration officer who--

(i) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 1158 of this title, and

(ii) is supervised by an officer who meets the condition described in clause (i) and has had substantial experience adjudicating asylum applications.

(F) Exception

Subparagraph (A) shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.

(G) Commonwealth of the Northern Mariana Islands

Nothing in this subsection shall be construed to authorize or require any person described in section 1158(e) of this title to be permitted to apply for asylum under section 1158 of this title at any time before January 1, 2014.

(2) Inspection of other aliens

(A) In general

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.

(B) Exception

Subparagraph (A) shall not apply to an alien--

(i) who is a crewman,

(ii) to whom paragraph (1) applies, or

(iii) who is a stowaway.

(C) Treatment of aliens arriving from contiguous territory

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

(3) Enforcement by attorney general of a State

The attorney general of a State, or other authorized State officer, alleging a violation of the detention and removal requirements under paragraph (1) or (2) that harms such State or its residents shall have standing to bring an action against the Secretary of Homeland Security on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this paragraph to the greatest extent practicable. For purposes of this paragraph, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of \$100.

(4) Challenge of decision

The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 1229a of this title.

(c) Removal of aliens inadmissible on security and related grounds

(1) Removal without further hearing

If an immigration officer or an immigration judge suspects that an arriving alien may be inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title, the officer or judge shall--

- (A) order the alien removed, subject to review under paragraph (2);
- (B) report the order of removal to the Attorney General; and
- (C) not conduct any further inquiry or hearing until ordered by the Attorney General.

(2) Review of order

(A) The Attorney General shall review orders issued under paragraph (1).

(B) If the Attorney General--

(i) is satisfied on the basis of confidential information that the alien is inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title, and

(ii) after consulting with appropriate security agencies of the United States Government, concludes that disclosure of the information would be prejudicial to the public interest, safety, or security,

the Attorney General may order the alien removed without further inquiry or hearing by an immigration judge.

(C) If the Attorney General does not order the removal of the alien under subparagraph (B), the Attorney General shall specify the further inquiry or hearing that shall be conducted in the case.

(3) Submission of statement and information

The alien or the alien's representative may submit a written statement and additional information for consideration by the Attorney General.

(d) Authority relating to inspections

(1) Authority to search conveyances

Immigration officers are authorized to board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States.

(2) Authority to order detention and delivery of arriving aliens

Immigration officers are authorized to order an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States--

(A) to detain the alien on the vessel or at the airport of arrival, and

(B) to deliver the alien to an immigration officer for inspection or to a medical officer for examination.

(3) Administration of oath and consideration of evidence

The Attorney General and any immigration officer shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this chapter and the administration of the Service.

(4) Subpoena authority

(A) The Attorney General and any immigration officer shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is

material and relevant to the enforcement of this chapter and the administration of the Service, and to that end may invoke the aid of any court of the United States.

(B) Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer may, in the event of neglect or refusal to respond to a subpoena issued under this paragraph or refusal to testify before an immigration officer, issue an order requiring such persons to appear before an immigration officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

8 U.S.C. § 1226. Apprehension and detention of aliens

(a) Arrest, detention, and release

On 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. Except as provided in subsection (c) and pending such decision, the Attorney General--

(1) may continue to detain the arrested alien; and

(2) may release the alien on--

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an “employment authorized” endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

(b) Revocation of bond or parole

The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.

(c) Detention of criminal aliens

(1) Custody

The Attorney General shall take into custody any alien who--

(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,

(B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentenced to a term of imprisonment of at least 1 year,

(D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title, or

(E)(i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and

(ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person,

when the alien is released, 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 the same offense.

(2) Definition

For purposes of paragraph (1)(E), the terms “burglary”, “theft”, “larceny”, “shoplifting”, “assault of a law enforcement officer”, and “serious bodily injury” have the meanings given such terms in the jurisdiction in which the acts occurred.

(3) Detainer

The Secretary of Homeland Security shall issue a detainer for an alien described in paragraph (1)(E) and, if the alien is not otherwise detained by Federal, State, or local officials, shall effectively and expeditiously take custody of the alien.

(4) Release

The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of Title

18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, 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. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

(d) Identification of criminal aliens

(1) The Attorney General shall devise and implement a system--

(A) to make available, daily (on a 24-hour basis), to Federal, State, and local authorities the investigative resources of the Service to determine whether individuals arrested by such authorities for aggravated felonies are aliens;

(B) to designate and train officers and employees of the Service to serve as a liaison to Federal, State, and local law enforcement and correctional agencies and courts with respect to the arrest, conviction, and release of any alien charged with an aggravated felony; and

(C) which uses computer resources to maintain a current record of aliens who have been convicted of an aggravated felony, and indicates those who have been removed.

(2) The record under paragraph (1)(C) shall be made available--

(A) to inspectors at ports of entry and to border patrol agents at sector headquarters for purposes of immediate identification of any alien who was previously ordered removed and is seeking to reenter the United States, and

(B) to officials of the Department of State for use in its automated visa lookout system.

(3) Upon the request of the governor or chief executive officer of any State, the Service shall provide assistance to State courts in the identification of aliens unlawfully present in the United States pending criminal prosecution.

(e) Judicial review

The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.

(f) Enforcement by attorney general of a State

The attorney general of a State, or other authorized State officer, alleging an action or decision by the Attorney General or Secretary of Homeland Security under this section to release any alien or grant bond or parole to any alien that harms such State or its residents shall have standing to bring an action against the Attorney General or Secretary of Homeland Security on behalf of such State or the residents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this subsection to the greatest extent practicable. For purposes of this subsection, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of \$100.

8 C.F.R. § 235.3 Inadmissible aliens and expedited removal.

...

(b) Expedited removal—

(1) **Applicability.** The expedited removal provisions shall apply to the following classes of aliens who are determined to be inadmissible under section 212(a)(6)(C) or (7) of the Act:

(i) Arriving aliens, as defined in 8 CFR 1.2;

(ii) As specifically designated by the Commissioner, aliens who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled following inspection by an immigration officer at a designated port-of-entry, and who have not established to the satisfaction of the immigration officer that they have been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility. The Commissioner shall have the sole discretion to apply the provisions of section 235(b)(1) of the Act, at any time, to any class of aliens described in this section. The Commissioner's designation shall become effective upon publication of a notice in the Federal Register. However, if the Commissioner determines, in the exercise of discretion, that the delay caused by publication would adversely affect the interests of the United States or the effective enforcement of the immigration laws, the Commissioner's designation shall become effective immediately upon issuance, and shall be published in the Federal Register as soon as practicable thereafter. When these provisions are in effect for aliens who enter without inspection, the burden of proof rests with the alien to affirmatively show that he or she has the required continuous physical presence in the United States. Any absence from the United States shall serve to break the period of continuous physical presence. An alien who was not inspected and admitted or paroled into the United States but who establishes that he or she has been continuously physically present in the United States for the 2-year period immediately prior to the date of determination of

inadmissibility shall be detained in accordance with section 235(b)(2) of the Act for a proceeding under section 240 of the Act.

...