No. 25-1460

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

NESTOR ESAI MENDOZA GUTIERREZ,
Petitioner-Appellee,
v.

JUAN BALTASAR, ROBERT HAGAN, MARKWAYNE MULLIN, TODD LYONS, TODD BLANCHE, SIRCE OWEN, in their official capacities; Department Of Homeland Security; Aurora Immigration Court; Immigration & Customs Enforcement,
Respondents-Appellants.

**On Appeal from the United States District Court
for the District of Colorado
The Honorable Regina M. Rodriguez
D.C. No. 25-CV-2720-RMR**

RESPONDENTS-APPELLANTS' REPLY BRIEF

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ORAL ARGUMENT REQUESTED
May 29, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

Federal Statutes

Federal Regulations

INTRODUCTION

The INA requires the detention of 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). Petitioner is undisputedly an "applicant for admission" and has not shown he is "clearly and beyond a doubt" admissible. The statute's plain text thus requires reversal.

Petitioner's primary contention is the phrase "seeking admission" must be read colloquially to encompass only aliens who affirmatively submit to inspection at the border. That is wrong. The §1225 plain text establishes an applicant for admission, like Petitioner, is seeking admission, as the Fifth and Eighth Circuits have held. *See Avila v. Bondi*, 170 F.4th 1128, 1134-38 (8th Cir. 2026); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 502-08 (5th Cir. 2026). Most notably, Petitioner disregards the import of §1225(a)(3), which makes clear that *all* "applicants for admission" are necessarily "seeking admission."

Ultimately, Petitioner'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 whenever they may be finally caught, while mandating detention of those who present at a port of entry *in compliance with law*. In their view, "no good deed goes unpunished." *Winter v. NRDC*, 555 U.S. 7, 31 (2008).

Petitioner next asks the Court to ignore §1225's clear text based on the separate detention authorities in §1226. His §1226 arguments rely on inference, conflicting legislative history, and inconsistent Executive interpretations—all insufficient to displace the clear terms of §1225.

Additionally, 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.

Finally, apart from the merits of §1225, Petitioner argues the district court had authority to enter a preliminary injunction prohibiting the government from transferring Petitioner or class members outside the District of Colorado. Petitioner asks the Court to ignore 8 U.S.C. §1252(f)(1), as well as Supreme Court and Circuit precedent interpreting that provision. That order cannot be justified based on the All Writs Act, which is not an independent source of jurisdiction and cannot displace §1252(f)(1).[1]

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[1] This Court is considering the interpretation of 8 U.S.C. §1225(b)(2)(A) in *Quiroz v. Mullin*, No. 26-6019 (argued May 12, 2026). The Court's decision

ARGUMENT

I. Section 1225(b)(2) mandates detaining aliens who are present in the United States without having been admitted.

Petitioner does not dispute he is an "applicant for admission," and does not claim to be "clearly and beyond a doubt entitled to be admitted." Therefore, he must be detained pending removal proceedings. 8 U.S.C. §§1225(a)(1), (b)(2)(A).

A. Under §1225(b)(2)(A), all applicants for admission are "seeking admission."

Petitioner tries to escape §1225's plain meaning based on the phrase "seeking admission" in §1225(b)(2)(A). That phrase, he contends, requires that the alien be engaged in some "present-tense action to 'to try to acquire or gain' an admission, which is a lawful entry into the United States." Answering Brief (A.B.) 35. Appellants have explained why that interpretation is untenable, Opening Brief (O.B.) 29-38, and Petitioner's brief fails to show otherwise.

1. Section 1225(a)(3) makes clear an "applicant for admission" *is* "seeking admission" for purposes of §1225(b)(2)(A). O.B.29-30. No

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in *Quiroz* will control the interpretation of §1225(b)(2)(A) in this appeal. However, the Government's challenge to the district court's order under the All Writs Act prohibiting transfer of Petitioner or class members from the District of Colorado is independent of the statutory question.

affirmative action is needed. It states, "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). 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*, 166 F.4th at 503; *Avila*, 170 F.4th at 1135 n.4. That is consistent with spoken English: a person may "seek" something without "applying" for it, but "[w]hen a person applies for something, they are necessarily seeking it." *Buenrostro-Mendez*, 166 F.4th at 502.

2. Petitioner has no cogent response to cases holding "or otherwise" means the preceding category is a subset of what follows. O.B.29-30. He instead asserts "or otherwise" merely conveys "overlap," A.B.40, but he cites no authority to support this *ipse dixit*. And the various, unrelated provisions of the U.S. Code he cites does him no good. A.B.41. At most, those provisions show "or otherwise" can be used incorrectly; they do not change the phrase's

meaning in *this* statute or others like it. *See Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963 (11th Cir. 2016) (en banc) (collecting examples). And of course, this Court must "presume" Congress "understand[s] ... principles of correct English word-choice." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Text* 140 (2012).

Ultimately, Petitioner's contrary interpretation requires the provision replace "or otherwise" with "or." They cite no case adopting such a re-write and the Fifth Circuit rejected it. *Buenrostro-Mendez*, 166 F.4th at 503-04. Petitioner says his reading is the only way to avoid creating surplusage in §1225(a)(3), A.B.39, "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.*

3. Petitioner does not dispute someone "applying" for admission is necessarily "seeking" admission as a matter of plain English. A.B.42. Instead, he says, because "applicant for admission" is a defined term, it has no bearing on the interpretation of "seeking admission." That is wrong: the two phrases must be read in harmony—particularly as both share the defined

term "admission." *See Dubin v. United States*, 599 U.S. 110, 124 (2023). Just as an alien is an "applicant for admission" even when no literal "application" is filed, so too he may be "seeking admission" even though the alien is not actively "try[ing] to acquire or gain" admission. A.B.35.

4. Finally, Petitioner invokes purported superfluity to overcome §1225(b)(2)(A)'s plain text. A.B.39-40. But §1225(b)(2)(A)'s structure "does not indicate that 'seeking admission' is a separate requirement for detention under the statute[,]" *Avila*, 170 F.4th at 1134; rather, "seeking admission" simply describes what *all* "applicants for admission" do. 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 even true redundancy cannot be used to "rewrite" statutory text. *Barton v. Barr*, 590 U.S. 222, 239 (2020).

B. Petitioner's contrary arguments have no merit.

Petitioner's narrow redefinition of "seeking admission" contradicts multiple provisions of the INA and finds no support in the statutes he cites.

1. Petitioner rests this atextual reading on the definition of "admission" and "admitted," theorizing an alien who "has already entered

the country without inspection cannot be seeking a 'lawful entry … into the United States.'" A.B.34. That is irreconcilable 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). Further, §1229a—the removal provision that applies to inadmissible aliens *already* in the country—requires them to show they are "clearly and beyond doubt *entitled to be admitted*." *Id.* §1229a(c)(2) (emphasis added). These provisions contemplate that aliens already physically in the United States may obtain "admission." Ultimately, Petitioner's efforts to engraft a moment-of-entry principle into the definition of "admission" would resurrect the pre-IIRIRA regime where "entry" was the touchstone—contrary to Congress's conscious changes to §1225 and the definition of "admission." *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").

Nor does the term "inspection" suggest §1225(b)(2) is limited to the border. *See* A.B.34-36. Section 1225(a)(3) provides, "*[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). These provisions disprove Petitioner's suggestion that inspections occur only at the border.

Petitioner's invocation of the "old soil" principle fares no better. A.B.35. That interpretive principle, like all others, does not trump text or other contextual indicators. *George v. McDonough*, 596 U.S. 740, 753 (2022). 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 §1225(a)(1)'s definition of "applicant for admission" and §1225(a)(3)'s specification that such individuals are "seeking admission."

2. Reaching outside §1225, Petitioner cites provisions he says show "'applicant for admission' and 'seeking admission' are not synonymous, and that 'seeking admission' happens at the border." A.B.36. His first submission, 8 U.S.C. §1736 (requiring as part of the visa waiver program that DHS assess whether an "applicant for admission" is in a "lookout database[] … at the time the alien seeks admission to the United States"), actually "strongly suggests that those who are applicants for admission are 'seeking admission.'" *Buenrostro-Mendez*, 166 F.4th at 503. Moreover, any

help §1736 might provide Petitioner depends entirely on the modifying phrase "at the time"—language that is absent from §1225.

Petitioner's invocation of 8 U.S.C. §1182(a)(7)—and *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020) (en banc)—suffers from the same flaw. That statute also specifies "at the time of application for admission." A.B.36. *Torres* thus relied on that temporal limit, along with related statutory context, to reach a narrow conclusion with no relevance to §1225. 976 F.3d at 924-25. If anything, §1182(a)(7) *undermines* Petitioner's position, because it, like §1736, shows that Congress knows how to limit provisions of the INA "to the moment of applying for entry at the border[,]" *id.* at 925, and did not do so in §1225(b)(2)(A).

The other provision Petitioner cites, 8 U.S.C. §1101(a)(13)(C), confirms Appellants' interpretation. It provides that certain lawful permanent residents are "seeking admission"—*e.g.*, those who have been outside the United States for longer than 180 days—*regardless* of whether the alien is taking an affirmative step toward admission.

C. Petitioner's interpretation would distort the statutory scheme.

Petitioner's interpretation would make a mess of the statutory scheme. First, his reading would result in §1225(b)(2) and the expedited removal provision in §1225(b)(1) covering identical populations. Section 1225(b)(1) applies to aliens arriving in the United States (or present for up to two years who have not been admitted or paroled) who are inadmissible because they cannot show proper documentation or because of a material misrepresentation. 8 U.S.C. §1225(b)(1)(A)(i) (citing 8 U.S.C. §§1182(a)(6)(C), (a)(7)). But if "seeking admission" narrows §1225(b)(2)(A) to aliens apprehended at the border and certain recent entrants, then §1225(b)(1) fully overlaps with §1225(b)(2). Worse still, that reading inverts the relationship between §1225(b)(1) and §1225(b)(2). Recall §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* 8 U.S.C. §1225(b)(2)(B)-(C). Under Petitioner's reading, however, §1225(b)(2) is no broader than §1225(b)(1) with respect to the detention of certain aliens who have unlawfully entered the country.

Not only that, Petitioner's reading effectively nullifies the definition of "applicant for admission" in §1225(a). According to Petitioner, "Congress defined 'applicant for admission' broadly in §1225(a)(1) to include all 'alien[s] present in the United States who [have] not been admitted,' but then, every time it subsequently used the phrase in §1225, narrowed it to apply only to those actively seeking admission." *Buenrostro-Mendez*, 166 F.4th at 504. If that really were Congress's intent, then it "could simply have defined 'applicants for admission' as those arriving in the United States, omitting from the definition any reference to aliens 'present in the United States who ha[ve] not been admitted.'" *Id.*

Finally, Petitioner's atextual at-the-border requirement creates a host of questions. "[W]here does the statute's application end? One mile from the border? Twenty-five miles? And how quickly must the alien be apprehended before the statute no longer applies?" *Lopez v. Dir., ERO*, --- F. Supp. 3d---, 2026 WL 261938, at *9 (M.D. Fla. Jan. 26, 2026) (quotations omitted). And how does one know whether an alien attempting to enter 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.[2]

[2] Petitioner argues 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.46-48. "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 507-08; *see Avila*, 170 F.4th at 1137-38 (same).

D. Petitioner is "seeking admission" even under his own interpretation.

Even under Petitioner's incorrect reading, he is still "seeking admission." O.B.37-38. Petitioner objects that "seeking relief from removal is not the same as 'seeking admission.'" A.B.46. That is a distinction without a difference. IIRIRA provides that any applicant for admission in removal proceedings has the "burden of establishing ... [he] is clearly and beyond doubt entitled to be admitted and is not inadmissible under section 1182 of this title[.]" 8 U.S.C. §1229a(c)(2)(A). By operation of statute, then, such aliens are "try[ing] to acquire or gain ... lawful entry." A.B.35; O.B.38. Indeed, the purpose of removal proceedings under §1229a is to "decid[e] the inadmissibility or deportability of an alien." 8 U.S.C. §1229a(a)(1).

II. Section 1226 does not justify ignoring §1225's unambiguous language.

Petitioner says §1225(b)(2)(A) applies only "at the border" and for certain recent entrants because detaining aliens "inside the country" is governed by §1226. A.B.23-24, 33-50. At bottom, Petitioner's misunderstanding rests on his insistence that §1226 be interpreted in isolation from §1225, A.B.29 (describing them as mutually exclusive), 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).

A. Section 1226(a) does not displace §1225(b)(2)'s clear text.

Petitioner insists §1226(a) is the governing detention statute for inadmissible aliens who have not been admitted because it authorizes detention pending "removal proceedings," which "cover noncitizens … who are charged with being inadmissible after entering the country without inspection." A.B.23. That is wrong.

1. To start, Petitioner cites dicta from *Jennings*. A.B.14, 23; *see Jennings*, 583 U.S. at 289. Indeed, *Jennings* did not address—or answer—the question of which aliens are subject to §1225(b) or §1226. Rather, it broadly and imprecisely generalized that §1226 applies to those aliens inside the country while §1225(b) applied to those outside. *Id.*

Petitioner argues the *Jennings* statements are "not dictum," and, even if they were, this Court affords Supreme Court dicta great weight. A.B.23, n.3. But *Jennings* also contains dicta supporting the government's positions in several other ways. *See, e.g.*, O.B.51-54. First, *Jennings* made clear 8 U.S.C. §1225(b)(2) is a "catchall provision that applies to all applicants for admission not covered by [§1225(b)(1)]." 583 U.S. at 287. This supports the argument Petitioner is covered under §1225(b)(2) by virtue of being an applicant for admission (which he concedes) who is not covered by (b)(1). Second, *Jennings* is consistent with the government's argument that all applicants for admission be detained until removal proceedings have concluded. *Jennings* characterized §1225(b) as "mandat[ing] detention of applicants for admission until certain proceedings have concluded." For §1225(b)(2) specifically, "aliens are detained for '[removal] proceedings.'" *Id.* at 297. Third, as the government argued, O.B.36, even if some redundancy exists in interpreting "applicant for admission" to mean "seeking admission," the result cannot be to rewrite §1225 in a manner contrary to its text. *Jennings* supports that position in observing, "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." *Id.* at 303. Indeed, *Jennings* described §1225(b) as "appl[ying] primarily to aliens *seeking entry* into the United States ('applicants for admission' in the language of the statute)," strongly suggesting "seeking entry" is synonymous with "applicant for admission." *Id.* at 297.

In sum, at best for Petitioner, the *Jennings* language on which he could rely is ambiguous and *Jennings* overall supports rather than detracts from the government's §1225(b)(2) interpretation. That there are generalizations about §1225 and §1226 applicability within a case that was not directly addressing those statutes' scope, should not control a case like this that is directly confronting that question. *See Olivier v. City of Brandon, Mississippi*, 146 S. Ct. 916, 925 (2026); *see also Lopez-Campos v. Raycraft*, ---F.4th---, 2026 WL 1283891, at *17 (6th Cir. May 11, 2026) (Murphy, J., dissenting) (Supreme Court very recently "cautioned that we should not read 'general language' in its decisions as 'referring to quite different circumstances that the Court was not then considering." (citation omitted)); *Hernandez Alvarez v. Warden, Federal Detention Center, Miami, ---F.4th---, 2026 WL 1243395, at* *34 *(11th Cir. May 6, 2026)* (Lagoa, J., dissenting) (similar).

2. Next, recognizing the question of statutory interpretation presented here is an open one, "[i]t is a commonplace of statutory construction that the specific governs the general." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (quotations omitted). Congress often writes broad directives that more specific provisions narrow, either within the same section or across multiple sections in the same enactment. IIRIRA fits within that tradition: insofar as §1226(a)'s terms

cover aliens who are "applicants for admission" subject to §1225(b)(2)(A), when read in isolation, the latter is plainly the more specific provision and so it governs. O.B.41-42.

Nonetheless, Petitioner says §1226(a) must be read to apply to *all* inadmissible aliens because §1226(a)'s *predecessor* required detention "'pending a determination of *deportability*,'" A.B.18 (quoting 8 U.S.C. §1252 (1995)) (emphasis added)—a ground that applied to aliens present in the United States, O.B.9—while the new §1226(a) authorizes detention "pending a decision on whether [they are] to be *removed*." A.B.18 (emphasis added). That misunderstands Congress's word choice. IIRIRA eliminated the prior "deportation" and "exclusion" proceedings and replaced them with the singular "removal" proceeding. O.B.9-10; A.B.7. Congress's shift in word-choice from "deportability" in the former §1252 to "removed" in §1226(a) was simply an effort to conform the language of §1226(a) to the post-IIRIRA lexicon, and does not demonstrate intent to extend §1226(a) to an inadmissible alien like Petitioner.

3. Retreating to legislative history, Petitioner seizes upon a committee report indicating §1226(a) "'restates' provisions in former §1252(a)(1) (1995) providing for 'release on bond' to noncitizens in [the]

country, including those who entered without inspection." A.B.24 (quoting House Rep. 104-469, part 1, at 229 (1996)). That cannot overcome statutory text. *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 436 (2019). And it does not support Petitioner's reading. 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. A.B.24. At best for Petitioner, that legislative history is ambiguous, which means it is not probative of legislative intent. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005).

Moreover, the same committee report states 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"—which includes bond hearings—"that are not available to aliens who present themselves for inspection at a port of entry." House Rep. 104-469 part 1, at 225; O.B.9-10. That is incompatible with Petitioner's interpretation of §1226. A.B.8, 24. Petitioner's argument that the report "makes no reference at all to eliminating bond," A.B.49, is a non-starter; the report refers to "immigration proceedings" and bond hearings plainly occur in the context of "immigration proceedings." And detention is in service of—indeed, inextricably intertwined with—those proceedings. *See* 8 U.S.C. §1225(b)(2)(A); *Jennings*, 583 U.S. at 286.

4. Prior Executive practice and interpretation cannot justify departing from the plain text. A.B.30-32. As to practice, it is axiomatic that "authority granted by Congress cannot evaporate through lack of administrative exercise." *Bankamerica Corp. v. United States*, 462 U.S. 122, 131 (1983) (cleaned up). That is especially true where, as here, the Executive has not wholly "fail[ed] … to exercise the power it now claims." *Id.* Under prior administrations, aliens now understood to be subject to §1225(b)(2)(A) were still detainable—just under §1226(a). And every prior administration applied §1225(b)(2)(A) to mandate detention of *some* aliens—just a subset of those correctly subject thereto. Regardless, courts have not hesitated to set aside longstanding agency interpretations, including of IIRIRA, when inconsistent with the statute. *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"). After all, "[y]ears of consistent practice cannot

vindicate an interpretation that is inconsistent with a statute's plain text." *Buenrostro-Mendez*, 166 F.4th at 506; *see Avila*, 170 F.4th at 1136-37 (same).

As to interpretation, Petitioner points to a 1997 interim rule stating 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 Executive interpretation of a statute may be informative only when it "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 interpretation "concede[s] that unadmitted aliens [fall] literally within the scope of §1225[.]" *Buenrostro-Mendez*, 166 F.4th at 506-07. Consistent with that, the 1997 regulations were promulgated, *see* 8 C.F.R. §235.3(b)(1)(ii), and "[t]his regulatory provision … looks no different from the government's interpretation" today, *Buenrostro-Mendez*, 166 F.4th at 507.

Finally, Petitioner's gesture at congressional acquiescence is meritless. A.B.30-31. The Supreme Court has made clear 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) (cleaned up). 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 Hurtado*, 29 I&N Dec. 216, 220-29 (BIA 2025). And the Executive's other pronouncements were, at best, ambiguous. O.B.36-37. In any event, "regardless of Congress's silence on §1225(b)(2)(A), the text controls." *Buenrostro-Mendez*, 166 F.4th at 506; *Avila*, 170 F.4th at 1137-38.

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

Petitioner fares no better relying on §1226(c), which provides 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 or affiliations. A.B.25-29. According to Petitioner, §1226(a) must apply to "inadmissible" aliens because otherwise "Congress [would have had no] need to exclude a subset of them from bond eligibility under §1226(a)." A.B.25.

1. Reading §1226 together with §1225 disproves Petitioner's theory.[3] For example, the inadmissibility grounds in §1226(c)(1)(A) and (D) (respectively, offenses related to a controlled substance and terrorism-related activities or associations) apply to aliens arriving at a port of entry—aliens Petitioners agree are covered by §1225(b)(2)(A).

The same is true of the grounds of inadmissibility—§1182(a)(6)(C) and (a)(7)—addressed by the Laken Riley Act (LRA). *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 offenses in §1226(c)) are subject to §1226(a)'s discretionary detention. That is refuted by the expedited removal provision, which applies to (1) aliens arriving in the United States and (2) aliens who "ha[ve] not been admitted or paroled into the United States" and have been present in the United States for less than two years—but only if they are "inadmissible under section 1182(a)(6)(C) or

[3] Petitioner cites *Nielsen v. Preap*, 586 U.S. 392 (2019), to argue §1226(c) does not preclude parole for aliens subject to §1225(b)(2). A.B.28. But *Preap* addressed the narrow question of when an alien who is released from criminal custody is subject to mandatory detention under §1226(c)(1). 586 U.S. at 396. The Court thus discussed the relationship between §§1226(a) and (c), *see id.* at 408-10, *not* the interaction between §1225 and §1226. *See 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").

1182(a)(7)." 8 U.S.C. §1225(b)(1)(A)(i), (iii). The upshot: aliens who, on Petitioner's theory, should be covered by §1226(a) may be subject to mandatory detention under §1225(b)(1).

This point refutes Petitioner's argument that the LRA—which added subparagraph (E) to §1226(c)(1)—"underscores that §1226(c) is the exception to the general rule" that all inadmissible aliens are eligible for bond under §1226(a). A.B.26-27. 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)" further undermines relying on it. 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) were limited to aliens who are actively trying to acquire admission at the border, 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) likewise boil down to objections about overlap in Appellants' interpretation of §§1226(c) and 1225(b)(2)(A). A.B.28-29. 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; *see Avila*, 170 F.4th at 1137 ("[I]t is entirely reasonable that the overlap between §§1225(b)(2)(A) and 1226(c) is a result of Congress's effort to be 'doubly sure' to deny parole to aliens who have committed certain offenses[.]" (quoting *Barton*, 590 U.S. at 239)). Besides, §1226(c) applies to aliens not subject to §1225(b)(2)(A), and so clearly does independent work. O.B.41-42.

At bottom, Petitioner's complaint about partial overlap 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. That is particularly true of the LRA, which was enacted nearly three decades after §§1225(b)(2) and 1226(c). *See South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 355 (1998) ("[T]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one") (quotations omitted)). 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.*

Pointing to potential redundancy is weaker still when there is overlap under any interpretation. O.B.44-45. Petitioner denies overlap under his reading, saying aliens arriving at a port of entry are "not detained under §1226" but are "subject to mandatory detention under §1225(b)(2)." A.B.27. That misses the point. By its terms, the LRA can cover aliens who arrive at a port of entry and are inadmissible on certain grounds, *see* 8 U.S.C. §1226(c)(1)(E), including aliens Petitioner agrees are also covered by §1225(b)(2)(A).

Finally, to the extent there is overlap, §1226(c) and the LRA serves the independent function of limiting release from detention on parole of aliens who are covered by §1226(c). 8 U.S.C. §§1226(c)(1)(E), (c)(4); *see Buenrostro-Mendez*, 166 F.4th at 505 & n.12 (§1226(c)(4) "eliminates the option of parole for those to whom it applies"); O.B.43-45. Petitioner objects that if Congress intended for the LRA to "remove the option of parole" for those aliens it covers, it would have amended §1225 or enacted exceptions to the parole statute, §1182(d)(5)—not amended §1226. A.B.28-29. That just critiques Congress's chosen method. But "there are many ways to skin a cat," *Wagner v. FEC*, 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.29.

III. Petitioners' interpretation subverts congressional intent.

Petitioner's reading subverts one of Congress's express objectives in IIRIRA—to eliminate the preferential treatment of aliens who enter the country unlawfully vis-à-vis those who present for inspection. O.B.9-10, 45-47. After all, the vast majority of aliens who have "arrive[d] in the United States" outside a port of entry or are already "present in the United States" without admission are not "go[ing] in search of … lawful entry into the United States" after inspection, A.B.35; they *intentionally evaded* inspection and entered the United States unlawfully. 8 U.S.C. §1325(a). So, under Petitioner's view, the millions of aliens who have deliberately violated federal law the longest are entitled to receive a bond hearing, while aliens who *follow the law* or are apprehended after "recent" entry are subject to mandatory detention. This Court should reject such a perverse regime that so clearly abrogates Congress's objective. *See Avila*, 170 F.4th at 1135-36 (recognizing §1225's purpose to place all aliens who have not been admitted "on equal footing" in immigration proceedings).

Petitioner does not dispute this is the consequence of his argument, nor that in enacting IIRIRA Congress meant to eliminate a system that afforded "greater procedural and substantive rights … in deportation proceedings" to aliens who successfully entered the country illegally. O.B.8. Instead, Petitioner myopically focuses on purported Congressional concern for "detention capacity," A.B.46-49, over the problem of preferential treatment. *See Buenrostro-Mendez*, 166 F.4th at 508 ("[T]he government's interpretation better honors [the] predominant goal in the enactment of IIRIRA"). Petitioner's apparent attempt to distinguish preferential treatment in "removal proceedings" from in detention also fails because the two are inextricably intertwined. 8 U.S.C. §1225(b)(2)(A).

IV. The Canon of Constitutional Avoidance does not apply.

Petitioner resorts to the canon of constitutional avoidance. A.B.50-52. 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 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 Jennings*, 583 U.S. at 297-98 (refusing to employ the doctrine of constitutional avoidance to import a 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. Petitioner argues immigration detention comports with due process only if the alien receives a hearing to show he is either (1) a danger to the community, or (2) a flight risk. A.B.52. He purports to derive this principal from *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), but *Zadvydas* addressed only whether *indefinite* detention under a different provision of the INA comports with due process. *Id.* at 682, 690, 692. Petitioner is not challenging the duration of his detention, only that it is mandatory. Moreover, the aliens challenging their detention in *Zadvydas* were aliens with final orders of removal for whom removal was "no longer practically attainable." *Id.* at 527.

Neither is true here. Petitioner is not subject to *indefinite* detention; his detention under §1225(b)(2)(A) lasts only for the duration of the removal proceedings, and there is no suggestion that his removal is not "practically attainable." Importantly, *Demore v. Kim*, 538 U.S. 510, 528–29 (2003), distinguished *Zadvydas* on these precise grounds in upholding the mandatory detention scheme in §1226(c).

V. The district court independently erred by enjoining the Government from transferring Petitioner and class members outside the District of Colorado in violation of 8 U.S.C. §1252(f)(1)

Even if the district court were correct on the statutory issue, its order prohibiting the transfer of Petitioner and class members outside the District of Colorado violates the limits on injunctive relief in §1252(f)(1). That provision provides that "no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain" certain provisions of the immigration laws, 8 U.S.C. §1252(f)(1)—including 8 U.S.C. §1231(g)(1). Petitioner effectively concedes the violation. He does not dispute that: (1) §1231(g) is a covered provision, (2) the transfer order "restrains" the operation of that provision, as interpreted by *Van Dinh v. Reno*, 197 F.3d

427, 433 (10th Cir. 1999), and (3) the transfer order is not individualized. That should end the matter. Nonetheless, Petitioner tries to use the All Writs Act ("AWA"), 28 U.S.C. §1651, to circumvent §1252(f)(1). That he cannot do. The AWA supply the district court with "jurisdiction or authority" to enter relief that §1252(f)(1) eliminates.

The Supreme Court has made clear that "the express terms" of the AWA "confine[s]" a court "to issuing process 'in aid of' its existing statutory jurisdiction; the Act does not enlarge that jurisdiction." *Clinton v. Goldsmith*, 526 U.S. 529, 534-35 (1999). Here, Petitioner filed his habeas petition in the District of Colorado. The district court would retain jurisdiction even if he, or anyone else included in his class, was transferred out of this district to another facility in the United States. *See* O.B.58-59; *Serna v. Commandant, USDB-Leavenworth*, 608 F. App'x 713, 714 (10th Cir. 2015); *Santillanes v. U.S. Parole Comm'n*, 754 F.2d 887, 888 (10th Cir. 1985) ("[i]t is well established that jurisdiction attaches on the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner and the accompanying custodial change"); *see Ex Parte Endo*, 323 U.S. 283, 284-88 (1944). And, because neither Petitioner nor his fellow class members are subject to a final removal order, no member of the class can be removed from the United States at this time. There was no need for the Court to enjoin the government in order for it to retain jurisdiction.

Petitioner claims without citation or elaboration that "Respondents are likely to contend that the District Court's orders do not apply" to class members transferred outside the District of Colorado. A.B.54. Not only is that contrary to the authority cited immediately above, but it is directly contradicted by Respondents' own representations to the district court. For example, in briefing regarding modifying the injunction to permit transfer of two class members to a facility outside the District for necessary medical treatment, Respondents told the district court that the relevant individuals "will remain class members even if transferred out of the district." App.787. Contrary to Petitioner's suggestion, Respondents' request to enforce §1252(f)(1) according to its plain terms is not a matter of gamesmanship, but rather, ensuring Congressional limits on district court jurisdiction are respected.

Petitioner frets that the district court would lose jurisdiction over "[c]lass [m]embers who have not yet had the opportunity to file habeas petitions," A.B.54, but the AWA cannot circumvent §1252(f)(1). "The [AWA] is a residual source of authority to issue writs that are not otherwise covered by statute. Where a statute specifically addresses the particular issue at hand, it is that authority, and not the [AWA], that is controlling." *Pennsylvania Bureau of Correction v. United States Marshals Service*, 474 U.S. 34, 43 (1985). Here, §1252(f)(1) strips district courts of "jurisdiction or authority to enjoin or restrain the operation of the [covered] provisions." (emphasis added). Thus, even if the district court would not have jurisdiction over class members who were transferred out of the district before filing habeas petitions, the AWA cannot authorize the district court to enter relief that §1252(f)(1) dictates it has no "jurisdiction or authority" to enter.

Contrary to Petitioner's suggestion, this Court is not free to ignore *Van Dinh*, 197 F.3d at 433 (holding §1252(f)(1) prohibits district courts from enjoining the Secretary's exercise of the authority under §1231(g)(1), which gives the Secretary "discretionary power to transfer aliens from one locale to another, as she deems appropriate"). The fact that *Van Dinh* didn't address the AWA, A.B.55, is irrelevant because §1252(f)(1) controls over the AWA, where §1252(f)(1) applies, as mentioned. Furthermore, this Court is not alone in its interpretation of §1252(f)(1). *See Hamama v. Homan*, 912 F.3d 869, 878 (6th Cir. 2018) (agreeing with *Van Dinh* and listing other courts which "have determined that they do not have jurisdiction under §1252(f)(1) to issue class-based injunctive relief against the removal and detention statutes").

Van Dinh did not "limit[] its holding" to "injunctive relief in a *Bivens* class action suit." A.B.55. The Court held that held that the class action could not proceed because §1252(f)(1) "forecloses jurisdiction to grant class-wide injunctive relief to restrain operation" of §1231(g)(1)—not because of anything unique to *Bivens*. 197 F.3d at 433.

Indeed, other courts of appeals have applied *Van Dinh* outside the *Bivens* context. For example, in *Hamama*, the Sixth Circuit relied on *Van Dinh* to find that §1252(f)(1) barred the district from entering class-wide injunctive relief on a detention-based claim, reasoning "[t]here is no way to square the concept of a class action lawsuit with the wording 'individual' in [8 U.S.C. § 1252(f)(1)]." *Hamama*, 912 F.3d at 877-78; *see also Hamama v. Adducci*, 946 F.3d 875, 877-78 (6th Cir. 2020) ("Last time around [in *Hamama*, 912 F.3d 869], we held that Congress removed jurisdiction from the district courts to enter class-wide injunctions restraining the enforcement of the following immigration statutes: 8 U.S.C. §§ 1221–1232. *See generally* 8 U.S.C. §[§]1252(f)(1), (g). Just before we decided that appeal, the district court issued another class-wide injunction. We vacate that injunction, too, and remand again for further proceedings."). *Van Dinh* thus controls. To the extent Petitioner asks this Court to re-examine *Van Dinh's* interpretation of §1231(g), based on disagreement with it by sister circuits, OB.56, this Court lacks authority to do so. *See Montgomery v. Cruz*, 162 F.4th 1285, 1290 n.6 (10th Cir. 2026) ("one panel can't overrule another in the absence of en banc consideration or a superseding opinion of the Supreme Court").

CONCLUSION

The Court should reverse the district court's orders.

Respectfully submitted,

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June 1, 2026

ORAL ARGUMENT STATEMENT

This case raises significant legal issues of first impression regarding the intersection between individual rights of aliens and the important governmental interests underpinning the enforcement of immigration law. Oral argument would aid the court in resolving these important issues.

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), I hereby certify that the foregoing Brief for Respondent is proportionally spaced using Georgia typeface, has a typeface of 14 points, and contains 6,498 words.

s/ Rebecca Hoffberg Phillips
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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 Tenth Circuit by using the appellate CM/ECF system on June 1, 2026. Participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

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