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' REPLY 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

LAURIE WIESNER
Trial Attorney

Counsel for Respondents-Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

REGULATIONS

OTHER

INTRODUCTION

The Immigration and Nationality Act requires the Executive to detain any "applicant for admission" who cannot show he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. §1225(b)(2)(A). There is no dispute that Petitioner and class members are "applicants for admission" who cannot show they are "entitled to be admitted." The statute's plain text thus resolves this case and requires reversal.

Petitioner's primary contention is that the additional phrase "seeking admission" changes the meaning of §1225(b)(2)(A) by limiting its scope to aliens who are "at the border"—that is, aliens who voluntarily subject themselves to inspection at a port of entry upon physical entry to the United States or who are encountered shortly after illegally crossing the border. That is wrong. The plain text of §1225 establishes that applicants for admission, like Petitioner and the class, are seeking admission. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). That is made clear by §1225(a)(3), which establishes that *all* "applicants for admission" are necessarily "seeking admission" by operation of law. Ignoring the words Congress wrote, Petitioner urges an agrammatical reading that is at war with numerous other cases interpreting similar language.

Ultimately, Petitioner's interpretation would require disparate

treatment Congress never could have intended—incentivizing aliens to intentionally evade inspection and commit the crime of illegal entry (8 U.S.C. §1325(a)) and then rewarding them with bond hearings, while mandating detention of those who present at a port of entry *in compliance with law*. That is the exact perverse regime Congress sought to abolish through §1225.

Petitioner asks the Court to ignore the clear text of §1225 based on the separate detention authorities in §1226 and his unsupported view of how Congress meant the statute to operate. His arguments rely on attenuated inferences, conflicting legislative history, and inconsistent Executive applications of the statutes—all insufficient to displace the clear terms of §1225. Here, §1225 is directly on point and it is axiomatic that "the specific controls the general." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012).

Finally, Petitioner urges the application of the canon of constitutional avoidance. But §1225(b)(2)(A) is not amenable to a narrowing construction and, even if it were, there is no constitutional issue to avoid.

ARGUMENT

I. Section 1225(b)(2) mandates detention of aliens who are present in the United States without admission.

Petitioner is an "applicant for admission," and does not claim to be "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. §1225(a)(1),

(b)(2)(A). Therefore, he and others like him must be detained pending removal proceedings.

A. The plain language of §1225 dictates that all applicants for admission are "seeking admission."

Petitioner tries to escape the plain meaning of §1225(b)(2)(A) based on the phrase "seeking admission." Answering Brief ("A.B.") 23-28. According to Petitioner, that phrase requires some "present-tense action 'to try to acquire or gain' a lawful entry into the United States." A.B.24-25. Respondents have already explained why that interpretation is untenable, Opening Br. ("O.B.") 28-36, and Petitioner's brief offers nothing to change that conclusion.

1. Section 1225(a)(3) makes clear that an "applicant for admission" *is* "seeking admission" for purposes of §1225(b)(2)(A)—no affirmative action is needed. O.B.29-32. It states that "all aliens … who are applicants for admission *or otherwise seeking admission* or readmission to or transit through the United States shall be inspected." 8 U.S.C. §1225(a)(3) (emphasis added). Such "'or otherwise' language '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* O.B.29-30. Thus, an "applicant for admission" necessarily is "seeking admission" for purposes of §1225(b)(2)(A). O.B.30

(citing, *inter alia*, *Buenrostro-Mendez*, 166 F.4th at 503). That is consistent with spoken English: A person may "seek" something without "applying" for it, but anyone "applying" for something is necessarily "seeking" it. O.B.32-33.

2. Petitioner has no cogent response to Respondents' cases holding that "or otherwise" means that the preceding category is a subset of what follows. O.B.29-30. He instead asserts that "or otherwise" merely conveys that the two categories "overlap," A.B.48, but he cites no authority to support this *ipse dixit*. Even his hypothetical ("reading or otherwise relaxing") supports Respondents' point: reading is a form or subset of relaxing.[1] And 8 U.S.C. §1153(c), cited by Petitioner, also supports Respondents: being admitted *as* a permanent resident is one way of being provided lawful permanent residence. A.B.48 n.13. Besides, even if Petitioner were to identify examples where "or otherwise" does not serve as a catchall, that

[1] Petitioner resorts to a (faulty) contextual example: an alien who travels abroad after having received "advance parole." A.B.49 (citing 8 C.F.R. §212.5(f)). Petitioner claims that, when such alien returns to the United States after his travels, he is an "applicant for admission" but cannot be "seeking admission" because he is being paroled, not admitted. *Id.* Receiving advance parole is not incompatible with "seeking admission" upon return to the United States; it means only that the alien is preliminarily approved to be paroled *in lieu of* admission. Indeed, they are complementary: parole under §1182(d)(5)(A) is the sole means of releasing an alien into the United States who is seeking admission but is not entitled to be admitted.

would not negate that "or otherwise" has an established meaning in the English language—one which has been employed in numerous statutes. *See Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963 (11th Cir. 2016) (en banc) (collecting examples). It would just show that "or otherwise"—like any other phrase with an established meaning—can be used incorrectly. *E.g.*, A.B.48 n.13 (citing 8 U.S.C. §1324c(f)). This Court, however, must "presume" that Congress "understand[s] … principles of correct English word-choice." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Text* 140 (2012).

Petitioner says his reading avoids surplusage, A.B.49, "but the surplusage canon does not apply in this context." *Villarreal*, 839 F.3d at 964. "The phrase 'or otherwise' operates as a catchall: the specific items that precede it are *meant* to be subsumed by what comes after the 'or otherwise.'" *Id.* And even if "or otherwise" produced some redundancy in §1225(a)(3) or (b)(2)(A), *see* A.B.47, 49, the canon against surplusage "is not a silver bullet," *Remini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019), because Congress often "employ[s] a belt-and-suspenders approach," *Atl. Richfield Co. v. Christian*, 590 U.S. 1, 14 n.5 (2020)—here, to ensure the broadest

possible application of the inspection requirement.[2]

3. "Seeking admission" thus includes aliens who are "deemed constructive applicants for admission by operation of law." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 n.6 (BIA 2012); *see* O.B.31-32. Petitioner contends that the phrase "seeking admission" carries a distinct meaning and bears no relationship to being an applicant for admission, A.B.45, but the preceding discussion refutes that argument. O.B.28-29. There is no dispute that "applicant for admission" is a term of art, A.B.45, and "seeking admission" must be read harmoniously—particularly as both share the defined term "admission." *Dubin v. United States*, 599 U.S. 110, 124 (2023) ("a word is known by the company it keeps"). Just as an alien is an "applicant for admission" even though no literal "application" is filed, so too an alien may be "seeking admission" even though the alien is not actively "try[ing] to acquire or gain" admission.[3]

---

[2] *Fischer v. United States*, 603 U.S. 480 (2024), does not support Petitioner. *See* A.B.49. In that case, the Supreme Court examined a criminal statute, 18 U.S.C. §1512(c), in which specific examples of crimes were followed by "or . . . otherwise" and a residual clause containing a broader category of criminal conduct. 603 U.S. at 486. The Court held that the scope of the broader residual category was informed by those preceding specific examples. *Id.* at 491. The Court did not hold that the specific examples were not one manner of engaging in the conduct described in the residual clause—to the contrary, it presumed they were.

[3] *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020), is not to the contrary. A.B.47 n.12. *Torres* analyzed the language and context of §1182(a)(7)—

5. Finally, Petitioner argues the Court should reject the statute as written because it would render "seeking admission" superfluous in §1225(b)(2)(A). A.B.45, 47. To the contrary: when §1225(b)(2)(A) is read consistent with its structure, every phrase has independent meaning. O.B.34-35. Petitioner insists Congress would have used "fewer words" in §1225(b)(2)(A) if it intended to deem applicants for admission to be seeking admission. A.B.47. But the same alleged superfluity results from Petitioner's reading, which renders the entire clause, "in the case of an alien who is an applicant for admission," surplusage. Regardless, "there is 'no canon of interpretation that forbids interpreting different words used in different parts of the same statute to mean roughly the same thing.'" *Buenrostro-Mendez*, 166 F.4th at 503 (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018)). And redundancy cannot be used to "rewrite or eviscerate another portion of the statute contrary to its text." *Barton v. Barr*, 590 U.S. 222, 239 (2020).

B. Petitioner's interpretation of "seeking admission" distorts the statutory scheme

Petitioner's interpretation of "seeking admission"—referring only to

---

specifically, the phrase "at the time of" modifying the phrase "application for admission." 976 F.3d at 924–25. *Torres* is an exceedingly narrow ruling. *See United States v. Gambino-Ruiz*, 91 F.4th 981, 988–90 (9th Cir. 2024).

aliens who are "at the border seeking entry," A.B.24—is not only contrary to the clear language of §1225(a)(3), but also incompatible with the remainder of the statutory text.

1. The text of §1225(b)(2)(A) does not limit its application to "the border." Petitioner argues his atextual reading is justified based on the definition of "admission" and "admitted," theorizing that "an alien who is already in the country cannot be seeking a 'lawful entry … into the United States.'" A.B.24. That cannot be reconciled with the statute deeming aliens "present in the United States who ha[ve] not been admitted" to be "applicant[s] for *admission*." 8 U.S.C. §1225(a)(1) (emphasis added). Indeed, the INA itself enables certain aliens to obtain admission (that is, "lawful entry") after they are already physically present in the country. For example, certain aliens who are "physically present in the United States" and "entered … without inspection," may apply for "adjustment of … status to that of an alien lawfully admitted for permanent residence." 8 U.S.C. §1255(i). Not only that, §1229a—the removal provision that applies to aliens *already* in the country—allows aliens to show they are "clearly and beyond a doubt *entitled to be admitted*." *Id.* §1229a(c)(2) (emphasis added). These provisions plainly contemplate that aliens may obtain "admission" even though they have already physically entered the United States. Ultimately,

Petitioner's effort to read what amounts to a moment-of-entry principle into the definition of "admission" would return the INA to the pre-IIRIRA status where "entry" was the touchstone—a legal regime Congress abolished through enactment of §1225 and the definition of "admission." House Rep. 104-469 part 1, at 225; *compare* 8 U.S.C. §1101(a)(13)(A) (definition of "admission"), *with* 8 U.S.C. §1101(a)(13) (1995) (repealed definition of "entry").

Disputing this, Petitioner cites various provisions in Title 8 he says show that "seeking admission" involves "people seeking to enter the United States, rather than simply being inside of it." A.B.25. He cites §1736 and its use of the phrase "at the time the alien seeks admission to the United States" to indicate that "'seeking admission'" happens … when a noncitizen is seeking to enter the United States at the border." *Id.* This attacks a strawman—the Government has not argued that aliens cannot "seek admission" at the border; but that does not mean that this is the *only* way to "seek admission." (The same response applies to §1503(c)). Besides, it is the phrase "at the time" in §1736 that suggests that "seeking admission" occurs "at a particular place and time," A.B.25, and §1225 lacks such language. *See*

Torres, 976 F.3d 918.[4]

Nor does §1225's use of the term "inspection" suggest that it is limited to the border. *See* A.B.26. Section 1225(a)(3) provides that "*[a]ll* aliens … who are applicants for admission … *shall be inspected by immigration officers*," 8 U.S.C. §1225(a)(3) (emphasis added), and "applicant[s] for admission" include aliens *anywhere* "present in the United States" without admission, *id.* §1225(a)(1). This disproves Petitioner's suggestion that inspections occur only at the border. Nor is the inquiry under §1225(b)(2)(A)—whether the alien is "entitled to be admitted"—limited to the border context. A.B.26. Petitioner says it is, because 8 U.S.C. §1357—a provision addressing immigration officers' arrest authority—directs immigration officers to "examine" aliens believed to be unlawfully present in the United States "as to their right to … remain in the United States." 8 U.S.C. §1357(a)(2). There is no conflict: If an alien is not "clearly and beyond a doubt entitled to be admitted," *id.* §1225(b)(2)(A), then they do not have a "right to … remain in the United States," *id.* §1357(a)(2). Moreover,

[4] The other examples are equally unhelpful to Petitioner. Statutes may refer to "seeking admission *or* adjustments of status" because not all adjustments of status constitute "admissions." *Cf.* 8 U.S.C. §1182(a)(4), (a)(5)(D). Nor does 8 U.S.C. §1357(c) limit the meaning of "seeking admission" to the entry point. A.B.25 n.6. That provision allows "any immigration officer" to conduct warrantless searches of aliens "seeking admission" under limited circumstances, including in the interior.

§1357(a)(2) is not limited to the interior, as it expressly applies both to aliens who are "entering … the United States" and aliens "in the United States."

Petitioner's invocation of the "old soil" principle fares no better. *See* A.B.30. That principle of interpretation, like all others, does not trump statutory text or other contextual indicators. *George v. McDonough*, 596 U.S. 740, 753 (2022) (applies "in the absence of indication to the contrary"). The fact that "seeking admission" was previously used in a statute that applied to aliens at the border has little interpretive value given IIRIRA's "comprehensive amendments to the [INA]" generally, *INS v. St. Cyr*, 533 U.S. 289, 292 (2001), and to §1225 specifically—including the definition of "applicant for admission" in subsection (a)(1) that covers aliens present *anywhere* in the United States, and subsection (a)(3) that makes clear that all applicants for admission are "seeking admission" by operation of law.

2. Petitioner's interpretation of "seeking admission" is irreconcilable with the statutory relationship between §1225(b)(2) and the expedited removal provision in §1225(b)(1). 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; *see also* 8 U.S.C. §1225(b)(2)(B)–(C). Section 1225(b)(1), however, *is not limited* to aliens who are "try[ing] to acquire or gain" admission to the United States (A.B.25); rather, it may apply

to certain applicants for admission who "ha[ve] been physically present in the United States continuously" for up to two years, *regardless* of whether the alien is taking any "present-tense action" (A.B.25) to obtain admission. 8 U.S.C. §1225(b)(1)(A)(i), (iii). It is illogical for §1225(b)(2)—the "catchall provision"—to be *narrower* than the carve-out.

Petitioner argues that §1225(b)(1) helps his position because, in contrast to §1225(b)(2), it "explicitly" provided that the Executive could subject aliens who were present without admission to expedited removal procedures. A.B.27. The obvious explanation is that, unlike §1225(b)(1), §1225(b)(2) expressly applies to "alien[s] who [are] applicant[s] for admission," which includes "alien[s] *present in the United States* who ha[ve] not been admitted." 8 U.S.C. §1225(a)(1) (emphasis added). Further reference in §1225(b)(2)(A) to physical presence is unnecessary. Nor are the temporal limits on the application of expedited removal to aliens instructive. At most, that reflects congressional concern with the amount of process provided during expedited removal, not with mandatory detention pending removal proceedings. In any event, aliens subject to §1225(b)(2)(A) are *not* in expedited removal, but receive the greater process available under §1229a.

3. Petitioner's reading of §1225(b)(2)(A) also "introduce[s] more questions … than answers" with respect to aliens who cross between ports of

entry. *Lopez v. Director of Enforcement & Removal Operations*, ---F. Supp. 3d---, 2026 WL 261938, at *8 (M.D. Fla. Jan. 26, 2026). For example: "[W]here does the statute's application end? One mile from the border? Twenty-five? And how quickly must the alien be apprehended before the statute no longer applies?" *Id.* And how is one to know whether an alien crossing between ports of entry is "try[ing] to acquire or gain" admission? The statute does not even begin to answer these questions—a clear sign this is not what it means. That is particularly true, as Congress knows how to write geographic or temporal limitations into law, as illustrated by the expedited removal provision (§1225(b)(1)(A)(iii)(II)). O.B.33.

C. At a minimum, Petitioner is "seeking admission" under his own interpretation.

Even assuming "seeking admission" had some independent meaning, Petitioner is still "seeking admission." O.B.39-42. Petitioner objects that he is "seeking to 'cancel [his] removal" and "not 'seeking admission' as he passes into this country." A.B.53. That does not matter. By operation of statute, an alien placed in §1229a removal proceedings—and particularly one, like Petitioner, who seeks to cancel his removal by obtaining the status of being "lawfully admitted for permanent residence"—is in the position of "try[ing] to acquire or gain a lawful entry" (A.B.25), regardless of whether they concede inadmissibility. *See* O.B.40-42. Indeed, the entire purpose of

removal proceedings under to §1229a is to "decid[e] the inadmissibility or deportability of an alien." 8 U.S.C. §1229a(a)(1). And no one disputes that, if successful on his intended application for cancellation of removal, Petitioner would obtain the status of "an alien lawfully admitted for lawful permanent residence." 8 U.S.C. §1229b(b)(1).

Petitioner says this creates "absurdities" because it would mean that "eligibility for bond can change over time … or depend on the kind of relief a person seeks." A.B.54. That is a problem with *Petitioner's* interpretation of the statute. Respondents agree that "a rule that turns on such factors would make no sense." A.B.54. That is why Congress established a simple rule that *all* aliens present in the United States without admission are deemed to be seeking admission.

II. Section 1226 does not justify ignoring the unambiguous language of §1225.

Despite the plain text of §1225(b)(2)(A), Petitioner argues that the detention of aliens "apprehended 'inside the United States'" is governed by the separate authority in §1226, which authorizes DHS to "arrest[] and detain[]" an alien "pending a decision on whether the alien is to be removed from the United States," 8 U.S.C. §1226(a), and which mandates detention of certain aliens, *id.* §1226(c). A.B.19-22. At bottom, Petitioner's misguided reading rests on his insistence that these provisions be interpreted in

isolation from §1225, but "[i]t is this Court's duty to interpret Congress's statutes as a harmonious whole." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 502 (2018).[5]

A. Section 1226(a) does not displace §1225(b)'s clear text.

Petitioner implicitly acknowledges that §1226(a) is not rendered redundant by Respondents' interpretation of §1225(b)(2)(A), because §1226(a) indisputably applies to aliens who *have* been admitted to the United States and so are not applicants for admission. A.B.20; O.B.42-43. Petitioner insists that §1226(a) must be the governing detention statute for all aliens who are present *without* admission, too, because it authorizes detention pending "removal proceedings," which can apply to "noncitizens who have not been admitted" and are charged as inadmissible, and because it "contains no exception based on the circumstances of a noncitizen's entry

[5] As previously explained, *Jennings* did not address the issue in this appeal. O.B.48-49. Petitioner does not seriously contest this, but still tries to use *Jennings* to his advantage based on a single sentence in the Government's supplemental briefing that characterized §1226(a) consistent with the Government's prior application of the provision. A.B.13. The supplemental brief, however, addressed "whether the Constitution requires the government to provide a bond hearing, or certain additional protections, when removal proceedings and detention incident to those proceedings under 8 U.S.C. 1225(b), 1226(c), or 1226(a) last six months." Supp. Br. for Petitioners, *Jennings v. Rodriguez*, 2017 WL 430387, at *1-2 (Jan. 31, 2017). The issue about *whether* the Constitution requires certain protections under these statutes is distinct from the question of *who* is covered by each statute. *Jennings* did not decide the latter question.

to the country." A.B.20. That is wrong.

1. To start, "[i]t is a commonplace of statutory construction that the specific governs the general." *RadLAX Gateway Hotel*, 566 U.S. at 645; *see* O.B.43. Indeed, Congress often writes broad directives that are narrowed by more specific provisions, either within the same statutory section or across multiple sections in the same enactment. IIRIRA fits squarely within that tradition: To the extent §1226(a)'s terms cover aliens who are "applicants for admission" subject to §1225(b)(2)(A), the latter is plainly the more specific provision and so it "governs." *RadLAX Gateway Hotel*, 566 U.S. at 645.

Nonetheless, Petitioner says §1226(a) must be read to apply to *all* aliens charged as inadmissible because the predecessor to §1226(a) required detention "[p]ending a determination of *deportability*," 8 U.S.C. §1252 (1995) (emphasis added)—a ground that applied to aliens present in the United States, O.B.7—while the new §1226(a) authorizes detention "pending a decision on whether the alien is to be *removed*," *id.* §1226(a) (emphasis added); *see* A.B.29-30. That misunderstands Congress's word choice. IIRIRA eliminated the prior "deportation" and "exclusion" proceedings and replaced them with the unified "removal" proceeding. O.B.7-9; A.B.8. Congress's shift in word-choice from "deportability" in predecessor §1252 to "removed" in §1226(a) was simply an effort to conform the language of new

§1226(a) to the post-IIRIRA lexicon. Section 1226(a) is referring to the *process* for removal—*i.e.*, the removal proceedings—not the *grounds* of removability.

2. Legislative history also does Petitioner no good. Like the district court, Petitioner relies on a single sentence in a committee report saying that §1226(a) "restate[d]" the prior regime. A.B.29. That legislative history cannot overcome clear statutory text. *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 436 (2019). And it does not support Petitioner's reading in any event. As Petitioner acknowledges, the predecessor statute refers to grounds of "deportability," so if §1226(a) really did just "restate" the prior authority, it would only apply to aliens subject to grounds of deportability—*not* applicants for admission. O.B.39. Petitioner offers an alternative reading, *see* A.B.29, but all that proves is that the legislative history is ambiguous, which makes it even less probative of legislative intent. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005).

In addition, only four pages earlier the same committee report states that Congress sought to dispense with the old regime under which "illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings"—including a bond hearing—"that are not available to aliens who present themselves for inspection at a

port of entry." House Rep. 104-469 part 1, at 225; *see* O.B.39. That purpose is incompatible with Petitioner's expansive interpretation of §1226 as simply "restat[ing]" the prior regime. O.B.22. Petitioner insists that the reference to "equities and privileges in immigration proceedings" refers only to "removal proceedings" and not detention. A.B.39. The report does not refer to "removal proceedings," but to "immigration proceedings" and bond hearings plainly occur in the context of "immigration proceedings." Moreover, detention is in service of those proceedings, including removal proceedings; they are inextricably intertwined. *See* 8 U.S.C. §1225(b)(2)(A); *Jennings*, 583 U.S. at 286.[6]

Petitioner cannot justify departure from the statute's text based on prior Executive practice and interpretation. *Cf.* A.B.35-37. As to practice, Petitioner does not dispute that "authority granted by Congress cannot evaporate through lack of administrative exercise." *Bankamerica Corp. v. United States*, 462 U.S. 122, 131 (1983); *see* O.B.36-37. Nor does he contest

[6] Petitioner argues that Congress's authorization for the Executive to delay implementation of mandatory detention under §1226(c), but not §1225(b)(2)(A), suggests §1225(b)(2)(A) should be read narrowly. A.B.30-32. As the Fifth Circuit recognized in rejecting this exact argument, "Congress could have declined to delay implementation of §1225(b)(2)(A) for any number of reasons, and reading into a Congressional omission provides little insight, if any, into the meaning of clear text." *Buenrostro-Mendez*, 166 F.4th at 507 (citing *Garland v. Cargill*, 602 U.S. 406, 428 (2024)).

that the Supreme Court and the courts of appeals have not hesitated to apply statutes as written, despite years of contrary practice. *See Pereira v. Sessions*, 585 U.S. 198, 204-05 (2018) (rejecting 21-year practice); *Pub. Emps. Ret. Sys. of Ohio v. Betts*, 492 U.S. 158, 171 (1989) (rejecting 19-year-old interpretation because "longstanding agency interpretations must fall to the extent they conflict with statutory language"); *Villarreal*, 839 F.3d 958 (rejecting 50-year interpretation of EEOC).

Nor does prior Executive interpretation aid Petitioner. O.B.37-38. He relies on a purported "contemporaneous interpretation of the statute" by the government, A.B.36, but concedes that the Executive promulgated a regulation in 1997 that contradicts Petitioner's interpretation of the statute. A.B.35 n.9 (citing 8 C.F.R. §235.3(b)(1)(ii)). Agency interpretation that has not "remained consistent over time" has little probative value and cannot overcome the statute's clear text. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 370 (2024).

Finally, Petitioner's invocation of congressional acquiescence is meritless. A.B.36-37. The Supreme Court has made clear that congressional acquiescence will be found only "when there is evidence that Congress considered and rejected the *precise* issue presented," and this evidence must be "overwhelming." *Rapanos v. United States*, 547 U.S. 715, 750 (2006)

(quotations omitted). Here, Congress did not "fail to repeal or revise" an "interpretation expressly placed on [the] statute." *Zemel v. Rusk*, 381 U.S. 1, 11 (1965). In fact, the BIA did not adopt a formal interpretation of §1225(b)(2)(A) until *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).[7] And the Executive's former pronouncements were, at best, ambiguous. *Supra*, pp. 18-19; O.B.37-38.[8]

B. Section 1226(c) does not support Petitioner's reading

Petitioner fares no better relying on §1226(c), which provides that the Executive "shall take into custody" certain aliens who are deportable or inadmissible for having committed certain specified offenses or engaged in terrorism-related actions of affiliations. A.B.21-22, 41-44.

1. According to Petitioner, §1226(a) must apply to inadmissible aliens because otherwise "Congress would have had no need to exclude a

[7] None of the BIA decisions Petitioner cites (at 12, 35 n.9) adjudicated the scope of §1226 or §1225(b)(2).

[8] The INA's provision of amnesty for some aliens who entered without inspection provides no reason to disregard the plain text of §1225. A.B.32-33. That Congress contemplated some pathways to regular status for certain applicants for admission does not negate that generally, such aliens are subject to removal proceedings and mandatory detention. The Executive retains prosecutorial discretion not to pursue or to pause §1229a proceedings for aliens who are pursuing such avenues. *See United States v. Texas*, 599 U.S. 670, 679 (2023).

subset of them from bond eligibility under §1226(a) in the first place." A.B.21, 41. Petitioner relies principally on *Nielsen v. Preap*, 586 U.S. 392 (2019), to argue that §1226(a) applies to inadmissible aliens because §1226(c) operates "as an exception to §1226(a)." A.B.43 (citing *Nielsen*, 586 U.S. at 409). *Nielsen* addressed the very specific question of whether the language in §1226(c)(1) referring to "when the alien is released" means that §1226(c)'s mandatory detention applies only when the alien is taken into custody *immediately* upon release. 586 U.S. at 396; *see id.* at 420-22 (Kavanaugh, J., concurring). In answering that narrow question, the Court discussed the relationship between §1226(a) and (c), *see id.* at 408-10, but it did *not* address the interaction between §1225 and §1226. *See, e.g.*, *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 170 (2004) (issues "neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents"). It did not need to, as the aliens there were *admitted* as lawful permanent residents. *See Preap v. Johnson*, 303 F.R.D. 566, 572-73 (N.D. Cal. 2014); *Khoury v. Asher*, 3 F. Supp. 3d 877, 880 (W.D. Wash. 2014).[9] Indeed, the Supreme Court framed the issue in terms of "deportable" aliens. *Nielsen*, 586 U.S. at 395, 396.

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

Reading §1226 together with §1225, as *Nielsen* had no occasion to do, disproves Petitioner's theory that §1226(a) necessarily covers *every* inadmissible alien referenced in §1226(c). For example, the grounds of admissibility listed in §1226(c)(1)(A) and (D) would apply to aliens arriving at a port of entry—aliens Petitioners agree are covered by §1225(b)(2)(A). The ground listed in §1226(c)(1)(A) renders inadmissible any alien who has committed "a violation of … any law or regulation of a State, the United States, or a foreign country related to a controlled substance," 8 U.S.C. §1182(a)(2)(A), and the ground listed in §1226(c)(1)(D) renders inadmissible an alien for past terrorism-related activities or associations, *id.* §1182(a)(3)(B). An alien who presents at a port of entry and is inadmissible on one of these grounds falls squarely within the terms of §1226(c), but even under *Petitioner's* reading, they are covered by §1225(b)(2)(A).

The same is true of the grounds of inadmissibility—§1182(a)(6)(C) and (a)(7)—added to §1226(c) by the Laken Riley Act ("LRA") *after Nielsen* was decided. *See* 8 U.S.C. §1226(c)(1)(E)(i)-(ii). Under Petitioner's reading, aliens who are inadmissible on those grounds (but did not commit the qualifying offenses in §1226(c)) are necessarily subject to §1226(a)'s discretionary detention. *See* A.B.43 n.11. That is refuted by the fact that such aliens are also potentially subject to expedited removal, even if not arrested

at the border. *See* 8 U.S.C. §1225(b)(1)(A)(i), (iii). And everyone agrees that §1225(b)(1) mandates detention. A.B.9. In short, certain aliens who, on Petitioner's theory, should be covered by §1226(a) are in fact subject to detention under §1225(b)(1).

The preceding point refutes Petitioner's argument (at 21-22) that the LRA—which added subparagraph (E) to §1226(c)(1)—means that aliens who entered without inspection exclusively fall within the scope of §1226, not §1225(b). Petitioner's reliance on the LRA is further undermined by the fact that the LRA also amended §1225(b) to provide a cause of action for States in the event the federal government "violat[es] the detention and removal requirements under paragraph (1) or (2)." Pub. L. No. 119-1, §3, 139 Stat. 3, 4 (Jan. 29, 2025) (codified at 8 U.S.C. §1225(b)(3)). If §1225(b)(2)(A) really were limited to aliens who are actively pursuing or trying to acquire admission, then there would have been no cause to worry that the Executive would not enforce the "detention … requirements" in that provision. 8 U.S.C. §1225(b)(3).

2. Petitioner's remaining arguments regarding §1226(c) boil down to an objection that Respondents' reading of §1226(c) renders portions of it redundant and/or fail to explain why Congress wrote the law as it did. But legislation often does not fit into neatly compartmentalized boxes, and

Congress often takes a belt-and-suspenders approach to be "doubly sure." *Barton*, 590 U.S. at 239. Section 1226(c) is no different. Besides, as Respondents explained, §1226(c) applies to numerous aliens *not* subject to §1225(b)(2)(A). O.B.36.

In the end, Petitioner's reliance on partial redundancy between §1225(b)(2)(A) and §1226(c) ignores the Supreme Court's recognition that "[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. And that is particularly true of the LRA, which was enacted nearly three decades after §1225(b)(2) and §1226(c) became law. *See* O.B.44-45; *Montoya v. Holt*, 2025 WL 3733302, at *12 (W.D. Okla. Dec. 26, 2025) ("the Supreme Court 'ha[s] often observed the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one" (quoting *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 355 (1998)). Not only that, "Congress passed the [LRA] at a time when the Executive was still declining to exercise its full enforcement authority" under §1225(b)(2)(A)." *Buenrostro-Mendez*, 166 F.4th at 505. Therefore, "the [LRA] 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." *Id.*

The canon is weaker still when there is overlap under any interpretation. O.B.45. Petitioner disputes that the LRA overlaps with §1225(b)(2)(A) under their reading of §1225(b)(2)(A). A.B.43 n.11. He says aliens arriving at a port of entry are "subject to mandatory detention under §1225(b)(2)" as a matter of regulation. *Id.* (citing 8 C.F.R. §235.3(c)(1)). That misses the point. *By its terms*, the LRA applies to aliens who arrive at a port of entry and are inadmissible on certain grounds, *see* 8 U.S.C. §1226(c)(1)(E), and those same aliens also are covered by §1225(b)(2)(A) *under Petitioners' reading*. That Petitioner believes §1225(b)(2)(A) controls despite the overlap does not mean no overlap exists.

Finally, to the extent there is overlap, §1226(c) and the LRA serve the independent function of prohibiting release from detention on parole of aliens who are covered by §1226(c). 8 U.S.C. §1226(c)(1)(E); *see* O.B.45-46. Petitioner objects that if Congress had intended for §1226(c), and specifically the LRA, to "eliminate parole" for the aliens it covers, it would have "enacted exceptions to the parole statute" or "expressly created parole exemptions." A.B.42. That critique reduces to a dispute about how Congress chose to achieve its legislative objective. But "there are many ways to skin a cat," *Wagner v. Fed. Election Comm'n*, 717 F.3d 1007, 1012 (D.C. Cir. 2013), and Congress's decision to include a restriction on a release authority in a statute

that mandates detention is hardly "a winding path of connect-the-dots provisions." A.B.42.

III. Petitioner's interpretation subverts express Congressional intent.

Petitioner's reading directly subverts one of Congress's express objectives in enacting IIRIRA—to eliminate the preferential treatment of aliens who had entered the country unlawfully vis-à-vis those who presented themselves at a port-of-entry for inspection. O.B.8-9, 46-48. After all, the vast majority of aliens who arrived in the United States outside a port of entry and are present in the United States without admission are not actively "go[ing] in search of" a "lawful entry into the United States," A.B.24-25; they *intentionally evaded* inspection and entered the United States contrary to law. 8 U.S.C. §1325(a). So, under Petitioner's reading of §1225, the millions of aliens who have deliberately violated U.S. law are entitled to receive a bond hearing, while aliens who voluntarily present themselves at a port of entry to "try to acquire or gain a lawful entry" (A.B.25) *in accordance with law* are subject to mandatory detention. This Court should reject such a perverse regime that so clearly abrogates Congress's objective.

Petitioner does not dispute this is the consequence of his argument, nor that in enacting IIRIRA Congress meant to eliminate the existing system that afforded "greater procedural and substantive rights … in deportation

proceedings" to aliens who successfully entered the country illegally. O.B.7-8 (quoting *Yajure Hurtado*, 29 I. & N. Dec. at 223). Nonetheless, Petitioner tries to separate preferential treatment in "removal proceedings" from preferential treatment in detention—but the detention authorized is *pending removal proceedings*; the two are inextricably intertwined. 8 U.S.C. §1225(b)(2)(A). Petitioner offers no theory why a Congress determined to eliminate favoritism toward lawbreakers would have preserved that favoritism for something so significant as detention pending a decision on removal.

IV. The canon of constitutional avoidance does not apply.

Petitioner resorts to the canon of constitutional avoidance. A.B.33-35. That canon "comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction." *Jennings*, 583 U.S. at 296. The key to the constitutional avoidance canon is that a court may "impose a limiting construction on a statute only if it is 'readily susceptible' to such a construction." *United States v. Stevens*, 559 U.S. 460, 481 (2010). A court may "not rewrite a law to conform it to constitutional requirements," as "doing so would constitute a serious invasion of the legislative domain, and sharply diminish Congress's incentive to draft a narrowly tailored law in the first place." *Id.* (citations

omitted); *see also Jennings*, 583 U.S. at 297-98 (refusing to employ doctrine of constitutional avoidance to import 6-month limit to mandatory detention under §1252(b)(2)).

The canon has no relevance here. Section 1225(b)(2)(A) unambiguously requires detention of aliens like Petitioner, and it is not "readily susceptible" to a different reading. *Stevens*, 559 U.S. at 481.

In any event, §1225(b)(2)(A) does not offend due process and so there is no constitutional concern to avoid.[10] Mandatory detention pending a decision on removal is a key component of the INA—one which the Supreme Court specifically upheld as "constitutionally permissible" in *Demore v. Kim*, 538 U.S. 510 (2003). Petitioner nonetheless argues that immigration detention can comport with due process only if an immigration judge determines whether the alien poses a danger or flight risk. A.B.34-35. He purports to derive this principle from this Court's opinion in *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021). A.B.35. But that decision addressed whether *different* or *additional* procedures were required for bond hearings conducted under §1226(a)—a statute that already provides the opportunity for release on bond. *See Hernandez-Lara*, 10 F.4th at 27, 29.

[10] Further, constitutional issues are not a proper subject of appeal. The district court certified the statutory question as final, *see* A090-91, while Petitioner's constitutional claims remain pending below, *see id.*; A071.

Hernandez-Lara cannot support a finding that Congress's express determination not to allow for release on bond violates due process. And unlike in other cases Petitioner cites (at 34), §1225(b)(2)(A) does not involve *indefinite* civil detention. *E.g., Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (addressing whether "indefinite detention" of aliens under a different statute comports with due process); *Addington v. Texas*, 441 U.S. 418 (1979); *Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) (determining indefinite civil commitment satisfied due process). It instead imposes detention for the finite period of removal proceedings, which the Supreme Court has *upheld* in a related context against a due process challenge. *See Demore*, 538 U.S. at 529.

Finally, even assuming §1225(b)(2)(A) presented constitutional concerns as to aliens "living in the United States" (A.B.34.), Petitioner's proposed interpretation cannot address those claimed concerns. Section 1225(b)(2)(A) applies equally to class members who entered the United States five days ago as to those, like Petitioner, who have resided here unlawfully for years. But Petitioner's alternative interpretation of the statute is overbroad, as it provides no clear demarcation of when an alien who illegally crosses the border goes from "seeking admission" to not seeking admission. *Supra*, pp. 12-13.

CONCLUSION

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

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. Shinners
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

LAURIE WIESNER
Trial Attorney

Counsel for Respondents-Appellants

March 16, 2026

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 March 16, 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. Shinners
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 6451 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. Shinners

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