No. 26-6019

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

RIGOBERTO SANTILLAN QUIROZ,

Petitioner-Appellant,

v.

MARKWAYNE MULLIN, in his official capacity; JOSHUA JOHNSON, in his official capacity; and PAMELA BONDI, in her official capacity,

Respondents-Appellees.

On Appeal from the United States District Court for the Western District of Oklahoma
Hon. Patrick R. Wyrick
Case No. 5:25-cv-01349-PRW

RESPONDENT'S ANSWERING BRIEF

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Oral Argument Requested

STATEMENT REGARDING ORAL ARGUMENT

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

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

STATEMENT OF RELATED CASES

I hereby state, pursuant to Tenth Circuit Rule 28.2(C)(3), that I am not aware of any prior or pending appeals involving the same Petitioner.

/s/ Anthony J. Nardi
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Administrative Decisions

Statutes

Regulations

INTRODUCTION

Before 1996, the federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who had entered unlawfully and were present in the United States to obtain release pending deportation proceedings. Congress overhauled the immigration system in 1996 with the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), in part to end the preferential treatment of aliens who evaded inspection and entered the country unlawfully.

Relevant here, Congress enacted what is now codified at 8 U.S.C. §1225. This 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 during removal proceedings of any "applicant for admission" who cannot show he is "clearly and beyond a doubt entitled to be admitted." *Id.* §1225(b)(2)(A).

There is no dispute that Petitioner is an "applicant for admission" under §1225(a), as he entered the country without inspection and was never "admitted." Nor did he show he is "clearly and beyond a doubt" entitled to be admitted. The district court thus correctly held that Petitioner is subject

to detention, without bond, under §1225(b)(2)(A)—the same interpretation adopted by the Fifth and Eighth Circuits. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Avila v. Bondi*, ---F.4th---, 2026 WL 819258 (8th Cir. Mar. 25, 2026).

On appeal, Petitioner argues that §1225(b)(2)(A) does not govern his detention on the theory that the phrase "seeking admission" limits that provision to the border. That is wrong. The plain text of §1225 establishes that applicants for admission, like Petitioner, are seeking admission. Ignoring the words Congress used, Petitioner urges an agrammatical reading that is at war with numerous other cases interpreting similar language, not to mention the English language.

Ultimately, Petitioners' interpretation would require the same disparate treatment Congress tried to abolish through §1225—aliens who commit the crime of illegal entry (8 U.S.C. §1325(a)) by intentionally evading inspection are afforded bond hearings, while those who present at a port of entry *in compliance with law* must be detained. In Petitioner's view, "no good deed goes unpunished." *Winter v. NRDC*, 555 U.S. 7, 31 (2008).

Despite §1225's clear text, Petitioner asks the Court to ignore it based on the separate detention authorities in §1226. His arguments rely on inference, conflicting legislative history, and inconsistent Executive

interpretations—nothing remotely sufficient to displace the clear terms of §1225. On its face, §1226 applies to numerous aliens *not* subject to §1225(b)(2)(A), including all *admitted* aliens who are now deportable and subject to §1229a removal proceedings—such as the more than a million aliens in the United States who were lawfully admitted but overstayed visas. By contrast, §1225 explicitly applies to all "applicants for admission," and it is axiomatic that "the specific controls the general." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012).

Petitioner's backup due process claim likewise fails. As the Supreme Court has held, "Plaintiffs who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme." *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 9 (2003). Because an alien's flight risk or dangerousness are irrelevant to whether §1225(b)(2)(A) applies, a bond hearing to assess those issues would be "a bootless exercise." *Id.* at 7. Petitioner's claim thus sounds in *substantive* due process. He does not, however, identify any fundamental right, and the Supreme Court has long "recognized [that] detention during deportation proceedings [i]s a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510 (2003).

The Court should affirm.

STATEMENT OF JURISDICTION

Petitioner's jurisdictional statement filed on January 5, 2026, is complete and correct.

RESTATEMENT OF THE ISSUES

1. Whether aliens who are present in the United States without admission are subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A) pending removal proceedings, with parole under 8 U.S.C. §1182(d)(5) serving as the exclusive statutory mechanism for release.

2. Whether the Due Process Clause of the Fifth Amendment requires the government to provide bond hearings to aliens who are subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A).

STATEMENT OF THE CASE

I. Statutory framework

A. The pre-IIRIRA framework distinguished between excludable aliens who had not made an entry and deportable aliens who had entered the United States, even unlawfully.

Before 1996, the INA treated aliens differently based on whether the alien presented at a port of entry or evaded inspection and entered the U.S. *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). "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" and whether the alien would be detained pending those proceedings. *Hing Sum*, 602 F.3d at 1099.[1]

At the time, the INA provided for two types of removal proceedings: exclusion hearings and deportation hearings. *Vartelas v. Holder*, 566 U.S. 257, 261 (2012). 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." *Hurtado*, 29 I.&N. Dec. 223; *see also* 8 U.S.C. §§1225(a)-(b), 1226(a) (1994). In contrast, an alien who evaded inspection and physically entered the United States would be placed in deportation proceedings. *Hurtado*, 29 I.&N. Dec. at 223; *see also Vartelas*, 566 U.S. at 261. Aliens in deportation proceedings, unlike those in exclusion proceedings, "were entitled to request release on bond." *Hurtado*, 29 I.&N. Dec. at 223 (citing 8 U.S.C. §1252(a)(1) (1994)).

[1] Aliens who arrive at a port of entry have physically "entered" the U.S., 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).

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

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

Hurtado, 29 I.&N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att'y General of U.S.*, 693 F.3d 408 (3d Cir. 2012)); H.R. Report ("House Rep.") No. 104-469, at 225 (1996) ("[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 preferential treatment for unlawful entrants into the United States, mandating detention and removal proceedings for certain "applicants for admission"

Congress refashioned the prior regime through enactment of IIRIRA, Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546 (Sept. 30, 1996). Among other things, IIRIRA sought 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 "admission" the touchstone. IIRIRA repealed the definition of "entry," and replaced it with "admission," which it defined 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) (emphasis added). As such, the immigration laws no longer distinguish between aliens based merely on whether they manage to enter the country. 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 eliminated the dichotomy of exclusion and deportation hearings, consolidating both sets of proceedings into "removal proceedings." *See* 8 U.S.C. §1229a; *Ming-Hui Wu*, 567 F.3d at 891-92.

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 "admission," rather than physical entry, the touchstone, first, by deeming a broad class of aliens "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.

8 U.S.C. §1225(a)(1). Immigration officers are required to inspect "[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States." *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, subject to removal.

Section 1225(b): IIRIRA also provided for expedited removal and § 1229a removal proceedings, mandating that applicants for admission be detained pending these proceedings. 8 U.S.C. §1225(b)(1)-(2).

Section 1225(b)(1) authorizes so-called "expedited removal proceedings," *DHS v. Thuraissigiam*, 591 U.S. 103, 109-13 (2020), which may be applied to a subset of 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 [they have] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C.

§1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration officer shall "order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum … or a fear of persecution." *Id.* §1225(b)(1)(A)(i). In that event, the alien "shall be detained pending a final determination of credible fear of persecution and, if found not to have such fear, until removed." *Id.* §1225(b)(1)(B)(iii)(IV); *see* 8 C.F.R. §235.3(b)(4)(ii). If found to have a fear, "the alien shall be detained for further consideration of the asylum application." 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. 8 U.S.C. §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).[2] It directs an immigration officer to detain applicants for admission pending §1229a removal proceedings:

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

> 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.

8 U.S.C. §1225(b)(2)(A) (emphasis added).

While §1225(b)(2) does not provide for the release of aliens on bond, the Secretary nonetheless has discretion to exercise his parole authority to temporarily release an applicant for admission, but "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.*; *see also* 8 U.S.C. § 1101(a)(13)(B).

Section 1226: IIRIRA moved and revised former §1252(a) to provide separate authority enabling the arrest, detention, and release of certain aliens. *See* 8 U.S.C. §1226. The statute provides that "[o]n a warrant issued by the [Secretary], 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). Like its predecessor, this provision encompasses the detention of aliens who were admitted to the country but later become removable—for example, admitted aliens who overstay or otherwise violate the terms of their visas, who engage in conduct that renders them deportable, or who are later determined to have been improperly admitted.

Detention under this provision is generally discretionary. The Secretary "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. 8 U.S.C. §1226(a)(1)-(2); *see* 8 C.F.R. §§236.1(c)(8), (d), 1236.1(d)(1), 1003.19.[3]

This "default rule" of discretionary detention does not apply to certain criminal aliens. *Jennings*, 583 U.S. at 288. Section 1226(c) mandates that "[t]he [Secretary] shall take into custody" certain classes of criminal aliens—those who are inadmissible or deportable because the alien either "committed" certain offenses delineated in 8 U.S.C. §§1182 and 1227 or engaged in terrorism-related activities or associations. 8 U.S.C. §1226(c)(1). Such aliens may be released from detention if the Attorney General determines "that release of the alien from custody is necessary" to protect a witness to a "major criminal activity" or a similar person, and then only if the alien "will not pose a danger" to public safety and is not a flight risk. *Id.* §1226(c)(4).

Congress recently amended §1226(c) through the Laken Riley Act, Pub. L. No. 119-1, §2, 139 Stat. 3 (2025), which additionally requires detention of and limits release from detention on parole that results in release for

[3] Conditional parole under §1226(a) is distinct from parole under §1182(d)(5)(A). *See Ortega-Cervantes v. Gonzalez*, 501 F.3d 1111, 1116 (9th Cir. 2007).

criminal aliens who (1) are inadmissible because they are physically present in the United States without admission or parole under 8 U.S.C. §1182(a)(6)(A), have committed a material misrepresentation or fraud under 8 U.S.C. §1182(a)(6)(C)), or lack required documentation under 8 U.S.C. §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. 8 U.S.C. §1226(c)(1)(E).

C. The Government concludes that §1225(b)(2)(A) mandates detention of all applicants for admission for removal proceedings under §1229a.

For many years after IIRIRA, the government treated aliens who entered the United States without admission as being subject to discretionary detention under 8 U.S.C. §1226(a), rather than mandatory detention under 8 U.S.C. §1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6.

However, the government also acknowledged that its practice was not consistent with the statute's text. In the preamble to regulations promulgated in 1997, the Department of Justice explained that "*[d]espite being applicants for admission*, aliens who are present without having been admitted … will be eligible" for bond hearings. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (emphasis added). Moreover, the regulations, as

promulgated, provided for mandatory detention consistent with the text of §1225(b)(2):

> 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).

On July 8, 2025, the Department revisited its legal position on detention and release authorities to bring the Executive's practices in line with the statute's plain text. Appendix ("App.") 5, 118. The Department concluded that applicants for admission are subject to mandatory detention under 8 U.S.C. §1225(b), and may not be released from Department custody except by 8 U.S.C. § 1182(d)(5) parole. App.5-6, 119. As a result, the only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under 8 U.S.C. §1226(a) are aliens admitted to the United States who are deportable under 8 U.S.C. §1227 and subject to removal proceedings under §1229a. App.38.

The Board also adopted this interpretation in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-23 (BIA 2025).

II. Factual and Procedural History

Petitioner is a citizen and national of Mexico who unlawfully entered the United States without being admitted sometime in 2006. App.6, 57. On November 2, 2025, he was arrested by the Department and served a notice to appear for removal proceedings that charged him with being inadmissible under 8 U.S.C. §1182(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled. App.55-56. The Department determined that Petitioner must be detained during his removal proceedings pursuant to §1225(b)(2)(A). App.40, 56.

Petitioner then filed an application for a writ of habeas corpus under 28 U.S.C. §2241 in the district court, contending that he is not subject to mandatory detention under §1225(b)(2)(A) and is entitled to a bond hearing. App.4-18. On January 13, 2026, the district court denied the habeas petition, App.124, also holding that Petitioner is subject to mandatory detention under §1225(b)(2). App.122. In reaching this determination, the district court concluded Petitioner's detention is proper because he "entered the United States without admission or inspection." App.122. Finally, the district court also held that Petitioner's "half-hearted" due process claim was premature because, even accounting for the "short, non-doctrinal snippet

from *Zadvydas v. Davis*," 533 U.S. 678, 701 (2001), Petitioner had not yet been detained for six months. App.122.

Petitioner appealed. App.125-26.

SUMMARY OF THE ARGUMENT

The district court correctly held that Petitioner is subject to mandatory detention under §1225(b)(2)(A), and that detention does not violate due process. This Court should affirm.

I.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).

Petitioner's reliance on the phrase "seeking admission" is unavailing. 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), (5). No additional, affirmative act is needed for an "applicant for admission" to be "seeking admission." This reading does not render the term "seeking admission" redundant; read consistent with the provision's structure, every portion has independent meaning. Even if there were redundancy, "[r]edundancies are common in statutory drafting," and "[r]edundancy in

one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Barton v. Barr*, 590 U.S. 222, 223 (2020).

Petitioner's interpretation would also 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. This Court should not endorse such a backwards outcome—particularly one that is so plainly subversive of congressional intent.

B. Section 1226 does not displace the clear text of §1225. Section 1226(a) applies to a significant swath of aliens who are *not* covered by §1225(b)(2). With respect to aliens who have not been admitted, §1225(b)(2) is the more specific provision and it controls. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). Nor does §1226(c) undermine Respondent's reading. 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 independent work by limiting release from detention on parole those aliens the subsection covers.

C. The Government's interpretation of §1225(b)(2) is consistent with *Jennings*, 583 U.S. 281. That case did not address the statutory scope of the Executive's pre-removal order detention authority, but only limits on the length of detention under this 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.

II. Petitioner's due process claim likewise fails. An individual asserting a due process right to a hearing "must show that the facts they seek to establish are relevant under the statutory scheme." *Doe*, 538 U.S. at 9. And neither flight risk nor dangerousness are relevant to whether §1225(b)(2)(A) applies.

Petitioner cannot prevail on a substantive due process claim either. His detention without a bond hearing does not implicate any fundamental right, so it is assessed under rational basis review. Section 1225(b)(2)(A)'s detention-pending-removal easily satisfies that standard. Indeed, the Supreme Court upheld mandatory detention under §1226(c), against a similar substantive due process challenge. *Demore*, 538 U.S. 510.

STANDARD OF REVIEW

This Court reviews *de novo* a district court's denial of a petition for a writ of habeas corpus under 28 U.S.C. §2241. *Bledsoe v. United States*, 384 F.3d 1232, 1235 (10th Cir. 2004).

ARGUMENT

I. The district court properly held that §1225(b)(2)(A) requires the detention of aliens, like the Petitioner, who are present in the United States without having been admitted.

The district court concluded that §1225(b)(2)(A) requires the Department to detain all aliens, like Petitioner, who are present in the United States without admission during their removal proceedings. That holding follows from the plain text of the statute. Petitioner's interpretation, by contrast, is incompatible with the statutory text and subverts Congress's clear purpose in adopting §1225(b)(2)(A).

A. The plain text of §1225(b)(2)(A) mandates detention of applicants for admission who are not clearly and beyond a doubt entitled to be admitted.

Section 1225(a) deems any alien who is "present in the United States [and] has not been admitted or who arrives in the United States" to be an "applicant for admission." 8 U.S.C. §1225(a)(1). The INA further defines "admission" not to mean mere physical entry, but "lawful entry … after inspection and authorization by an immigration officer." 8 U.S.C. §1101(a)(13)(A). Thus, any alien who enters the country without inspection

and is not admitted is (and remains) an applicant for admission. In turn, §1225(b)(2)(A) provides that for "an alien who is an applicant for admission," if an examining officer finds the "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). Detention is mandatory. *Jennings*, 583 U.S. at 302.

Petitioner falls squarely within the statute. He is "present in the United States," there is no dispute that he has "not been admitted," and he does not fall within any of the exemptions to §1225(b)(2)(A). 8 U.S.C. §1225(a), (b)(2)(B); *see* App.57, 122. Moreover, he cannot—and did not—establish to an examining officer that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. §1225(b)(2)(A). Therefore, the statute commands that he "shall be detained for a proceeding under [8 U.S.C. §1229a]." 8 U.S.C. §1225(b)(2)(A).

B. Petitioner's contrary interpretation is at war with the text of §1225(b)(2)(A).

Despite its clear language, Petitioner argues that §1225(b)(2)(A) applies only "at the border." Opening Br. ("O.B.") 29. He bases this interpretation exclusively on the phrase "seeking admission" in §1225(b)(2)(A), which he reads to "connote[] present-tense action" and to require that an alien be "go[ing] in search of" or "try[ing] to acquire or gain"

admission. O.B.31-32. That interpretation is incompatible with the statute's clear terms.

1. All applicants for admission are "seeking admission."

Section 1225(b)(2) requires the detention for §1229a proceedings 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 all "applicants for admission" are necessarily "seeking admission." No additional affirmative act is necessary.

a. Section 1225(a) provides that "[a]ll 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). 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'" clause. *Kleber v. CareFusion Corp.*, 914 F.3d 480, 483 (7th Cir. 2019); *see also 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 one way of seeking admission, such that any alien who is an "applicant for admission" *is* "seeking admission" for purposes of §1225(b)(2)(A). *See*

Buenrostro-Mendez, 166 F.4th at 503-04; *Avila*, 2026 WL 819258, at *3 n.4; *see also Montoya v. Holt*, 2025 WL 3733302, at *8-9 (W.D. Okla. Dec. 26, 2025) (Dishman, J.) ("The word 'otherwise' establishes that 'aliens … seeking admission' is the category to which 'applicants for admission' belong.").

"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*, 166 F.4th at 502. 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"). For example, a person who is "applying" for admission to a college or club is "seeking" admission to the college or club. *See* The American Heritage Dictionary of the English Language 63 (1980) ("American Heritage Dictionary") ("apply" means "[t]o request or *seek* employment, acceptance, or *admission*") (emphasis added). Likewise, an alien who is "applying" for admission to the United States (*i.e.*, an "applicant for admission") is necessarily "seeking admission" to the United States. *Buenrostro-Mendez*, 166 F.4th at 502.

Section 1225(a)(5) confirms this reading. It 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. "Th[is] language strongly suggests that those who are applicants for admission are 'seeking admission.'" *Buenrostro-Mendez*, 166 F.4th at 503.

"Seeking admission" thus includes not only aliens who "entered the United States with visas or other entry documents before their presence became lawful," but also aliens who "entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of [§1225](a)(1)." *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. Mere presence without admission *is* seeking admission "by operation of law." *Id.* at 743 n.6; *see Buenrostro-Mendez*, 166 F.4th at 502 ("That 'seeking admission' is equivalent to being an 'applicant

for admission' by operation of law was confirmed by the [Board] over a decade ago in *Lemus-Losa*[.]").

b. The preceding discussion confirms that "seeking admission" in §1225(b)(2)(A) does not "connote[]" some kind of "present-tense, affirmative action" by an alien "to 'go in search of or to try to acquire or gain' a lawful entry into the United States." O.B.32. Section 1225(a) deems an alien to be an "applicant for admission" simply because the alien is "present in the United States [and] has not been admitted," 8 U.S.C. §1225(a), and an applicant for admission necessarily is "seeking admission." Nothing more is needed.

This is not, as Petitioner says, a way of "read[ing]" the phrase "'seeking admission' into the definition of 'applicant for admission.'" O.B.33. Section §1225(a)(3) does not *equate* "applicant for admission" with aliens "seeking admission"; it provides only that being an "applicant for admission" is *one* "way or manner" of seeking admission. *Supra*, p. 22. "Seeking admission" is a broader category, which is why Congress would not have included that phrase in §1225(a)(1)'s definition of "applicant for admission." *Montoya*, 2025 WL 3733302, at *9 ("§1225(a)(3) leaves open the possibility that some aliens who are not applicants for admission may nonetheless be 'seeking admission.' But it does *not* leave open the possibility that some 'applicants

for admission' are not 'seeking admission.").[4] And, given the complexity of the statutory scheme and IIRIRA's amendments, Congress's use of the phrase "or otherwise seeking admission" ensured that all aliens would be subject to §1225(a)'s requirement—including aliens who entered before IIRIRA's effective date.

Petitioner points to provisions in Title 8 he says show that "'applicant for admission' and 'seeking admission' are not synonymous' and that 'seeking admission' is something that happens at the border." O.B.34-36. He cites 8 U.S.C. §1736, which addresses the visa waiver program and requires DHS to assess whether an "applicant for admission" is in a "lookout database … at the time the alien seeks admission to the United States." But like §1225(a)(5), this provision "strongly suggests that those who are applicants for admission are 'seeking admission.'" *Buenrostro-Mendez*, 166 F.4th at 503. Moreover, to the extent §1736 suggests that "seeking admission" happens at the border, that is because of the phrase "at the time" which modifies "seeking admission"—language that is conspicuously absent

[4] For example, aliens may present themselves for pre-inspection by U.S. Customs and Border Protection at certain designated foreign locations—such as certain international airports prior to arrival in the United States. *See* 8 U.S.C. §1225a; 8 C.F.R. §235.5. Those aliens are "seeking admission" but are not "applicants for admission" because they are not present or arriving in the United States at the time of inspection.

from §1225. To say that pursuing admission through the visa waiver program is an act of "seeking admission" does not negate Congress's determination that all applicants for admission are "seeking admission" by operation of law.[5]

Petitioner is likely to argue that §1225(a)(3)'s reference to "readmission" and "transit" undermine this reading of "or otherwise." They do not. As for "readmission," there is no meaningful difference between one alien seeking "admission" and another seeking "readmission"—both are seeking the same thing: admission. The "or otherwise" clause maps on perfectly: all applicants for admission are "seeking admission," whether for the first time or again—for example, an alien with a nonimmigrant visa authorizing multiple entries may be "seeking … readmission to … the United States" as an "applicant for admission." 8 U.S.C. §1225(a)(3).

As for "transit," the sentence structure makes clear that "or otherwise" does not modify the "transit" clause at all. The relevant portion of §1225(a)(3) contains two independent clauses ending in prepositions—(1)

[5] An alien who receives "advance parole" is "seeking admission." *Cf.* O.B.35. True, an alien who is paroled "shall not be considered to have *been* admitted," 8 U.S.C. §1101(a)(13)(B) (emphasis added), but the alien still is "seeking admission" and "applying for admission." *See* 8 U.S.C. §1182(d)(5) (authorizing parole of "alien[s] *applying for admission* to the United States" (emphasis added)).

"seeking admission or readmission to" and (2) "or transit through." Although "or otherwise" modifies the first, it does not apply to subsequent non-parallel clauses. *Accord* Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 152–53 (2012); *U.S. Postal Serv. v. Konan*, 607 U.S. ---, 146 S. Ct. 736, 746 (Feb. 24, 2026). For good reason: it would make no sense to read "or otherwise" to modify the transit clause—"or [otherwise seeking] transit through"—because the transit clause already contains an "or." And it makes no sense to carry forward *only* "otherwise"—"or [otherwise seeking] transit"—because the "or otherwise" is a pair that has a "meaning[] … different from the sum of its parts." *Villarreal*, 839 F.3d at 963.

In any event, even if part of a statute may be "awkward" in some respect, that does not "make it ambiguous on the point at issue." *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004); *accord Torres v. Lynch*, 578 U.S. 452, 472-73 (2016) (courts must discern "the right and fair reading of the statute before [them]" even though "Congress could have expressed itself more clearly").

Nor does Respondent's reading render the term "seeking admission" superfluous in §1225(b)(2)(A). *Cf.* O.B.34. "[T]he structure of §1225(b)(2)(A) does not indicate that 'seeking admission' is a separate

requirement for detention under the statute," *Avila*, 2026 WL 819258, at *3—"seeking admission" in §1225(b)(2)(A) simply describes what *all* "applicants for admission" do. And "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*, 583 U.S.at 303).

Even if there were redundancy under the Respondent's reading, 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.

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

Petitioner's interpretation is not only inconsistent with the text of §1225(b)(2)(A) itself, but it would make a mess of the statutory scheme.

First and foremost, his reading would collapse §1225(b)(2) into the expedited removal provision in §1225(b)(1). Section 1225(b)(1) 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 1182(a)(7)." 8 U.S.C. §1225(b)(1)(A)(i), (iii) (citing 8 U.S.C. §§ 1182(a)(6)(C), (a)(7)). But if "seeking admission" narrows §1225(b)(1)(A) to aliens who are presenting to an immigration officer at the border and actively trying to obtain admission, then §1225(b)(1) would swallow §1225(b)(2). Worse still, that reading inverts the relationship between §1225(b)(1) and §1225(b)(2). Recall that §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). Under Petitioner's reading, however, §1225(b)(2) is no broader than §1225(b)(1).

Petitioner argues that §1225(b)(1) helps his position because, in contrast to §1225(b)(2), it "explicitly" provides that the Executive could

subject aliens who were "present" without admission to expedited removal procedures. O.B.37. 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.

Not only that, Petitioner's reading effectively nullifies the definition of "applicant for admission" in §1225(a). According to Petitioner's reading, "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 reading of §1225(b)(2)(A) creates a host of questions under the statute. 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?" *Lopez*

v. Director of Enforcement & Removal Operations, ---F. Supp. 3d---, 2026 WL 261938, at *8 (M.D. Fla. Jan. 26, 2026). 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)).

3. Petitioner's other arguments are meritless.

Petitioner's remaining arguments are likewise meritless.

Petitioner first relies on the definition of "admission," theorizing that "an [alien] who has already entered the country without inspection cannot be seeking a 'lawful entry … into the United States.'" O.B.31. 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). Not only that, §1229a 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 repeal of the definition of "entry" and 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").

Nor does §1225's use of the term "inspection" suggest that it is limited to the border. O.B.32. 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.

Petitioner's invocation of the "old soil" principle fares no better. O.B.34. 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.

4. Alternatively, Petitioner is "seeking admission" under his definition.

Even assuming "seeking admission" requires some separate affirmative conduct by the alien, an applicant for admission who attempts to avoid removal from the United States is by any definition "seeking admission."

Section 1225(b)(2)(A) applies to an alien who is present in the United States without admission, even for years. Although the alien may not have been affirmatively seeking admission during those years of illegal presence, §1225(b)(2) is not concerned with the alien's pre-inspection conduct. Rather, the statute's use of present-tense language ("seeking" and "determines") shows that its focus is a specific point in time—when "the examining immigration officer" is making a "determin[ation]" regarding the alien's admissibility. 8 U.S.C. §1225(b)(2)(A). At *that* point, the alien is "seeking" — *i.e.*, presently "endeavor[ing] to obtain," American Heritage Dictionary, *supra*, at 1174 — admission into the United States; if it were otherwise, the applicant would seek to withdraw his application for

admission and 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 by participating in §1229a 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. Indeed, the entire purpose of a §1229a removal proceeding is to "decid[e] the inadmissibility or deportability of an alien." 8 U.S.C. §1229a(a)(1).

C. Petitioner's Narrow Interpretation Subverts Congressional Intent.

Petitioner's reading is not only textually baseless, it also subverts IIRIRA's express goal of eliminating preferential treatment for aliens who enter the country unlawfully, *supra*, pp. 7-8. *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. 7-8. Petitioner's interpretation would resurrect the regime Congress sought to bury: It would require detention for those who present themselves for inspection at the border in compliance with law, yet grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years or even decades until an involuntary encounter with immigration authorities. That is *exactly* the "perverse incentive to enter" unlawfully, *Thuraissigiam*, 591 U.S. at 140, that IIRIRA sought to eradicate.

The Government's reading, by contrast, adheres to the statute's text and "honors [the] predominant goal in the enactment of IIRIRA." *Buenrostro-Mendez*, 166 F.4th at 508. It also brings the statute in line with the longstanding "entry fiction" that courts have employed for well over a century to avoid giving favorable treatment to aliens who have not been lawfully admitted. Under that doctrine, all "aliens who arrive at a port of entry," as well as those who enter unlawfully but are not "taken into custody

the instant [they] attempted to enter the country," are "treated for due process purposes as if stopped at the border," 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; Petitioner's reading subverts it.

D. Section 1226 does not support Petitioner's interpretation.

Rather than accept §1225(b)(2)(A) as written, Petitioner claims that his detention is governed instead by 8 U.S.C. §1226, which authorizes the Department 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 mandates detention of certain aliens, *id.* §1226(c). O.B. 23-27.

Ultimately, Petitioner's misguided reading of §1226 rests on his insistence that it be interpreted in isolation from §1225, but "[i]t is this Court's duty to interpret Congress's statutes as a harmonious whole rather than at war with one another." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 502 (2018).

1. Section 1226(a) does not displace §1225(b)(2)(A).

As noted, §1226(a) authorizes the Secretary to "arrest[] and detain[]" any "alien" pending removal proceedings but provides that the Secretary (or the Attorney General, per 8 C.F.R. § 1003.19) also "may release the alien" on bond or conditional parole. Petitioner maintains that §1226(a) governs his detention. He is wrong.

a. To begin, there is no possible argument that Respondent's interpretation of §1225(b)(2)(A) renders §1226(a)'s discretionary detention authority superfluous. Section 1226(a) provides the detention authority for the significant group of aliens who are *not* deemed applicants for admission subject to §1225(b)(2)(A)—that is, aliens who have been admitted to the United States but are now deportable and subject to removal proceedings under §1229a. For example, the detention of any of the millions of aliens who have overstayed their visas will be governed by §1226(a), because those aliens (unlike Petitioner) were lawfully admitted to the United States. *See Buenrostro-Mendez*, 166 F.4th at 504 ("the government's interpretation

does not render portions of § 1226 superfluous"). But to the extent that §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 it governs. *RadLAX Gateway Hotel, LLC*, 566 U.S. at 645.

Nonetheless, Petitioner says §1226(a) must be read to apply to *all* inadmissible aliens 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—while the new §1226(a) authorizes detention "pending a decision on whether the alien is to be *removed*," 8 U.S.C. §1226(a) (emphasis added). O.B.23-24. This misunderstands Congress's word choice. Recall that IIRIRA eliminated the prior "deportation" and "exclusion" proceedings and replaced them with the unified "removal" proceeding. *Supra*, pp. 7-9. Congress's shift from "deportability" in former §1252 to "removed" in §1226(a) conformed the language of new §1226(a) to the post-IIRIRA lexicon. Petitioners respond that another provision added in IIRIRA—codified at 8 U.S.C. §1229c(a)(1)—uses the term "deportable." O.B.24-25. But that provision is referring to *grounds* for removability; IIRIRA preserved the separate categories of "deportable," while replacing "excludable" with the broader term "inadmissible." *See* 8 U.S.C. §§1182, 1227(a); *compare* 8 U.S.C.

§1182(a) ("Classes of excludable aliens"). Section 1226(a), by contrast, is referring to the *process* for removal — *i.e.*, the removal proceedings.

b. Shifting to legislative history, Petitioner seizes upon 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); *e.g.*, O.B.24. 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). 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* those subject to grounds of inadmissibility. O.B.24. Petitioner offers an alternative reading, *see* O.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).

Moreover, 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. The report's reference to "immigration proceedings" plainly encompasses bond hearings. And 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. That purpose is incompatible with Petitioners' expansive interpretation of §1226 as simply "restat[ing]" the prior regime. O.B.24.

c. The same essential problem faces Petitioner's reliance on post-enactment regulations and agency practice. O.B.27-29. Petitioner points 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); *see* O.B.28. 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*, 166 F.4th at 506-07. Consistent with that acknowledgment, the regulations promulgated in 1997 provide for mandatory detention. 8 C.F.R. §235.3(b)(1)(ii) (emphasis added). As the Fifth Circuit explained, "[t]his regulatory provision … looks no different from [Respondent's] interpretation." *Buenrostro-Mendez*, 166 F.4th at 507. Regardless, the terms of the statute, not agency pronouncements, control. *Loper Bright Enters.*, 603 U.S. at 412-13.

Petitioner's reliance on Executive inaction also falls short. O.B.28-29. "[A]uthority 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 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-old interpretation of EEOC). Ultimately, "[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 also Avila*, 2026 WL 819258, at *5 (same).

d. Nor is it probative that Congress has not amended §1225 and §1226 since 1997 to correct the Government's prior practice. O.B.29. 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) (quotation marks 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).[6] And the

[6] None of the BIA decisions Petitioner cites (O.B.13) adjudicated the scope of §1226 or §1225(b)(2).

Executive's former pronouncements were, at best, ambiguous. *Supra*, pp. 42-43.

2. Section 1226(c) does not aid Petitioner's interpretation.

Petitioner fares no better relying on §1226(c), which provides that the Secretary "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. 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) in the first place." O.B.25-26. That is wrong. Petitioner relies on *Nielsen v. Preap*, 586 U.S. 392 (2019), but *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. 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).[7] Indeed, the Supreme Court framed the issue in terms of "deportable" aliens. *Nielsen*, 586 U.S. at 395, 396.

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 inadmissibility listed in §1226(c)(1)(A) and (D) would apply to aliens arriving at a port of entry—the same aliens he agrees are subject to §1225(b)(2)(A). The ground listed in §1226(c)(1)(A) refers to aliens inadmissible for, inter alia, having 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) refers to aliens inadmissible for past terrorism-related activities or associations, 8 U.S.C. §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 if §1226(c) did not exist, those aliens would not be subject to

[7] 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.

§1226(a); even under Petitioner's reading, they would be covered by §1225(b)(2)(A).

The same is true of the inadmissibility grounds added by the Laken Riley Act: §1182(a)(6)(C) and (a)(7). *See* 8 U.S.C. §1226(c)(1)(E)(i)-(ii). Under Petitioner's reading, those aliens would otherwise be 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 1182(a)(7)." 8 U.S.C. §1225(b)(1)(A)(i), (iii). And §1225(b)(1) mandates detention. *Supra*, pp. 20-24. The upshot: §1226(a)'s *discretionary* detention regime may not apply to the aliens subject to §1225(b)(1) expedited removal, even though the latter *may also* be addressed by §1226(c).

The preceding point refutes Petitioner's argument that the Laken Riley Act—which added subparagraph (E) to §1226(c)(1)—"makes even clearer that §1226(c) is the exception to the general rule" that *all* inadmissible aliens are eligible for bond under §1226(a). O.B.26. His reliance on the Laken Riley Act is further undermined by the fact that it 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)." Laken Riley Act, Pub. L. No. 119-1, §3, 139 Stat. 3, 4 (2025) (codified at 8 U.S.C. §1225(b)(3)). If §1225(b)(2)(A) really were limited to aliens voluntarily presenting at a port of entry for inspection, there would have been little reason to worry that the Secretary would not enforce the "detention … requirements" in that provision. 8 U.S.C. §1225(b)(3).

b. Petitioner's remaining arguments regarding §1226(c) boil down to an objection that Respondents' reading of §1226(c) renders portions of it redundant or fails 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, §1226(c) applies to numerous inadmissible aliens *not* subject to §1225(b)(2)(A). That provision requires detaining "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). Section 1226(c) applies to significant groups of criminal aliens not encompassed by §1225(b)(2). Most obvious, §1226(c)(1) requires detaining aliens who *have been admitted* to the U.S. and are now "deportable." *See* 8

U.S.C. §1226(c)(1)(B). By contrast, §1225(b)(2) has no application to admitted aliens.

Section 1226(c) also differs from §1225(b)(2) in another crucial way; Section 1226(c) narrows 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 Secretary to "temporarily" parole them "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. §1182(b)(5); *supra*, p. 11. Section 1226(c)(1) takes that option 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) restricts their release from detention on parole where "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*, 166 F.4th at 505 & n.12 (noting that §1226(c)(4) "eliminates the option of parole for those to whom it applies").

To be sure, §1226(c) does apply to aliens who are removable under certain grounds of inadmissibility. *See* 8 U.S.C. §1226(c)(1)(A), (D). But again, overlap is "common in statutory drafting," including out of a

"congressional effort to be doubly sure." *Barton*, 590 U.S. at 239. That principle applies fully here. After all, the grounds of inadmissibility listed in §1226(c)(1) do not apply to jaywalkers or petty offenders; they apply to serious criminal offenders—human traffickers, drug traffickers, terrorists, and others. 8 U.S.C. §§1182(a)(2), (a)(3)(B). Those are precisely the kind of criminal and dangerous aliens Congress would want to be "doubly sure" are subject to mandatory detention.

c. The Laken Riley Act does not undermine the government's interpretation, either. To be sure, that law's application to certain criminal 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. In any event, the canon against surplusage is "weak" when applied, as here, to "acts of Congress enacted at widely separated times." *Montoya*, 2025 WL 3733302, at *12 ("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)). 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). After all, this portion of the Laken Riley Act requires detention of "applicants for admission," including "arriving aliens" who are taking affirmative steps toward admission, as long as they meet the offense criteria, *see* 8 U.S.C. §1226(c)(1)(E)(ii)—but Petitioner would agree that those aliens are subject to §1225(b)(2)(A), too. Some overlap is unavoidable.

Moreover, the Laken Riley Act was enacted against a backdrop in which the government was treating aliens, like Petitioners, as bond-eligible. 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*, 166 F.4th at 505 (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 from detention through any method.[8]

[8] 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. O.B.38-40. However, "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 also Avila*, 2026 WL 819258, at *6 (same).

In any event, §1226(c) still does independent work, despite any overlap, by limiting the ability to release from detention the specified aliens on parole. *Buenrostro-Mendez*, 166 F.4th at 505. In fact, Congress's desire to further limit paroling criminal aliens from detention was one reason it enacted the Laken Riley Act. The Act was adopted in the wake of a heinous murder committed by an inadmissible alien who was "paroled into this country through a shocking abuse of that power," 171 Cong. Rec. at H278 (daily ed. Jan. 22, 2025) (Rep. McClintock), *available at* 2025 WL 270227, and an abdication of the government's "fundamental duty under the Constitution to defend its citizens," 171 Cong. Rec. at H269 (Rep. Roy), *available at* 2025 WL 270222.

E. *Jennings* does not support Petitioner's interpretation.

The government's interpretation is also consistent with the Supreme Court's decision in *Jennings*. There, the Court 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. *Jennings*, 583 U.S. at 292. The Court held that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of aliens subject to §1225(b) or §1226. *See Buenrostro-Mendez*, 166 F.4th at 505 (explaining that the

language on which Petitioner relies "is part of a general description" and is "[a]t most … dicta"); *Avila*, 2026 WL 819258, at *5; *see Webster v. Fall*, 266 U.S. 507, 511 (1925).

To be sure, *Jennings* described the detention authorities in §1225(b) and §1226, and in that context summarized §1226 as applying to aliens "already in the country." 583 U.S. at 288-89. But when describing §1226's scope in particular, *Jennings* refers to aliens "present in the country" who are removable under 8 U.S.C. §1227(a)—a provision that applies *only* to admitted aliens. *See* 583 U.S. at 288. The government's interpretation is consistent with that understanding: it allows that §1226 is the exclusive source of detention authority for the substantial category of aliens who are were admitted but are now deportable. *Supra*, pp. 38-40. Moreover, nothing in the quoted language suggests that §1226 is the *sole* detention authority for *every* "alien[] already in the country."

Moreover, elsewhere in *Jennings* the Supreme Court used language that directly supports the government's reading of §1225(b)(2). The Court stated that §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. It then described §1225(b) as "appl[ying] primarily to aliens *seeking entry* into the United States ('applicants for admission' in the language of the

statute)," *id.* at 287—thus *equating* the concept of "seeking entry" with the definition of "applicant for admission." *See Buenrostro-Mendez*, 166 F.4th at 505-06 (same). And *Jennings* then concluded that "[r]ead most naturally, §§1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded." 583 U.S. at 297.

At best for Petitioner, the language from *Jennings* on which he could rely is ambiguous, and such uncertain dicta is insufficient to displace the statute's text and the manifest congressional purpose; that is especially so where nothing in *Jennings* required resolving the precise scope of §1225(b) and §1226. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74 (2023) ("The language of an opinion is not always to be parsed [like the] language of a statute") (internal quotation marks omitted)).

II. Petitioner's Due Process Claim Fails.

Alternatively, Petitioner argues that detention under §1225(b)(2)(A) without a bond hearing to assess "dangerousness and flight risk" (O.B.46) violates "procedural and substantive due process." O.B.45-46; *see also id.* at 41-44. That is wrong. His challenge does not even sound in procedural due process, and he has no *substantive* due process right to a bond hearing.

A. Petitioner is not asserting a cognizable procedural due process claim.

The Constitution prohibits the government from "depriv[ing]" a "person" of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. The Supreme Court has recognized two types of due process claims. *Department of State v. Muñoz*, 602 U.S. 899, 910 (2024). A *procedural* due process claim takes as given the substantive determinations that would justify a deprivation of life, liberty, or property, and challenges the "adequacy of the[] procedures" for making those determinations. *Mathews*, 424 U.S. at 335. By contrast, a *substantive* due process claim challenges the substance of the determinations themselves, arguing that they are inadequate to justify the deprivation "*at all*, no matter what process is provided." *Reno v. Flores,* 507 U.S. 292, 302 (1993).

Petitioner argues that procedural due process requires additional procedures in the form of a bond hearing to assess "dangerousness and flight risk," but those factors are irrelevant to whether §1225(b)(2)(A) applies. To be sure, Petitioner is requesting additional process in the form of a bond hearing, but that hearing is merely the vehicle for making the *substantive* determination about flight risk or dangerousness. Because §1225(b)(2)(A) does not require such determinations, Petitioner's claim is a substantive due process challenge, not a procedural one. Put differently, Congress decided

as a substantive policy matter to impose mandatory detention on all applicants for admission, such as Petitioner, unless they are "clearly and beyond a doubt entitled to be admitted" or subject to one of the statutory exceptions, *unlike* Petitioner. 8 U.S.C. §1225(b)(2)(A)-(C). Whether those aliens are flight risks or dangerous is irrelevant to the inquiry. Due process does not require procedures to adjudicate immaterial facts.

This Supreme Court's decision in *Doe*, 538 U.S. 1, is definitive on this point. The statute there required sex offenders to register with the State so their information could be published on a registry. *Id.* at 4-5. John Doe, who had previously been convicted of a sex offense, claimed that the statute violated his procedural due process rights by requiring him to register without a "hearing to determine whether" he was "currently dangerous." *Id.* at 4 (citation omitted). The Court rejected Doe's claim. It explained that "due process does not require the opportunity to prove a fact that is not material to the State's statutory scheme," and "the fact that [Doe] seeks to prove—that he is not currently dangerous—[wa]s of no consequence under" the relevant statute, which required him to register based on his prior conviction alone. *Id.* at 7. So "[u]nless [Doe] c[ould] show that that *substantive* rule of law [wa]s defective (by conflicting with the Constitution),

any hearing on current dangerousness [would be] a bootless exercise." *Id.* at 8.

Doe's rule is simple and straightforward: "Plaintiffs who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme." 538 U.S. at 9. A claim that a plaintiff is entitled to a hearing to adjudicate facts a legislature has *not* made relevant "'must ultimately be analyzed' in terms of substantive, not procedural, due process." *Id.* at 7-8.

Under *Doe*'s rule, Petitioner has no procedural due process right to a bond hearing. Petitioner indisputably falls within the terms of §1225(b)(2); therefore, as in *Doe*, any claim that Petitioner is entitled to a bond hearing "'must ultimately be analyzed' in terms of substantive, not procedural, due process." 538 U.S. at 7-8; *see Flores*, 507 U.S. at 308 (holding that a challenge to a regulation on the ground that it failed to require a determination of a detainee's "interests" was "just [a] 'substantive due process' argument recast in 'procedural due process' terms"); *Michael H. v. Gerald D.*, 491 U.S. 110, 119, 121 (1989) (plurality opinion) (treating a request for an "evidentiary hearing" on an issue that the statutory scheme deemed "*irrelevant*" as a "substantive due process" claim).

Petitioner's reliance on *Mathews* is therefore erroneous. O.B.42-45. *Mathews* articulates a three-part balancing test for analyzing certain "procedural due process" claims. *Nelson v. Colorado*, 581 U.S. 128, 134 (2017). *Mathews* takes the "nature of the relevant inquiry" as given, 424 U.S. at 343, and asks only whether the "procedures" for conducting that factual inquiry are adequate, *id.* at 335. That test has no application in the realm of substantive due process.

B. Even if Petitioner were asserting a cognizable due process claim, it would be meritless.

Even if Petitioner were asserting a procedural due process claim, those claims contradict the Supreme Court's longstanding precedent regarding the due process rights of aliens who were never admitted to this country. For more than a century, the rule has been that for aliens who have never "been admitted into the country pursuant to law, the decisions of executive and administrative officers, acting within the powers expressly conferred by Congress, are due process of law." *Thuraissigiam*, 591 U.S. at 138 (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)).

This is true even of aliens "paroled elsewhere in the country for years pending removal" who have developed significant ties to the country. *Id.* at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). They are "'treated' for due process purposes 'as if stopped at the

border.'" *Id.* This includes those who successfully evade inspection at the border: "[A]n alien who tries to enter the country illegally is treated as an 'applicant for admission'"—*i.e.*, treated the same as if they lawfully presented themselves at a port of entry or were caught at the border. *Id.* at 140.

The Supreme Court has elsewhere made clear that admission—not physical entry—is the touchstone for when aliens gain due process interests that could potentially require procedures beyond what Congress has provided. For example, in *Landon*, 459 U.S. 21, the Court observed that only "*once an alien gains admission* to our country and begins to develop the ties that go with permanent residence [does] his constitutional status change[]." *Id.* at 32 (emphasis added). "Th[is] rule," the Court explained, "rests on [the] fundamental proposition" that "the power to admit or exclude aliens is a sovereign prerogative," and "the Constitution gives the political department of the government plenary authority to decide which aliens to admit." *Id.* at 32; *see also Nishimura Ekiu*, 142 U.S. at 659.

That is consistent with *Kaplan v. Tod*, 267 U.S. 228 (1925), decided years before, where the Supreme Court held that a child paroled into the care of relatives for nearly nine years—but never admitted—must be "regarded as stopped at the boundary line" and "had gained no foothold in the United States." *Id.* at 230-31. That was so even though the child had been living in

the interior of the country with her naturalized-citizen father and thus was presumably forming connections to the United States. *Id.* at 229.

The same result follows here. Petitioner's entry into the United States constituted a criminal act, *see* 8 U.S.C. § 1325(a). Adopting Petitioner's conception of due process would constitutionalize the same perverse dynamic that both the Fifth and Eighth circuits have rejected as a statutory matter. Nothing in law or basic fairness allows aliens to accrue additional due process rights simply by virtue of entering the United States contrary to law and successfully evading enforcement for some length of time.

C. Petitioner has no substantive due process right to a bond hearing.

Petitioner also does not have a viable *substantive* due process claim. In contrast to a *procedural* due process claim, which leaves untouched the substantive determinations that would justify a deprivation, a *substantive* due process claim challenges the substance of the determinations, arguing that they are inadequate to justify the deprivation regardless of "what process is provided." *Flores*, 507 U.S. at 302.

1. Petitioner's detention without a bond hearing during the pendency of his removal proceedings does not implicate any fundamental right. "[P]rior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings," *Demore*, 538 U.S. at

523 n.7, so such a right cannot possibly be "objectively, deeply rooted in this Nation's history and tradition," *Muñoz*, 602 at 910 (quoting *Glucksberg*, 521 U.S. at 720-21). Accordingly, at most rational-basis review would be the appropriate standard for analyzing any substantive-due process claim. *Glucksberg*, 521 U.S. at 728. Under that standard, detention under §1225(b)(2) is constitutionally permissible if it is "rationally related to legitimate government interests." *Id.*

Section 1225(b)(2)(A) easily clears the bar. In *Demore*, the Supreme Court rejected a "substantive due process" challenge to detention under §1226(c). 538 U.S. at 515. The petitioner "argued that his detention under §1226(c) violated due process because the [government] had made no determination that he posed either a danger to society or a flight risk." *Id.* at 514. In rejecting that claim, the Court explained that its cases had long "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process," because "deportation proceedings 'would be vain if those accused could not be held in custody pending the inquiry into their true character.'" *Id.* at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *see also id.* at 526 (reiterating the "Court's longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal

proceedings"). Therefore, because "[d]etention during removal proceedings is a constitutionally permissible part of that process," the Court held that the alien's substantive due process "claim must fail." *Id.* at 531.

In reaching its holding, *Demore* distinguished its prior decision in *Zadvydas v. Davis*, which addressed the constitutionality of *indefinite* detention after a final order of removal under a different provision of the INA. 533 U.S. 678, 693 (2001). First, the aliens challenging their detention in *Zadvydas* were aliens for whom removal was "no longer practically attainable." *Id.* at 690. Under the circumstances, the Court explained, "the detention … did not serve its purported immigration purpose." *Id.* at 690. By contrast, §1226(c) applies to aliens "pending their removal proceedings," and so "necessarily serves the purpose of preventing" those aliens "from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed." *Demore*, 538 U.S. at 528. As *Demore* noted, Congress "had before it evidence suggesting that permitting discretionary release of aliens pending their removal hearings" would result in "large numbers" of aliens "skipping their hearings and remaining at large in the United States unlawfully." *Id.*

Second, and in the same vein, *Demore* emphasized that "the period of detention at issue in *Zadvydas* was 'indefinite' and 'potentially permanent,'"

whereas detention under §1226(c) pending removal proceedings "is of a much shorter duration" and "ha[s] a definite termination point." 538 U.S. at 530.

2. The same reasons for upholding mandatory detention under §1226(c) apply to §1225(b)(2)(A). Petitioner does not allege that his ultimate removal is "unattainable," so detention under §1225(b)(2)(A) serves the same legitimate interest recognized by *Demore*—preventing aliens "from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed." 538 U.S. at 528. As *Buenrostro-Mendez* recognized, "the Department of Justice Inspector General found in 1997 that 'when aliens are released from custody, nearly 90 percent abscond and are not removed from the United States," and "[t]hat situation exists today on a much larger scale." 166 F.4th at 508 (quoting 62 Fed Reg. 10312, 10323 (Mar. 6, 1997)).

Nor is detention under §1225(b)(2)(A) "indefinite" or "permanent." *Demore*, 538 U.S. at 530. As with §1226(c), detention under §1225(b)(2)(A) lasts only for the duration of "a proceeding under section 1229a of this title." 8 U.S.C. §1225(b)(2)(A); *see Jennings*, 583 U.S. at 302-03. Even then, nothing *requires* aliens to contest removal; to the contrary, most or all can avoid detention by withdrawing their application for admission and

voluntarily departing. *See* 8 U.S.C. §1225(a)(4) (authorizing aliens "applying for admission" to withdraw their application for admission and "depart immediately from the United States").

In short, removal remains a practically attainable goal, and while the proceedings remain pending, Petitioner's detention under §1225(b)(2) would bear a reasonable relation to the legitimate purposes that this Court identified in *Demore*. Section 1225(b)(2)(A) is therefore constitutional as applied to Petitioner.

CONCLUSION

The Court should affirm the judgment of the district court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because it contains 12,780 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2013, Georgia, 14-point type.

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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 April 7, 2026. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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