

No.

In the Supreme Court of the United States

ANDRE QUINONES, ACTING FIELD OFFICE DIRECTOR,
SEATTLE FIELD OFFICE, U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT, ET AL., PETITIONERS

v.

RAMON RODRIGUEZ VAZQUEZ, ON BEHALF OF
HIMSELF AS AN INDIVIDUAL AND ON BEHALF OF
OTHERS SIMILARLY SITUATED

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 8 U.S.C. 1225(b)(2)(A) mandates the detention pending removal proceedings of aliens who, like respondent, are present in the United States without having been admitted.

PARTIES TO THE PROCEEDING

Petitioners (defendants-appellants below) are Andre Quinones, Acting Field Office Director, Seattle Field Office, U.S. Immigrations and Customs Enforcement (ICE); Bruce Scott, Warden, Northwest ICE Processing Center; Markwayne Mullin, Secretary of Homeland Security; United States Department of Homeland Security; Todd Blanche, Attorney General; Executive Office for Immigration Review (EOIR); Sirce Owen, Acting Director, EOIR; and Tacoma Immigration Court.*

Respondent (plaintiff-appellee below) is Ramon Rodriguez Vazquez, on behalf of himself as an individual and on behalf of others similarly situated.

RELATED PROCEEDINGS

United States District Court (W.D. Wash.):

Rodriguez Vazquez v. Bostock, No. 25-cv-5240 (Sept. 30, 2025)

United States Court of Appeals (9th Cir.):

Rodriguez Vazquez v. Bostock, No. 25-6842 (July 30, 2026)

* Acting Director Quinones is automatically substituted for his predecessor. See Sup. Ct. R. 35.3.

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OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-94a) is reported at 183 F.4th 1160. The order of the district court (App., *infra*, 95a-165a) is reported at 802 F. Supp. 3d 1297. A prior order of the district court (App., *infra*, 166a-218a) is reported at 349 F.R.D. 333.

JURISDICTION

The judgment of the court of appeals was entered on July 30, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The pertinent statutory provisions are reproduced in the appendix to this petition. App., *infra*, 219a-234a.

STATEMENT

A. Legal Background

The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, authorizes the removal of certain classes of aliens from the United States. See 8 U.S.C. 1182, 1227. Various provisions of the INA further authorize the detention of certain aliens pending their removal proceedings. See, *e.g.*, 8 U.S.C. 1225, 1226. This case concerns several INA provisions addressing removal and detention that were enacted in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546.

1. Before 1996, the applicable procedures for detaining and expelling an alien under the INA depended largely on whether the alien had physically “entered” the United States, regardless of whether that entry had been lawful. “[E]xpelling an alien who had already entered required a *deportation* proceeding.” *Jama v. ICE*, 543 U.S. 335, 349 (2005). Aliens in deportation proceedings could be released on bond while those proceedings unfolded. 8 U.S.C. 1252(a)(1) (1994).

By contrast, expelling an alien seeking to physically enter the United States “could be achieved through the more summary exclusion proceeding.” *Jama*, 543 U.S. at 349. The INA mandated that all such aliens arriving at a port of entry—except those “clearly and beyond a doubt entitled” to enter—“shall be detained” for further inquiry, unless they were granted parole. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 422(a), 110 Stat. 1271; 8 U.S.C. 1225(b) (1994); see 8 U.S.C. 1182(d)(5)(A) (1994).

Under that physical-entry-based regime, aliens who managed to evade detection and physically “enter” the United States illegally were subject to deportation pro-

ceedings and eligible for bond. 8 U.S.C. 1252(a)(1) (1994). Conversely, aliens who presented themselves for inspection at a port of entry on American soil were deemed not to have “entered” the United States. See *Leng Ma v. Barber*, 357 U.S. 185, 188-190 (1958). Those aliens therefore were subject to exclusion proceedings, and to mandatory detention during such proceedings. See 8 U.S.C. 1225(a) and (b) (1994). Thus, aliens who illegally “entered the United States without inspection gain[ed] equities and privileges in immigration proceedings that [we]re not available to aliens who present[ed] themselves for inspection at a port of entry.” H.R. Rep. No. 469, 104th Cong., 2d Sess. Pt. 1, at 225 (1996) (House Report).

2. In IIRIRA, Congress acted to correct that disparity. Congress replaced the defined term “entry” with the term “admission,” which it defined as “the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer.” IIRIRA § 301(a), 110 Stat. 3009-575 (8 U.S.C. 1101(a)(13)(A)) (emphasis added). Members of Congress described the significance of that change as follows: Instead of making physical entry into the United States the touchstone of an alien’s status, the “pivotal factor” became “whether or not the alien has been *lawfully* admitted.” House Report 225 (emphasis added).

IIRIRA also eliminated the prior distinction between “deportation” and “exclusion” proceedings, consolidating both sets of hearings into “removal proceedings.” § 304(a)(3), 110 Stat. 3009-589 (8 U.S.C. 1229a) (capitalization omitted); see *Jama*, 543 U.S. at 349. Now, in removal proceedings, the burden of proof depends on whether the alien has been lawfully admitted. An alien who is an “applicant for admission” must establish that

he is “clearly and beyond doubt entitled to be admitted” and “not inadmissible.” 8 U.S.C. 1229a(c)(2)(A). By contrast, the government bears “the burden of establishing by clear and convincing evidence that, in the case of an alien who has been admitted to the United States, the alien is deportable.” 8 U.S.C. 1229a(c)(3)(A).

3. In 8 U.S.C. 1225 and 1226, Congress fleshed out the details of its revised removal and detention scheme.

Section 1225. Section 1225(a) codifies Congress’s decision to make lawful admission, not physical entry, the touchstone for an alien’s status. See IIRIRA § 302(a), 110 Stat. 3009-579 to 3009-580 (8 U.S.C. 1225(a)). Specifically:

- **Section 1225(a)(1)**, titled “Aliens treated as applicants for admission,” provides that “[a]n alien present in the United States who has not been admitted or who arrives in the United States * * * shall be deemed for purposes of this chapter an applicant for admission.” 8 U.S.C. 1225(a)(1).
- **Section 1225(a)(3)** adds that “[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.” 8 U.S.C. 1225(a)(3). That inspection is to determine whether the alien may be “admitted” to the country or instead must be referred to immigration proceedings.

Section 1225(b) sets out procedures for removing aliens who have not been admitted, and mandates that aliens be detained during those proceedings. See IIRIRA § 302(b), 110 Stat. 3009-580 to 3009-583 (8 U.S.C. 1225(b)). Specifically:

- **Section 1225(b)(1)** creates an “expedited removal” process “for certain ‘applicants for admission.’” *DHS v. Thuraissigiam*, 591 U.S. 103, 108-109 (2020). Those procedures apply to certain inadmissible aliens who are (1) “arriving in the United States,” or (2) as designated by the Secretary of Homeland Security, have not “been admitted or paroled into the United States” and have not shown that they have been “physically present in the United States continuously” for two years prior to the date of the inadmissibility determination. 8 U.S.C. 1225(b)(1)(A)(i)-(iii).
- **Section 1225(b)(2)**, titled “Inspection of other aliens,” supplies the removal and detention procedures relevant here. 8 U.S.C. 1225(b)(2). Subject to certain narrow exceptions not applicable here, Section 1225(b)(2)(A) provides that: “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for” a removal proceeding under Section 1229a. 8 U.S.C. 1225(b)(2)(A). Though Section 1225(b)(2)(A) speaks in mandatory language, the Department of Homeland Security (DHS) has the discretion to release “any alien applying for admission to the United States” on parole, albeit “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. 1182(d)(5)(A).

Section 1226. Section 1226 addresses the arrest and detention of aliens more generally, without limitation to applicants for admission. Unlike Section 1225, detention under Section 1226 is discretionary for many aliens;

only certain classes of criminal aliens are subject to mandatory detention under Section 1226. Specifically:

- **Section 1226(a)** authorizes the arrest and detention of aliens “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. 1226(a). Such detention is discretionary; the government “may continue to detain the arrested alien” or “may release the alien” on “bond” or “conditional parole.” 8 U.S.C. 1226(a)(1) and (2). By regulation, the alien is entitled to a “custody redetermination” (a bond hearing) before an immigration judge, which can be appealed to the Board of Immigration Appeals (BIA). 8 C.F.R. 236.1(d), 1003.19, 1236.1(d)(1).
- **Section 1226(c)** mandates detention for certain criminal aliens. In IIRIRA, Congress required the detention of any alien who is inadmissible or deportable because he (1) committed certain covered offenses, or (2) engaged in terrorism-related activities. § 303(a), 110 Stat. 3009-585 to 3009-586; see *Nielsen v. Preap*, 586 U.S. 392, 398-399 (2019). Recently, Congress amended Section 1226(c) to require the detention of additional categories of criminal aliens. See Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3 (8 U.S.C. 1226(c)(1)(E)). Section 1226(c) prohibits the release of covered criminal aliens except for narrow, witness-protection purposes. 8 U.S.C. 1226(c)(4).

4. After IIRIRA was enacted, the government continued to treat aliens who were present in the United States without having been admitted as eligible for bond hearings—just as they had been before IIRIRA’s comprehensive immigration reforms. See 8 U.S.C. 1252(a)(1)

(1994). The preamble to interim rules promulgated in 1997 announced: “Despite being applicants for admission, aliens who are present without having been admitted or paroled * * * will be eligible for bond and bond redetermination.” 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). The preamble did not explain why Section 1225(b)(2)(A)’s new mandatory-detention regime did not apply to such aliens, whom the government recognized were “applicants for admission.” *Ibid.*

The regulations then contradicted that preamble, stating that Section 1225(b)(2)(A) *did* apply to certain aliens who were physically present in the United States after an unlawful entry. See 8 C.F.R. 235.3(b)(1)(ii). Even so, the government continued to grant bond hearings to aliens present without admission.

In July 2025, DHS revisited the issue and determined that its prior approach was inconsistent with the INA’s text. See Todd M. Lyons, Acting Director of U.S. Immigration and Customs Enforcement, *Interim Guidance Regarding Detention Authority for Applicants for Admission* (July 8, 2025). DHS concluded that “applicants for admission” are “subject to detention under [Section 1225(b)] and may not be released from ICE custody” except by “parole” under Section 1182(d)(5). *Ibid.* (emphasis omitted). As a result, except for aliens subject to Section 1226(c), the “only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under [Section 1226(a)] are aliens admitted to the United States and chargeable with deportability under [Section 1227].” *Ibid.* (emphasis omitted). The BIA reached the same conclusion in a published opinion. *In re Yajure Hurtado*, 29 I. & N. Dec. 216 (2025).

B. Factual And Procedural Background

1. Respondent is an alien who entered the United States illegally in 2009. See App., *infra*, 15a. In February 2025, respondent was apprehended by immigration officers on a warrant for violations of the immigration laws. See *ibid.* DHS initiated removal proceedings against respondent. See *id.* at 175a. An immigration judge denied respondent’s request for a bond hearing on the ground that his detention pending removal proceedings was mandated by Section 1225(b)(2)(A). See *id.* at 15a, 175a; C.A. E.R. 111-117.

2. Respondent filed a class action complaint and habeas petition in the United States District Court for the Western District of Washington. See C.A. E.R. 145. He argued that his detention without a bond hearing violated the INA and the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* See C.A. E.R. 163-164. He moved to certify a “Bond Denial Class” to pursue those claims. *Id.* at 161. He also moved for a preliminary injunction. See *id.* at 118.*

The district court granted respondent a preliminary injunction and ordered the government to provide respondent with a bond hearing within 14 days. See App., *infra*, 109a. At respondent’s bond hearing, respondent was denied bond. See *id.* at 15a.

The district court also certified a “Bond Denial Class” of aliens without lawful status who are detained at an ICE detention center in Tacoma, Washington, and who “(1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, (3) are

* In his complaint and habeas petition, respondent also challenged alleged delays in the BIA’s consideration of bond denials and sought to certify a separate “Bond Appeal Class” to pursue that challenge. C.A. E.R. 162, 164-165. Those issues are not relevant to this petition.

not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the noncitizen is scheduled for or requests a bond hearing.” App., *infra*, 217a.

The district court subsequently granted summary judgment to the class on its claim that detention without bond under Section 1225(b)(2)(A) violates the INA. App., *infra*, 165a. The court first observed that respondent’s individual claims had become moot because respondent had voluntarily departed the United States after being denied bond. *Id.* at 113a. After concluding that the INA did not deprive it of jurisdiction over the remaining class claims, *id.* at 114a, the court turned to the merits and rejected the government’s interpretation of Section 1225(b)(2)(A). *Id.* at 135a. The court determined, *inter alia*, that the government’s interpretation would “render superfluous provisions of section 1226(c).” *Id.* at 141a. The court further reasoned that the government’s interpretation would render superfluous the phrase “seeking admission” in Section 1225(b)(2)(A). *Id.* at 148a. The court “declare[d] that Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2).” *Id.* at 165a.

3. a. The court of appeals affirmed. App., *infra*, 1a-61a. The court concluded that Section 1225(b)(2)(A)’s detention mandate covers only aliens “engaged in the affirmative process of attempting to gain ‘entry’ ‘into’ the country,” which happens “at the border (or a port of entry).” *Id.* at 23a; see *id.* at 34a (stating that Section 1225(b)(2)(A) covers “aliens who are seeking entry in between the nation’s ports of entry”). The court interpreted the phrase “‘seeking admission’” in Section 1225(b)(2)(A) to apply only to “those who are seeking

‘entry . . . into the United States.’” *Id.* at 23a (citation omitted). Like the district court, the court of appeals found that its interpretation of that phrase would avoid surplusage. *Id.* at 26a-27a. The court also rejected the government’s arguments based on statutory context and structure. *Id.* at 35a-39a. The court also posited that “Congress would have drafted language more direct than what we have in [Section] 1225(b)(2)(A)” if it intended to “depart[] from prior law and practice and impos[e] a new mass detention requirement.” *Id.* at 42a.

Judge Bea dissented. App., *infra*, 62a-94a. He would have adopted the government’s interpretation and concluded that aliens who are deemed to be “‘applicants for admission’” because of their presence in the United States without admission “are necessarily ‘seeking admission’” within the meaning of Section 1225(b)(2)(A). *Id.* at 65a. He determined that the government’s interpretation of the text was also supported by nearby provisions and the statutory purpose. *Id.* at 65a-73a. And he rejected several arguments adopted by the majority, including the majority’s view that Congress would need to speak more clearly to mandate the detention pending removal proceedings of aliens present without admission. *Id.* at 73a-80a.

b. The court of appeals sua sponte ordered the parties to file simultaneous briefs on whether the case should be reheard en banc. C.A. Doc. 88 (Sept. 23, 2026). After this Court granted certiorari to consider the meaning of Section 1225(b)(2)(A) in *Rhoney v. Barbosa da Cunha*, No. 26-104 (Oct. 1, 2026), the court of appeals withdrew that order and stayed the mandate pending this Court’s decision in *Barbosa da Cunha*. C.A. Doc. 89 (Oct. 6, 2026).

REASONS FOR GRANTING THE PETITION

This case presents the question whether 8 U.S.C. 1225(b)(2)(A) mandates the detention of aliens who are present in the United States without having been admitted. This Court granted certiorari in *Rhoney v. Barbosa da Cunha*, No. 26-104 (Oct. 1, 2026), to consider that question. The Court should therefore hold this petition for a writ of certiorari pending its decision in *Barbosa da Cunha* and then dispose of the petition as appropriate in light of that decision.

CONCLUSION

This Court should hold the petition for a writ of certiorari pending the disposition of the petition in *Rhoney v. Barbosa da Cunha*, cert. granted, No. 26-104 (Oct. 1, 2026), and then dispose of this petition as appropriate.

Respectfully submitted.

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APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 25-6842

D.C. No. 3:25-cv-05240-TMC

RAMON RODRIGUEZ VAZQUEZ, ON BEHALF OF
HIMSELF AS AN INDIVIDUAL AND ON BEHALF OF OTHERS
SIMILARLY SITUATED, PLAINTIFF-APPELLEE

v.

DREW BOSTOCK, SEATTLE FIELD OFFICE DIRECTOR,
ENFORCEMENT AND REMOVAL OPERATIONS, UNITED
STATES IMMIGRATION AND CUSTOMS ENFORCEMENT
(ICE); BRUCE SCOTT, WARDEN, NORTHWEST ICE
PROCESSING CENTER; MARKWAYNE MULLIN,
SECRETARY, UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; UNITED STATES DEPARTMENT
OF HOMELAND SECURITY; TODD BLANCHE, ACTING
ATTORNEY GENERAL; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW, (EOIR); SIRCE OWEN, ACTING
DIRECTOR, EOIR; TACOMA IMMIGRATION COURT,
DEFENDANT-APPELLANTS

Argued and Submitted: Mar. 4, 2026
Seattle, Washington
Filed: July 30, 2026

Appeal from the United States District Court
for the Western District of Washington
Tiffany M. Cartwright, District Judge, Presiding

OPINION

(1a)

Before: M. MARGARET McKEOWN, CARLOS T. BEA,
and DANIEL A. BRESS, Circuit Judges.

Opinion by Judge BRESS;

Dissent by Judge BEA

BRESS, Circuit Judge:

Historically, the law regarded unadmitted aliens present in the interior of the United States as subject to release on bond during the pendency of their removal proceedings. That understanding persisted after the 1996 amendments to the Immigration and Nationality Act (INA). Following those amendments, and over the course of many Presidential administrations, the government treated these unadmitted aliens present in the interior of the United States as detained pursuant to 8 U.S.C. § 1226, which allows for release on bond. A different provision requiring mandatory detention, 8 U.S.C. § 1225(b)(2)(A), was understood to apply only to aliens who were seeking to enter the United States at the border.

The government recently changed its longstanding approach. It now contends that unadmitted aliens present in the interior of the country are subject to mandatory detention without bond under § 1225(b)(2)(A), based on revisions to the statute that Congress made in 1996. The government's change in policy has resulted in detained aliens filing thousands of habeas petitions in federal courts across the country, seeking bond hearings and possible release from detention. Some of these detained aliens have resided in the United States for lengthy periods. The implication of the government's position is that Congress in 1996 made a major change to the immi-

gration laws by subjecting millions of unadmitted aliens present in the United States to mandatory detention, but that this change then went unnoticed and unheeded, with the Executive Branch for the next three decades violating Congress's assertedly unambiguous mandatory detention directive by treating these aliens as subject to release on bond.

We conclude that the text, context, and structure of the INA, considered as a whole, did not direct such a significant, yet overlooked, change in the law. Although no reading of the complicated and interrelated textual provisions at issue here is without some shortcomings, the historical understanding of the statute is the better one. The government's new interpretation, by contrast, is less consistent with the statutory text and introduces a series of interpretative complications. We accordingly do not think that Congress in 1996 made such a large-scale change to our established system of immigration detention in the way that the government now contends.

The aliens at issue here remain subject to mandatory detention if they commit qualifying criminal offenses, and they may be denied bond and held pending their removal proceedings if they pose flight risks or dangers to the community. Whether these aliens should be subject to a broader mandatory detention regime is a policy question that lies outside the role of the judiciary. The question here is not about policy or Executive Branch discretion, but congressional authorization. We do not decide whether Congress could enact the detention regime as the government would now have it, but rather whether Congress did so in 1996. The better view is that it did not.

For the reasons that follow, we conclude that aliens present without admission who are apprehended in the interior of the United States are subject to the detention regime of § 1226, not § 1225(b)(2)(A). The judgment of the district court is affirmed.

I

A

Civil detention of aliens at the federal level began at the close of the nineteenth century, during a period when Congress was consolidating federal control over the nation's immigration policies. *See Hernandez Alvarez v. Warden*, 175 F.4th 1258, 1281 (11th Cir. 2026) (“[N]ear the close of the nineteenth century, Congress expanded border agents’ powers to specifically detain arriving aliens pending review.” (emphasis omitted)). It appears that the first congressional statute authorizing mandatory detention required that “every inspector of arriving alien immigrants . . . detain for a special inquiry” any alien not “clearly and beyond doubt entitled to admission.” Immigration Act of 1893, ch. 206, § 5, 27 Stat. 569, 570 (1893); *see Hernandez Alvarez*, 175 F.4th at 1281. Ten years later, Congress passed the Immigration Act of 1903, Pub. L. No. 57-162, § 24, 32 Stat. 1213, 1219-20 (1903), which similarly provided that “[e]very alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry.” *See Hernandez Alvarez*, 175 F.4th at 1281. Similar language was included in the INA in 1952. *See* Pub. L. No. 82-414, § 235(b), 66 Stat. 163, 199.

In the meantime, Congress authorized, but did not mandate, the detention of certain aliens inside the coun-

try “upon [a] warrant,” pending the alien’s removal. *See* Act of Feb. 5, 1917, ch. 29, §§ 19-20, 39 Stat. 874, 889-91 (1917) (providing that such aliens “may be released under a bond”). When mandatory detention was provided for in the early laws, Congress limited that authority to “‘arriving alien immigrants,’ aliens ‘at the port of arrival,’ and ‘aliens[s] seeking entry.’” *Hernandez Alvarez*, 175 F.4th at 1281.

This system—where arriving aliens suspected of inadmissibility were subject to mandatory detention at the ports of arrival, and aliens inside the country were subject only to discretionary detention with the possibility of bond—was carried over into the INA. *See* 66 Stat. at 199, 208-09. Initially under the INA, aliens detained at the border during entry into the United States were subject to “exclusion” proceedings, whereas aliens physically (though unlawfully) present in the United States were subject to “deportation” proceedings. *See Landon v. Plasencia*, 459 U.S. 21, 25 (1982); *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc); *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc).

Under this regime, the “distinction between those who had entered the United States and those who had not was important,” in that “‘non-citizens [aliens] who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings.’” *Torres*, 976 F.3d at 927-28 (quoting *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010)); *see also Plasencia*, 459 U.S. at 25-27 (summarizing the differences between deportation and exclusion proceedings). We have ex-

plained that these rights for aliens already present in the United States included the ability to seek adjustment of status, request suspension of deportation, voluntarily depart, and have the burden of proof placed on the government. *See Maldonado-Sandoval v. INS*, 518 F.2d 278, 280 n.3 (9th Cir. 1975) (per curiam). Aliens in deportation proceedings could also receive release on bond, whereas those subject to exclusion proceedings at the border were mandatorily detained. *See* 8 U.S.C. §§ 1225(a)-(b) (1995), 1252(a) (1994); *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025). Over time, Congress mandated the detention of limited categories of aliens inside the United States who had committed certain crimes. *See, e.g.*, Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 7343(a)(4), 12 Stat. 4181, 4470 (1988).

Congress next passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009-546 (1996). Among other changes, IIRIRA eliminated the distinction between deportation and exclusion proceedings and replaced them with a general “removal” proceeding, to which all aliens would be subject. *See* 8 U.S.C. § 1229a; *Yajure Hurtado*, 29 I. & N. Dec. at 223. Relying on legislative history, we have said that, through this change, Congress sought to correct the “anomaly” by which those aliens attempting to enter lawfully were subject to less favorable removal proceedings, thereby “ensur[ing] 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*, 976 F.3d at 928 (citing H.R. Rep. No. 104-469, pt. 1, at 225 (1996)).

One of the additional ways that Congress accomplished this is through IIRIRA’s “deeming” provision, which “deem[s]” as an “applicant for admission” any “alien present in the United States who has not been admitted or who arrives in the United States.” 8 U.S.C. § 1225(a)(1). Because this provision deems unadmitted aliens who are already present here as “applicants for admission,” we have described the phrase “applicant for admission” in § 1225(a)(1) as a “term of art denoting a particular legal status,” which “places some physically-but-not-lawfully present noncitizens into a fictive legal status for purposes of removal proceedings.” *Torres*, 976 F.3d at 927-28.

This statutory innovation has important consequences in removal proceedings. Per the above discussion, by deeming unadmitted aliens present inside the United States “applicants for admission,” § 1225(a)(1) brings those aliens within the INA’s inadmissibility framework and its associated procedural burdens. As compared to persons who are lawfully admitted yet removable, *i.e.*, deportable, aliens who are “applicants for admission” (both present and arriving) are treated less favorably in removal proceedings. That is because inadmissibility grounds are distinct and often broader than those for deportability, and an alien charged with inadmissibility bears the burden of proof in removal proceedings. *Judulang v. Holder*, 565 U.S. 42, 46 (2011); *Barton v. Barr*, 590 U.S. 222, 243 (2020) (Sotomayor, J., dissenting); *see also Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020) (“Under [IIRIRA], a person who physically entered the United States but was not admitted is subject to grounds of inadmissibility, rather than deportability, and has to bear the corresponding burden of proving admissibility.”); 8 U.S.C. § 1229a(c)(2)(A).

IIRIRA also amended the INA’s detention provisions. Section 1226 sets out a general detention scheme for aliens charged with removability. *See* 8 U.S.C. § 1226. It provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a); *see also* 6 U.S.C. §§ 251, 557 & 8 U.S.C. § 1101(a)(1) (transferring immigration enforcement from the Attorney General to the Department of Homeland Security (DHS)). Section 1226 refers generally to “alien[s],” without limitation. Because § 1226 is not limited to aliens deemed “applicants for admission,” the aliens subject to § 1226 include other aliens, such as admitted aliens “who overstay or violate the terms of their visas” or who “engage in conduct that renders them removable.” *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 499 (5th Cir. 2026).

Like the previous detention authorities governing unadmitted aliens apprehended in the interior, detention under § 1226(a) is discretionary, allowing the release of aliens on bond pending their removal proceedings. 8 U.S.C. § 1226(a)(2); 8 C.F.R. §§ 1003.19, 1236.1; *see Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018) (“Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest. . . . Section 1226(a) also permits the Attorney General to release those aliens on bond.”). Although DHS makes the initial custody determination, aliens subject to § 1226(a) can seek bond hearings before an immigration judge (IJ) and further review in the Board of Immigration Appeals (BIA). 8 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), (3), 1003.19. A § 1226(a) detainee will be released on bond if he demonstrates by a preponderance of the evidence

that he is not a flight risk or a danger to the community. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022) (citing *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006)).

Section 1226(c) creates certain exceptions to the default availability of bond under § 1226(a). *See Nielsen v. Preap*, 586 U.S. 392, 409 (2019) (observing that § 1226(c) is “a limit on the authority conferred by subsection (a)”). Building off and expanding the pre-IIRIRA statutory provisions, under § 1226(c), aliens who have committed certain crimes or who present national security concerns are subject to mandatory detention and cannot be released on bond. 8 U.S.C. § 1226(c)(1)(A)-(E), (4); *see also Rodriguez Diaz*, 53 F.4th at 1197. Given § 1226(c)’s expansion of mandatory detention, Congress in 1996 gave the Executive Branch the discretion to delay implementation of this provision to give the agency time to build detention capacity during the statutory transition. *See IIRIRA* § 303(b)(2), 110 Stat. at 3009-586. In addition, IIRIRA directed the Attorney General to increase the detention facilities of the INS to at least 9,000 beds before the end of 1997. *Id.* § 386, 110 Stat. at 3009-653. The INS promptly invoked its authority to delay implementation of mandatory detention under § 1226(c). *See* Letter from Doris Meissner, Comm’r, INS, to Henry J. Hyde, Chairman, S. Comm. on the Judiciary (Oct. 3, 1997); *Hernandez Alvarez*, 175 F.4th at 1283; *Barbosa da Cunha v. Freden*, 175 F.4th 61, 89-90 (2d Cir. 2026).

Congress amended § 1226(c) again in 2025 in the Laken Riley Act, expanding the range of circumstances and criminal violations that will render an alien subject to mandatory detention and ineligible for bond under § 1226(a). *See* Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025)

(codified in relevant part at 8 U.S.C. § 1226(c)(1)(E)). Section 1226(c)(1)(E) now requires the mandatory detention of aliens inadmissible under § 1182(a)(6)(A) (presence without admission), § 1182(a)(6)(C) (misrepresentation to procure admission into the United States), and § 1182(a)(7) (lack of documentation), who *also* commit various enumerated crimes. 8 U.S.C. § 1226(c)(1)(E). Accordingly, aliens who enter the United States illegally and then commit one of the crimes enumerated in § 1226(c)(1)(E) are subject to mandatory detention under that provision. This provision applies to aliens who are present in the interior of the United States without admission.

The other set of detention authorities at issue in this case are housed in 8 U.S.C. § 1225. That section is entitled “Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing.” As discussed above, § 1225 begins with the provision “deem[ing]” as “applicant[s] for admission” both aliens present in the United States without admission and those arriving in the United States. *Id.* § 1225(a)(1). Section 1225 also includes the INA’s inspection mandate. *Id.* § 1225(a)(3) (“All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.”). Section 1225 then establishes two independent pathways for processing aliens suspected of inadmissibility and detaining them pending those proceedings:

First, § 1225(b)(1) sets out IIRIRA’s new expedited removal regime. *See DHS v. Thuraissigiam*, 591 U.S. 103, 109 (2020) (discussing expedited removal). Under the expedited removal provisions, aliens arriving in the

United States (and at the Attorney General's discretion, aliens with fewer than two years of continuous presence in the United States) are subject to summary removal proceedings when they are inadmissible for lacking valid entry documents or engaging in various forms of immigration fraud. 8 U.S.C. § 1225(b)(1)(A)(i) (applying to aliens "arriving in the United States"); *id.* § 1225(b)(1)(A)(iii) (applying to an alien "who has not affirmatively shown . . . that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility"). Aliens subject to expedited removal shall be ordered removed without further hearing or review, unless they express a credible fear of persecution, in which case they are referred for further proceedings. *Id.* § 1225(b)(1)(A), (B). Aliens in expedited removal proceedings are mandatorily detained pending their removal and credible fear proceedings. *Id.* § 1225(b)(1)(B)(ii), (iii)(IV); *see also Jennings*, 583 U.S. at 297 (noting that § 1225(b)(1) does not "say[] anything whatsoever about bond hearings"); 8 C.F.R. § 235.3(b)(2)(iii).

Second, § 1225(b)(2) requires the detention of certain "other aliens" pending removal proceedings. Section 1225(b)(2)(A), the key provision in this case, reads as follows:

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.

The carve-out for subparagraph (B) excepts from § 1225(b)(2)(A) aliens who are crewmen, stowaways, or who are subject to expedited removal under § 1225(b)(1). *Id.* § 1225(b)(2)(B). The carve-out for subparagraph (C) allows the government to return arriving aliens to contiguous foreign territory before their removal proceedings. *Id.* § 1225(b)(2)(C). The final reference to “section 1229a of this title” is to the removal proceedings themselves. *See id.* § 1229a.

Unlike with detention under § 1226, detention under both § 1225(b)(1) and (2) is mandatory and affords no opportunity for release on bond. *See Jennings*, 583 U.S. at 300 (explaining that these provisions “unequivocally mandate that aliens falling within their scope ‘shall’ be detained”); *see also Buenrostro-Mendez*, 166 F.4th at 499 (“Section 1225(b)(2) does not include any exception that permits the government to release detained aliens on bond.”). However, as noted above, for aliens subject to § 1225(b)(2)(A), and in the case of an alien “who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory” pending his removal proceedings. 8 U.S.C. § 1225(b)(2)(C). The government may also grant temporary parole to aliens subject to § 1225(b)(2)(A), but “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A).

In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court discussed §§ 1225 and 1226. Referencing § 1225, *Jennings* explained that the process of evaluating an alien’s right to enter and remain in the United States “generally begins at the Nation’s borders and ports of entry, where the Government must determine

whether an alien seeking to enter the country is admissible.” *Id.* at 287. The Court noted that “§ 1225(b) applies primarily to aliens seeking entry into the United States.” *Id.* at 297. The Court further stated that “§ 1226 applies to aliens already present in the United States.” *Id.* at 303. Discussing both §§ 1225 and 1226 together, the Court wrote that “U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).” *Id.* at 289.

This language in *Jennings* indicates that the Supreme Court was evidently operating on the same understanding of §§ 1225 and 1226 that has prevailed since 1996 (and earlier, under the predecessor provisions), namely, that § 1225(b)(2)(A) applies to unadmitted aliens seeking entry into the United States at the border, whereas § 1226 applies to aliens already present in the United States. Until recently, the Executive Branch’s actions in the thirty years since were consistent with that same understanding.

B

The plaintiffs in this case are a class of unadmitted aliens apprehended in the interior of the United States who are not subject to expedited removal under 8 U.S.C. § 1225(b)(1) or mandatory detention as criminal aliens under 8 U.S.C. § 1226(c). The dispute in this case is whether these plaintiffs are subject to mandatory detention under § 1225(b)(2)(A), or discretionary detention under § 1226(a) with a corresponding entitlement to a bond hearing. As we have noted, prior to its recent

change in policy, the government treated aliens in the plaintiffs' position as subject to discretionary detention under § 1226(a). That includes the last thirty years, following Congress's amendment of § 1225(b)(2)(A) to add the language that the government now claims requires mandatory detention. *See Barbosa da Cunha*, 175 F.4th at 91-92.

The government's new interpretation of § 1225(b)(2)(A) seems to have originated from the practice of certain immigration judges in Tacoma, Washington, beginning in 2022, of denying bond to unadmitted aliens present inside the country, on the theory that § 1225(b)(2)(A) mandates their detention. Those immigration judges were initially rebuffed by the Board of Immigration Appeals (BIA), which in several unpublished decisions remanded cases to these immigration judges. In one of those decisions, the BIA stated it was "unaware of any precedent stating that an Immigration Judge lacks authority to re-determine the custody conditions of a respondent in removal proceedings under the circumstances here."

In July 2025, the government reversed course. Immigration and Customs Enforcement (ICE) issued guidance determining that, "[e]ffective immediately," "[t]he only aliens eligible for a custody determination and release on . . . bond" under § 1226(a) are "aliens admitted to the United States" who have become deportable and who are not otherwise subject to § 1226(c). ICE's guidance further provides that aliens who have entered without inspection are instead "subject to detention under [§ 1225(b)(2)(A)] and may not be released from ICE custody except by . . . parole." In September 2025, the Board of Immigration Appeals adopted this interpreta-

tion of the INA in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

After the government began to detain unadmitted aliens present in the United States under § 1225(b)(2)(A), thousands of aliens filed habeas petitions seeking release from custody and bond determinations. This is one such case. Plaintiff Ramon Rodriguez Vazquez illegally entered the United States in 2009, without admission or parole. In 2025, Rodriguez Vazquez was apprehended by immigration authorities pursuant to a warrant and placed in removal proceedings. An immigration judge in Tacoma, Washington then denied Rodriguez Vazquez bond under the challenged interpretation of § 1225(b)(2)(A).

In response, Rodriguez Vazquez filed a habeas petition and class action complaint in federal district court. The district court certified a “Bond Denial Class” consisting of all individuals detained in the Northwest ICE Processing Center in Tacoma, Washington, and subject to mandatory detention under the government’s § 1225(b)(2)(A) detention policy. *See, e.g., Al Otro Lado v. EOIR*, 138 F.4th 1102, 1123-24 (9th Cir. 2025) (explaining that under Ninth Circuit precedent, 8 U.S.C. § 1252(f)(1) “does not ‘bar classwide declaratory relief’” (quoting *Rodriguez v. Hayes*, 591 F.3d 1105, 1119 (9th Cir. 2010))), *rev’d on other grounds sub nom. Mullin v. Al Otro Lado*, No. 25-5, 2026 WL 1825741 (U.S. June 25, 2026). The district court also granted the Bond Denial Class’s motion for partial summary judgment and entered final judgment, holding that the class was not subject to mandatory detention under § 1225(b)(2)(A). Rodriguez Vazquez received a bond hearing, but he was denied bond. He chose voluntarily to depart the United

States instead of further challenging his detention and removal.

Versions of this case have played out in federal courts across the country. The vast majority of the district courts to confront the issue have concluded that § 1225(b)(2)(A) is limited to the border and does not apply to unadmitted aliens apprehended inside the United States, meaning that those aliens are entitled to bond hearings under § 1226(a) and its implementing regulations. *See Barco Mercado v. Francis*, 811 F. Supp. 3d 487, 494 n.22 (S.D.N.Y. 2025) (collecting cases); *see also Barbosa da Cunha*, 175 F.4th at 71-72 (noting that “over ninety percent of district court judges have sided with Petitioner”). Some district courts, though, have ruled for the government. *See, e.g., Lopez v. Dir. of Enft & Removal Operations*, 817 F. Supp. 3d 1260, 1272 (M.D. Fla. 2026); *Chen v. Almodovar*, 2026 WL 100761, at *13 (S.D.N.Y. Jan. 14, 2026); *Garibay-Robledo v. Noem*, 814 F. Supp. 3d 747, 758-59 (N.D. Tex. 2026); *Hernandez Cruz v. Noem*, 2025 WL 3482630, at *4 (C.D. Cal. Dec. 2, 2025).

The circuits are divided as well. In February of this year, the Fifth Circuit became the first court of appeals to address the question on the merits. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). In *Buenrostro-Mendez*, and over a dissent, the Fifth Circuit sided with the government, holding that § 1225(b)(2)(A) applies to unadmitted aliens inside the country and requires their detention without the possibility of bond. *Id.* at 498. The Eighth Circuit agreed with the Fifth Circuit, also over a dissent. *See Avila v. Bondi*, 170 F.4th 1128, 1138 (8th Cir. 2026).

The Second, Sixth, Tenth, and Eleventh Circuits (the Sixth and Eleventh with dissents) subsequently sided

with the habeas petitioners, holding that § 1225(b)(2)(A) does not apply to unadmitted aliens apprehended in the interior. *See Barbosa da Cunha v. Freden*, 175 F.4th 61, 71 (2d Cir. 2026); *Lopez-Campos v. Raycraft*, 175 F.4th 713, 732 (6th Cir. 2026); *Santillan Quiroz v. Mullin*, 2026 WL 1876709, at *5 (10th Cir. June 30, 2026); *Hernandez Alvarez v. Warden*, 175 F.4th 1258, 1262 (11th Cir. 2026). After earlier concluding at the stay motion stage that the government was unlikely to prevail on the merits of the § 1225(b)(2)(A) issue, *see Castañon-Nava v. DHS*, 161 F.4th 1048, 1061 (7th Cir. 2025), the Seventh Circuit issued a splintered decision that failed to command a majority on this issue, although the bottom-line result was that the plaintiffs prevailed. *See Castañon-Nava v. DHS*, 175 F.4th 828, 857-58 (7th Cir. 2026).

The same issue that has split other circuit courts is now before our court. We review the grant of summary judgment and questions of statutory interpretation de novo. *See, e.g., Okonowsky v. Garland*, 109 F.4th 1166, 1178 (9th Cir. 2024); *United States v. Harris*, 983 F.3d 1125, 1126 (9th Cir. 2020).

II

When interpreting a statute, we give statutory terms their plain, ordinary meaning. *See, e.g., Wisconsin Cent. Ltd. v. United States*, 585 U.S. 274, 277 (2018); *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009). But “[w]hen a statute includes an explicit definition, we must follow that definition, even if it varies from that term’s ordinary meaning.” *Stenberg v. Carhart*, 530 U.S. 914, 942 (2000). We also read “the words of a statute . . . in their context and with a view to their place in the overall statutory scheme.” *Trim v. Reward Zone USA LLC*, 76 F.4th 1157, 1161 (9th Cir. 2023) (quoting *FDA v. Brown & Wil-*

liamson Tobacco Corp., 529 U.S. 120, 133 (2000)); see also *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 7 (2011) (explaining that statutory interpretation “depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis” (quotations omitted)). That is, we “construe statutes, not isolated provisions.” *Graham Cty. Soil & Water Conservation Dist. v. Wilson*, 559 U.S. 280, 290 (2010) (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 568 (1995)).

Construing text in context requires consideration of whether the statutory text sustains the interpretation placed upon it, that is, whether the words Congress used are best construed as accomplishing the legal consequence attributed to them. See, e.g., *United States v. Tinklenberg*, 563 U.S. 647, 655 (2011). As the Supreme Court put it, “when Congress wishes to alter the fundamental details of a regulatory scheme . . . we would expect it to speak with the requisite clarity to place that intent beyond dispute.” *United States Forest Serv. v. Cowpasture River Pres. Ass’n*, 590 U.S. 604, 621 (2020) (quotations omitted). This principle, stated in different ways in different decisions, pervades the Supreme Court’s cases involving statutory interpretation. See, e.g., *Learning Res., Inc. v. Trump*, 607 U.S. 229, 245 (2026) (observing that “Congress seldom effects such sea changes through vague language” (quotations omitted)); *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 499 (2018) (discussing “the rule that Congress ‘does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions’” (quoting *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468 (2001))); *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 465 (2017) (observing that

“if, and when, Congress were to intend a major departure” from prevailing practice, “we would expect to see some affirmative indication” of that intent); *Biden v. Nebraska*, 600 U.S. 477, 511-17 (2023) (Barrett, J., concurring) (explaining that “textualists, like all interpreters,” “situate[] text in context,” considering “commonsense principles of communication”).

In this case, we conclude that § 1225(b)(2)(A), based on its text and context, is best construed as applying to aliens entering the United States at the border. Section 1226, by contrast, is best understood as governing inadmissible and deportable aliens present in the interior of the United States. While the relevant statutory provisions are not pellucidly clear, the text, context, and history of the INA are more supportive of the plaintiffs’ interpretation. To the extent there is any remaining doubt, we are aided by the common-sense principle that Congress would have spoken more clearly if it had intended the dramatic expansion of mandatory detention authority that the government’s new interpretation portends. And we are aided by the further common-sense intuition that a change of this magnitude would likely not have gone unnoticed and unobserved in the nearly thirty years since it was allegedly put into place. Because it is the government’s current interpretation that suffers from greater textual and other problems, that interpretation does not reflect the best reading of the statute.

A

1

To begin our analysis, it is clear that plaintiffs—a class of unadmitted aliens present in the United States—are at least facially subject to detention under 8 U.S.C.

§ 1226(a), which allows for release on bond. *See Jennings*, 583 U.S. at 303. Section 1226(a) permits (but does not require) the government upon a warrant 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) (emphasis added). Rodriguez Vazquez is an alien who was apprehended pursuant to a warrant. And by its terms, § 1226(a) is not limited to aliens of any particular admission status, but instead refers broadly to aliens subject to removal.

The facial breadth of § 1226(a) and its presumptive coverage of unadmitted aliens present inside the United States is confirmed by § 1226(c), which mandates detention and withdraws the possibility of release on bond for certain criminal aliens who are either deportable (meaning previously admitted, but now subject to removal) *or* inadmissible on the grounds identified. *See* 8 U.S.C. § 1226(c). Congress’s decision to include inadmissible aliens within § 1226(c)’s mandatory detention regime further confirms that, absent some other overriding provision, § 1226(a)’s baseline detention authority likewise encompasses such inadmissible aliens. *See Jennings*, 583 U.S. at 288-89 (describing § 1226(c) as an exception to § 1226(a)’s “default rule”); *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (“The fact that Congress has created specific exceptions to [the Rule] hardly proves that the Rule does not apply generally. In fact, it proves the opposite.”). This is demonstrated even more specifically by § 1226(c)(1)(E), which requires the mandatory detention of aliens inadmissible under § 1182(a)(6)(A) for being present in the United States without admission or parole, if they have committed a qualifying criminal act. That such aliens are subject to mandatory detention un-

der § 1226(c)(1)(E) implies that aliens who are present without admission, but who have not committed such a qualifying criminal act, remain subject to § 1226(a).

It is therefore clear that, absent anything further, § 1226(a) would apply to aliens inadmissible on the ground of being present without admission. *See, e.g., Barbosa da Cunha*, 175 F.4th at 73.

2

The government concedes this much. But in arguing that plaintiffs are subject to mandatory detention without the possibility of bond, the government responds that 8 U.S.C. § 1225(b)(2)(A), as a more specific provision, governs detention for aliens in the plaintiffs' position, over and above § 1226. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) (“[I]t is a commonplace of statutory construction that the specific governs the general.”). This raises the question whether § 1225(b)(2)(A) is limited to the border (the traditional understanding), or whether it also applies to aliens apprehended in the interior of the United States who have not previously been admitted.

Section 1225(b)(2)(A) provides that “[s]ubject 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.” (Emphasis added). Critical to the dispute in this case, § 1225(a)(1) earlier provides that “[a]n 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 . . .) *shall be deemed* for purposes of this chapter *an appli-*

cant for admission.” 8 U.S.C. § 1225(a)(1) (emphasis added).

From these two provisions, a few points are undisputed. Aliens subject to § 1225(b)(2)(A) must be mandatorily detained without bond. *See, e.g., Jennings*, 583 U.S. at 300. It is undisputed that plaintiffs, who are present here without permission, are not “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A); *see id.* § 1182(a)(6)(A) (rendering inadmissible “[a]liens present without admission or parole”). And it is undisputed that the plaintiffs here are “applicants for admission,” because, again, they are present in the United States without admission. *See id.* § 1225(a)(1). What the government now disputes is whether the undefined phrase “seeking admission” in 8 U.S.C. § 1225(b)(2)(A) imposes an additional requirement—that to be subject to this mandatory detention authority, an alien must be seeking entry into the United States at the nation’s border. *See Barbosa da Cunha*, 175 F.4th at 73-74.

That border-oriented view of § 1225(b)(2)(A) is how the provision has been traditionally understood and enforced since 1996, consistent with a lengthy pre-IIRIRA history of treating unadmitted aliens present inside the United States as subject to discretionary detention with the availability of release on bond. There is a straightforward basis in the statutory text for this long-held understanding. The word “admission” under the INA is specifically 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). Combined with the word “seeking,” § 1225(b)(2)(A) has been treated as requiring that an al-

ien be engaged in the affirmative process of attempting to gain “entry” “into” the country, which an alien does at the border (or a port of entry). And although “admission” is defined as “lawful entry,” *id.* § 1101(a)(13)(A), it is clear that § 1225(b)(2)(A) is not limited to aliens seeking entry at a port of arrival. That is because, among other things, § 1225(b)(2)(C) confirms that § 1225(b)(2)(A) applies to aliens arriving on land “whether or not at a designated port of arrival.” *Id.* § 1225(b)(2)(C).

This traditional border-focused interpretation has several virtues. Importantly, it gives independent meaning to the words “seeking admission” in § 1225(b)(2)(A), by capturing those who are seeking “*entry . . . into* the United States.” 8 U.S.C. § 1101(a)(13)(A) (emphasis added); *see U.S. ex rel. Claussen v. Day*, 279 U.S. 398, 401 (1929) (“The word ‘entry’ by its own forces implies a coming from outside.”); *Torres*, 976 F.3d at 924 (explaining that “although the INA does not currently define the term ‘entry,’ we have long understood this term to refer to coming from outside into the United States” (quotations omitted)). By giving effect to the phrase “seeking admission,” the traditional understanding of § 1225(b)(2)(A) accords with the interpretive principle that “a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.” *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)); *see also Williams v. Taylor*, 529 U.S. 362, 404 (2000) (describing as a “cardinal principle of statutory construction that we must ‘give effect, if possible, to every clause and word of a statute’” (quoting *United States v. Menasche*, 348 U.S. 529, 538-39 (1955))). The traditional understanding of § 1225(b)(2)(A) also accords with the ordinary under-

standing of the present participle “seeking,” which normally would be used to describe someone actively doing something. *See* Webster’s New World College Dictionary 1299 (4th ed. 1999) (“seek” means “to request, ask for”); *Hernandez Alvarez*, 175 F.4th at 1267-68 (observing that “seeking” “indicat[es] an affirmative step of search or pursuit” (citing Oxford English Dictionary, https://www.oed.com/dictionary/seek_v [<https://perma.cc/T45G-5P67>])); *Santillan Quiroz*, 2026 WL 1876709, at *6 (“The choice of present participle . . . requires present and continuing action.”); *accord Barbosa da Cunha*, 175 F.4th at 74; *Lopez-Campos*, 175 F.4th at 722-23.

Finally, the long-held treatment of § 1225(b)(2)(A) also coheres with the statute’s reference to an “examining immigration officer.” Although the INA defines “immigration officer” broadly, *see* 8 U.S.C. § 1101(a)(18); 8 C.F.R. § 287.5(c), the statute here describes the officer as “examining” aliens. The word “examining” more naturally describes a formal examination, something that traditionally occurs at the nation’s borders. *Cf.* 8 U.S.C. § 1222(a)-(b) (referring to “examination of arriving aliens” suspected of “mental or physical . . . disabilities” “at ports of the United States”). This is corroborated by the fact that, in the pre-IIRIRA statutory predecessors for mandatory detention, Congress similarly used the phrase “examining immigration officer” and explicitly tied application of the provision to the border. *See* INA, 66 Stat. at 199 (“Every alien . . . who may not appear to the examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained.”); Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214, 1271 (1996) (“[I]f the examining immigration officer determines that an alien seeking entry is not

clearly and beyond a doubt entitled to enter, the alien shall be detained for a hearing before a special inquiry officer.”).

In short, there is a clear textual basis for the plaintiffs’ position that § 1225(b)(2)(A) applies to aliens seeking to enter the United States at the border—an interpretation that is also consistent with longstanding practice and the Supreme Court’s description of the detention regime in *Jennings*.

3

The government now contends that there is a superior interpretation of § 1225(b)(2)(A) that invalidates the last three decades of Executive Branch practice. Hanging its hat on § 1225(b)(2)(A)’s reference to an “applicant for admission,” the government argues that all aliens who are present inside the United States without admission are subject to mandatory detention under § 1225(b)(2)(A). That is because, according to the government, an “applicant for admission” is necessarily “seeking admission.” In the government’s view, an unadmitted alien who is an “applicant for admission” through his presence in the United States is effectively in the perpetual state of “seeking admission.”

The government bases its interpretation on its own ordinary meaning argument—that as a matter of common parlance one who is an “applicant” for something is also “seeking” that same thing. *See also Buenrostro-Mendez*, 166 F.4th at 502 (“‘apply’ means ‘[t]o make a formal request (to someone for something),’” and “‘seek’ means ‘to request, ask for’” (quoting Webster’s New World College Dictionary 69, 1299) (4th ed. 1999)). As the Fifth Circuit posited in crediting this argument, a person who applies to college also seeks admission to

that college, “regardless whether the person actively engages in further affirmative acts to gain admission.” *Id.*; *see id.* at 502 (“Just as an applicant to a college seeks admission, an applicant for admission to the United States is ‘seeking admission’ to the same.”). The government also argues that if the traditional understanding of § 1225(b)(2)(A) were correct, Congress could have referred more directly to “arriving aliens,” as it did elsewhere in the statute, as opposed to using the phrases “applicant for admission” and “seeking admission.” *Id.* at 504 (“Congress did not hesitate to use the ‘arriving alien’ language elsewhere in § 1225.”).

The government’s newfound interpretation of § 1225(b)(2)(A) has some initial intuitive force, but there are good reasons to reject it as a textual matter. For one, if all applicants for admission are necessarily “seeking admission,” as the government maintains, it is unclear why Congress would have included the phrase “seeking admission” in § 1225(b)(2)(A). *See Lopez-Campos*, 175 F.4th at 723 (observing the government’s interpretation “render[s] § 1225(b)(2)(A)’s use of ‘seeking admission’ superfluous”); *accord Santillan Quiroz*, 2026 WL 1876709, at *8; *Barbosa da Cunha*, 175 F.4th at 75; *Hernandez Alvarez*, 175 F.4th at 1271. The government responds that because there are various ways of “seeking admission” besides being an “applicant for admission,” Congress drafted § 1225(b)(2)(A) to ensure coverage of a certain category of aliens “seeking admission,” namely, those who are “applicants for admission.” But this explanation does not give “seeking admission” independent meaning, because under that view Congress could have still accomplished the same thing by using only the phrase “applicant for admission.” *See Barbosa da Cunha*, 175 F.4th at 77 (“Congress could

have achieved the same outcome by using ‘applicant for admission’ alone and omitting ‘seeking admission’ entirely.”).

The government replies that even if the phrase “seeking admission” is superfluous on its new reading, Congress can sometimes be redundant in statutory drafting. *See Barton*, 590 U.S. at 239 (explaining that “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”); *see also Al Otro Lado*, 2026 WL 1825741, at *8-9. This is true as a general matter. But in the context of § 1225(b)(2)(A) more specifically, and as a matter of the provision’s plain language and sentence structure, the superfluous phrase here is integral to the provision’s operation: it defines the actions of the alien that trigger examination by an immigration officer, which can in turn lead to significant consequences in the form of mandatory detention. And the superfluous phrase contains an important defined term: “admission,” which means “entry” “into the United States.” 8 U.S.C. § 1101(a)(13)(A). Given these circumstances, our usual tolerance for some marginal surplusage makes less sense here.¹

¹ Our dissenting colleague suggests that the government’s interpretation “may well not create any redundancy at all” because the phrase “seeking admission” in § 1225(b)(2)(A) shows that applicants for admission who withdraw their application under 8 U.S.C. § 1225(a)(4) are not subject to mandatory detention. Dissent at 91-92 (citing *Lopez-Campos*, 175 F.4th at 741-42 (Murphy, J., dissenting)). The government has not made this argument, perhaps because it lacks merit. Section 1225(a)(4) allows applicants for admis-

In addition to rendering superfluous the phrase “seeking admission,” the government’s plain meaning interpretation of “applicant for admission” is not the best way of understanding the relationship between §§ 1225(a)(1) and 1225(b)(2)(A). Indeed, the government’s analytical approach is one that our precedents counsel against.

Recall that § 1225(a)(1) *deems* aliens present in the United States to be applicants for admission, creating what we have described as “a term of art denoting a particular legal status,” *i.e.*, “a fictive legal status for purposes of removal proceedings.” *Torres*, 976 F.3d at 927-28. That is, “an alien is an ‘applicant for admission’ even though no literal ‘application’ is filed.” *Avila*, 170 F.4th at 1135.

In ordinary usage, however, we would not normally regard someone present in the United States to be in the perpetual state of “seeking” entry into the United States. And unlike the term “applicant for admission,” which is a special term of art in the statute, *Torres*, 976

sion, “in the discretion of the Attorney General,” to “withdraw the application for admission and depart immediately from the United States.” Because an alien who wishes to withdraw an application for admission could already attempt to do so under § 1225(a)(4), the government’s reading—by which all “applicants for admission” are necessarily “seeking admission”—still renders “seeking admission” in § 1225(b)(2)(A) unnecessary. *Cf. Santillan Quiroz*, 2026 WL 1876709, at *11 n.10 (rejecting this same argument); *Lopez-Campos*, 175 F.4th at 724 (same). Nor is it apparent that § 1225(a)(4), a form of discretionary relief that benefits aliens, is designed to operate beyond aliens arriving at the border or a port of entry. *See United States v. Cisneros-Resendiz*, 656 F.3d 1015, 1020 (9th Cir. 2011) (“[A]n IJ may grant an alien’s request for withdrawal only if . . . the alien is an arriving alien.” (citing 8 C.F.R. § 1240.1(d))).

F.3d at 927, the word “seeking” in § 1225(b)(2)(A) is not defined and would therefore presumptively retain its ordinary meaning. Because § 1225(a)(1) creates a specialized construct through the term “applicant for admission” and includes in that term of art aliens who do not meet its plain meaning, it therefore does not follow that we should then consider the fact that the isolated words “applicant” or “apply,” and “seek” or “seeking,” share a common ordinary meaning connoting a continuous state of doing those things. See *Barbosa da Cunha*, 175 F.4th at 75-76; *Hernandez Alvarez*, 175 F.4th at 1270-71; *Lopez-Campos*, 175 F.4th at 728; *Santillan Quiroz*, 2026 WL 1876709, at *9. As the Tenth Circuit has explained, the government’s new interpretation “conflates ordinary and statutory meaning.” *Santillan Quiroz*, 2026 WL 1876709, at *9.

Our en banc decision in *Torres* is highly relevant in this regard, for it demonstrates that an alien should not be regarded as being in a perpetual state of “seeking admission” or “applying” for it, for purposes of other statutory provisions, just because he is deemed an “applicant for admission” in § 1225(a)(1). In *Torres*, we held that an unadmitted alien’s physical presence, which made her an “applicant for admission” for purposes of 8 U.S.C. § 1225(a)(1), did not on its own mean she had thereby made an “application for admission” for purposes of 8 U.S.C. § 1182(a)(7). *Torres*, 976 F.3d at 922, 927-29; see 8 U.S.C. § 1182(a)(7) (providing that “any immigrant at the time of application for admission . . . who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter” is inadmissible). We accordingly overruled our prior de-

cision in *Minto v. Sessions*, 854 F.3d 619 (9th Cir. 2017), which had held otherwise.

As we explained in *Torres*, “*Minto* misread th[e] deeming provision, which places some physically-but-not-lawfully present noncitizens into a fictive legal status for purposes of removal proceedings, as altering the meaning of a substantive ground of inadmissibility that refers to the time of a real event: an actual application for admission.” 976 F.3d at 928. That reading, we explained, “conflated the term ‘applicant for admission’ from § 1225(a)(1) with the term ‘application for admission’ in § 1182(a)(7),” thus “fail[ing] to understand that the phrase ‘applicant for admission’ is a term of art denoting a particular legal status.” *Id.* at 927. We thus specifically rejected the notion “that any applicant for admission should be treated as having made a continuing application for admission that does not terminate ‘until it is considered by the Immigration Judge (IJ).’” *Id.* at 922 (quoting *Minto*, 854 F.3d at 624) (brackets omitted); *see also id.* at 929 (discussing a BIA decision that similarly “emphasiz[ed] that the term ‘applicant for admission’ in the deeming provision” is “distinguishable from ‘applying . . . for admission to the United States within the meaning of’ § 1182(h)” (quoting *Matter of Y-N-P*, 26 I. & N. Dec. 10, 13 (BIA 2012))).

As we later explained it, *Torres* “rejected the view that an alien remains in a perpetual state of applying for admission” simply because he is regarded as an “applicant for admission” under § 1225(a)(1). *United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir. 2024). Instead, *Torres* “stands for the propositions that an immigrant submits an ‘application for admission’ at a distinct point in time,” and that “stretching the phrase ‘at the

time of application for admission’ to refer to a period of years would push the statutory text beyond its breaking point.” *Id.* at 990 (quoting *Torres*, 976 F.3d at 990) (cleaned up).

“Seeking admission,” that is seeking “entry,” 8 U.S.C. § 1101(a)(13)(A), also most naturally refers to a particular point in time, namely, the time an alien “‘com[es] from outside’ into the United States.” *Torres*, 976 F.3d at 924 (quoting *Claussen*, 279 U.S. at 401). *Torres* rejected the theory that the time of an application for admission “continues, potentially for years or decades.” *Id.* at 926 (emphasis omitted). But if the legal construct “applicant for admission” does not mean “an alien remains in a perpetual state of applying for admission,” *Gambino-Ruiz*, 91 F.4th at 989, we do not think an alien present in the interior of the United States remains in the perpetual state of seeking admission (that is, seeking *entry*), either. The government’s new interpretation of § 1225(b)(2)(A) is in significant tension, if not outright conflict, with the logic of *Torres*. The same can be said of the dissent, which purports to apply a “non-specialized, ordinary meaning” to the phrase “applicant for admission,” Dissent at 70, even though *Torres* holds that it is “a term of art” that should not be “conflate[d]” with other facially similar language in the INA. 976 F.3d at 922, 927.

Indeed, other uses of “applicant for admission” confirm that the INA uses the phrase as a legal classification identifying a category of aliens subject to specified procedures or consequences, not in its colloquial sense. See 8 U.S.C. § 1225(a)(3) (“All aliens . . . *who are* applicants for admission” shall be subject to inspection (emphasis added)); *id.* § 1229a(c)(2)(A) (“if the alien *is* an

applicant for admission” he bears the burden of proof in showing his admissibility in a removal proceeding (emphasis added)). Section 1225(b)(2)(A) is constructed similarly. *See id.* § 1225(b)(2)(A) (“in the case of an alien *who is* an applicant for admission” (emphasis added)).

For all these reasons, we conclude that “applicant for admission” in § 1225 is best treated as a term of art used to identify a class of people that do not meet the plain meaning understanding of that term, and that imbues them with “a fictive legal status.” *Torres*, 976 F.3d at 927-28. And from this we conclude that any plain meaning comparison of the phrases “applicant for admission” and “seeking admission” does not properly account for the stylized treatment of the former and the default plain meaning treatment of the latter. *See, e.g., Hernandez Alvarez*, 175 F.4th at 1267.

The government draws an analogy to an applicant for college who thereby seeks admission to college. But the issues appear different if we think of a statute that deems as “applicants for college” persons who do not naturally or inevitably fit that description, like all high school seniors who have completed certain coursework. It is not apparent that we would regard all of the students as seeking admission to college when they have no plans to go. When people are placed into a legal classification that—as a matter of ordinary meaning—would not typically apply to them (“applicants for admission”), it does not mechanically follow that those people should thereby fall within other aspects of the statute that otherwise would share an ordinary meaning with what is in fact an unordinary term-of-art classification.

The government’s interpretation also sits uneasily with the sentence structure of § 1225(b)(2)(A) itself. The

provision begins by identifying a category of aliens (“in the case of an alien who is an applicant for admission”) and then proceeds to describe an alien “seeking admission.” 8 U.S.C. § 1225(b)(2)(A) (“[I]n 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.”). Under the government’s theory the latter phrase is broader than the former: every “applicant for admission” is perpetually “seeking admission,” but other aliens beyond “applicants for admission” could also be “seeking admission.” If that is the case, though, the sentence is unusually crafted, for modifying clauses such as this would more commonly be read to narrow, clarify, or characterize the antecedent they follow. And here, the provision as drafted reads as though it begins with a broader concept which is then narrowed, rather than the reverse. Accordingly, the traditional view of the statute, which understands those “seeking admission” to encompass the narrower category of aliens seeking entry at the border, better accords with the way § 1225(b)(2)(A) as a sentence is constructed.

This does not leave the phrase “applicant for admission” without work to perform in the statute. There is a plausible reason why § 1225(b)(2)(A) is not limited to “arriving aliens,” namely, because “arriving alien” can be understood to refer only to aliens arriving at a port of entry. Indeed, that is how IIRIRA’s implementing regulations define it. *See Gambino-Ruiz*, 91 F.4th at 986 (explaining that “since 1997 the government has defined the term ‘arriving alien’ narrowly to mean ‘applicant for admission coming or attempting to come into the United States at a port-of-entry’” (quoting 8 C.F.R.

§ 1001.1(q)). This may explain why § 1225 refers to aliens who arrive in the United States “whether or not at a designated port of arrival.” 8 U.S.C. § 1225(a)(1), (b)(2)(C). By using “applicant for admission,” Congress confirmed that § 1225(b)(2)(A) covered aliens who are seeking entry in between the nation’s ports of entry, a point that § 1225(b)(2)(C) later validates.²

And beyond this, the term “applicant for admission” elsewhere performs critical work in the statute. As discussed, § 1225(a)(1) clarifies that aliens present inside the United States without admission are subject to removal on broader grounds than those aliens who have been lawfully admitted, while also imposing on those unadmitted aliens greater procedural burdens in the context of removal proceedings. *See Ortega-Lopez*, 978 F.3d at 682 (observing that under IIRIRA, “a person who physically entered the United States but was not admitted is subject to grounds of inadmissibility, rather than deportability, and has to bear the corresponding burden of proving admissibility”); *Torres*, 976 F.3d at 928 (observing that, in light of § 1225(a)(1), “the relevant distinction for procedural purposes” in removal proceedings “is whether the immigrant has been lawfully admitted, regardless of actual physical presence”); 8 U.S.C. § 1229a(c)(2).

In sum, these various considerations show that the government’s new interpretation does not follow from the assertedly unambiguous language of the statute. Instead, the government’s reading is the less compelling

² The dissent maintains that under the traditional understanding of § 1225(b)(2)(A), the phrase “applicant for admission” is superfluous. Dissent at 89, 91. That is flatly incorrect.

one, as it raises various textual and interpretive problems, especially in view of *Torres*.

4

The other provisions in § 1225 do not advance the government’s position, or at least not enough to resolve the difficulties that arise from the government’s new interpretation of § 1225(b)(2)(A).

The government first points to § 1225(a)(3), which mandates the inspection of “[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States.” The government reasons that this provision shows that Congress denoted “applicants for admission” as a “subset” of those seeking admission, insofar as “otherwise” sets off “applicants for admission” from “seeking admission.” *See Buenrostro-Mendez*, 166 F.4th at 503; *Avila*, 170 F.4th at 1135 n.4.

But the government’s reading of the word “otherwise” in § 1225(a)(3) is not the only one. Courts have at times treated the words “or otherwise” to mean that the terms that follow encompass a broader set, as the government would have it. *See Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (“‘Otherwise’ means ‘in a different way or manner.’” (quoting Webster’s Third New International Dictionary 1598 (1971))); *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) (observing that Congress often uses the phrase “or otherwise” to denote a “subset”).

But the Supreme Court has in other contexts “rejected the argument that ‘or otherwise’ mandates the subset-superset interpretation urged by the government.”

Barbosa da Cunha, 175 F.4th at 78-79 (citing *Helsinn Healthcare S.A. v. Teva Pharmaceuticals USA, Inc.*, 586 U.S. 123, 125, 132 (2019)); see also *Hernandez Alvarez*, 175 F.4th at 1273 (observing as to § 1225(a)(3) that “there are two different ways to read the ambiguous phrase ‘or otherwise’”). That is, “or otherwise” could also mean “something that is different from something already mentioned.” *Hernandez Alvarez*, 175 F.4th at 1273 (quotations omitted). And to the extent “applicants for admission” are a subset of “seeking admission” in § 1225(a)(3), as the government argues, it would seem that “applicants for admission” should then be regarded as a subset of everything else in the rest of § 1225(a)(3). But in that scenario, “applicants for admission” would also be a subset of those seeking “readmission to or transit through the United States,” 8 U.S.C. § 1225(a)(3), which does not easily follow. In short, § 1225(a)(3) is at best a wash for the question before us. See, e.g., *Barbosa da Cunha*, 175 F.4th at 78-81; *Santillan Quiroz*, 2026 WL 1876709, at *12; *Hernandez Alvarez*, 175 F.4th at 1273.

The government also cites § 1225(a)(4), which provides that “[a]n alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States.” The government argues this provision shows that an “applicant for admission” under § 1225(a)(1) is in a constant state of “applying” for admission, again invoking the similarity in ordinary meaning between the verbs “applying” and “seeking.” But nothing in § 1225(a)(4) suggests, contrary to *Torres*, that “applying for admission” is a perpetual event that “continues, potentially for years or decades.” *Torres*, 976 F.3d at 926 (emphasis omitted);

see also Gambino-Ruiz, 91 F.4th at 989 (same). Section 1225(a)(4) thus adds little, if anything, to the theory that an applicant for admission is in a perpetual state of seeking entry.

The Fifth Circuit also relied on § 1225(a)(5) in crediting the government’s interpretation. *See Buenrostro-Mendez*, 166 F.4th at 503. Section 1225(a)(5) provides that:

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

In the Fifth Circuit’s view, this provision shows that an “applicant for admission” is “seeking admission.” *See Buenrostro-Mendez*, 166 F.4th at 503.

But § 1225(a)(5) simply indicates that “applicants for admission *can* be seeking admission, not that they must be.” *Santillan Quiroz*, 2026 WL 1876709, at *12. Section 1225(a)(5) is consistent with the traditional understanding of § 1225(b)(2)(A), namely, that the set of aliens “seeking admission” is a narrower category than those who are “applicant[s] for admission,” describing only those applicants “seeking” entry. 8 U.S.C. § 1225(a)(5); *see also Hernandez Alvarez*, 175 F.4th at 1272 (“The usage of ‘seeking admission’ in this context further suggests that the phrase refers to one who is actively seeking to enter the United States.”). In this regard, and given the overarching border-focused nature of § 1225, the government’s position is undermined by the fact that

the required statement “under oath” about the alien’s “intended length of stay,” 8 U.S.C. § 1225(a)(5), is a less natural question to pose to an alien who has resided in the United States for many years, and would make more sense posed to an alien at the border. *See Barbosa da Cunha*, 175 F.4th at 81; *Hernandez Alvarez*, 175 F.4th at 1272-73. Thus, § 1225(a)(5) at minimum does not provide independent support for the government’s interpretation of § 1225(b)(2)(A).

The government also argues that the traditional treatment of § 1225(b)(2)(A), which requires that an alien seek entry into the United States at the border, is undermined by § 1225(b)(2)(C). That provision states that “[i]n the case of an alien described in [§ 1225(b)(2)(A)] who is arriving on land (*whether or not at a designated port of arrival*) from a foreign territory contiguous to the United States,” the government can return the alien to that territory pending removal proceedings. 8 U.S.C. § 1225(b)(2)(C) (emphasis added). That provision, according to the government, shows that illegal border-crossers are subject to § 1225(b)(2)(A)’s initial scope.

But this point also does not add to the government’s position. Illegal border-crossers are indeed subject to § 1225(b)(2)(A). But that is because, among other things, § 1225(b)(2)(C) confirms that an alien “who is arriving on land (whether or not at a designated port of arrival)” falls within “subparagraph (A).” *Id.* Aliens illegally crossing the border are, of course, at that time seeking “entry.” But contrary to the government, this does not lead to the conclusion that aliens like plaintiffs who are seeking relief in immigration proceedings inside the United States are also “seeking admission,” that is, seeking “entry” into the United States. *See Matter of Pierre*, 14

I. & N. Dec. 467, 468 (BIA 1973) (discussing the concept of “entry” under the INA, which includes a “crossing into the territorial limits of the United States”); *Torres*, 976 F.3d at 922 (rejecting the theory that “any applicant for admission should be treated as having made a continuing application for admission that does not terminate until it is considered by the Immigration Judge” (quotations and brackets omitted)).

5

In sum, the government offers possible arguments for why the traditional understanding of § 1225(b)(2)(A) is not inevitable. But its newfound interpretation of § 1225(b)(2)(A) and the surrounding § 1225 text encounters significant difficulties. For the reasons we have given, the traditional understanding of § 1225(b)(2)(A) as limited to aliens encountered at the border finds greater support in the statutory text of § 1225, considered as a whole.

But even if this point were more doubtful, any ambiguities in § 1225(b)(2)(A) cut against, not for, the government’s asserted authority. The language of § 1225(b)(2)(A) is at times awkward and poorly executed. See *Hernandez Alvarez*, 175 F.4th at 1271 (describing § 1225(b)(2)(A) as “circuitous and layered”). And as the foregoing discussion shows, while the government’s interpretation has some hold in the statutory text, even when we limit our focus to § 1225—we will turn to § 1226 next—we see that, at the very least, reaching the government’s new interpretation involves a labored process that raises numerous interpretive problems along the way. These problems are more extensive than any problems associated with an interpretation of § 1225(b)(2)(A) that aligns with how it has been traditionally enforced.

We may fairly ask: if the statute is meant to require the mass detention of unadmitted aliens present in the United States and mark a sharp break from the past, would Congress have introduced such a major change through a cross-referenced deeming provision, in the way the government asserts? As a matter of basic communication, we likely should not need to work through so many questions and complications to detect a groundbreaking alteration of our immigration detention regime. See *Whitman*, 531 U.S. at 468 (explaining that Congress is unlikely to confer significant authority through “modest words,” “vague terms,” or “subtle device[s]”); *MCI Telecomms. Corp. v. AT&T*, 512 U.S. 218, 231 (1994) (observing that Congress is “unlikely” to use “a subtle device” to achieve a major change).

And when we consider the prior versions of the statutory provision at issue, it becomes even less plausible to think that Congress in 1996 effected a major change through the use of the stilted language in § 1225(b)(2)(A). The 1952 version of the INA read:

Every alien . . . who may not appear to the examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special inquiry officer.

66 Stat. at 199. Similarly, the version in place in 1996, before the passage of IIRIRA, read:

Except as provided in subparagraph (B), if the examining immigration officer determines that an alien seeking entry is not clearly and beyond a doubt entitled to enter, the alien shall be detained for a hearing before a special inquiry officer.

AEDPA, 110 Stat. at 1271. Congress in IIRIRA updated § 1225(b)(2)(A) to reflect the new concept of “admission.” But again, “admission” is specifically 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). And if we plug that definition into § 1225(b)(2)(A), we get something very similar to what Congress had before: “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 [lawful entry into the United States] is not clearly and beyond a doubt entitled to [lawful entry], the alien shall be detained for a proceeding under section 1229a of this title.” (As discussed above, other aspects of § 1225 make clear that § 1225(b)(2)(A) covers illegal border-crossers, even as the focus remains “entry.”)

The fact that § 1225(b)(2)(A) follows the same basic sentence structure and includes much of the same wording as prior versions of this provision cuts against reading the 1996 changes in IIRIRA as a complete overhaul of this mandatory detention provision, which was consistently limited to aliens at the border. *See Niz-Chavez v. Garland*, 593 U.S. 155, 165 (2021) (considering “IIRIRA’s statutory structure and history” to resolve “any doubt remain[ing] about the meaning” of statutory provisions); *Hernandez Alvarez*, 175 F.4th at 1281 (“Congress did not construct § 1225(b)(2)(A) from whole cloth—the language finds deep roots in the country’s historical immigration laws and practices.”). It is doubtful that Congress would accomplish such a dramatic departure from historical practice through a web of cross-references, redundant qualifications, and the word “otherwise” in a separate provision. *See Barbosa da Cunha*,

175 F.4th at 93 (“If Congress meant to achieve such a radical break from the past, it would not have done so in such an indirect and ambiguous way.”). And it is further doubtful Congress would do so while carrying forward much of the prior statutory language and including, by the government’s reading, unnecessary language (“seeking admission”) whose plain meaning does not naturally cover the category of aliens at issue in this case.

In short, if the statute were departing from prior law and practice and imposing a new mass detention requirement, Congress would have drafted language more direct than what we have in § 1225(b)(2)(A) and the rest of § 1225. *See Biden v. Texas*, 597 U.S. 785, 798 (2022) (“If Congress had wanted the provision to have that effect, it could have said so in words far simpler than those that it wrote.”). The “oblique” and “elliptical” language of § 1225(b)(2)(A), *West Virginia v. EPA*, 597 U.S. 697, 723 (2022), does not approach the “requisite clarity” we would expect if “Congress wish[ed] to alter the fundamental details” of the mandatory detention scheme. *United States Forest Serv.*, 590 U.S. at 621 (quotations omitted); *see Whitman*, 531 U.S. at 468. And if we broaden the lens beyond § 1225, as we will do next, we see that the government’s interpretation of § 1225(b)(2)(A) faces further hurdles.

B

When we consider § 1226, the government’s view that § 1225(b)(2)(A) should be read as accomplishing a groundbreaking change in mandatory detention policy becomes even more doubtful. *Mellouli v. Lynch*, 575 U.S. 798, 809 (2015) (explaining that “[s]tatutes should be interpreted ‘as a symmetrical and coherent regulatory

scheme’” (quoting *Brown & Williamson Tobacco Corp.*, 529 U.S. at 133)).

As we recounted above, § 1226(a) on its face applies to aliens who are present in the United States without admission. See *Hernandez Alvarez*, 175 F.4th at 1278 (“This language applies to both admitted and unadmitted aliens, since either may be subject to removal proceedings.”). It follows that interpreting § 1225(b)(2)(A) in the manner the government requests—to apply to that same class of aliens—would substantially narrow the reach of § 1226(a), without a basis for doing so in the text of § 1226(a) itself. Under this reading, § 1225(b)(2)(A) would mandate detention for all unadmitted aliens also subject to § 1226(a)’s discretionary scheme, thereby carving these aliens out from § 1226(a). See *Barbosa da Cunha*, 175 F.4th at 86 (observing that “the government’s interpretation reduces the applicability of Section 1226(a) to a subset of [aliens] narrower than the statutory text authorizes”). But there is no basis on the face of § 1226(a) to conclude that it covers only a narrower category of “aliens” than it purports to do.

To be sure, the government’s position does not render § 1226(a) entirely superfluous. As the government points out, § 1226(a) would continue to apply to aliens who are admitted into the United States and later become removable. See *Buenrostro-Mendez*, 166 F.4th at 504-05 (explaining, *inter alia*, that “Section 1226(a) undeniably does work independent from § 1225(b)(2)(A) because only § 1226(a) applies to admitted aliens who overstay their visas” or “become deportable on many different grounds”). Still, if it was Congress’s design to subject only this narrower subset of removable aliens to discretionary detention under § 1226(a), and to have the

large population of aliens present in the United States without admission subject to mandatory detention under § 1225(b)(2)(A), Congress in § 1226 would have more likely given some textual indication of this important distinction. *See* 8 U.S.C. § 1226(a) (permitting detention with the possibility of bond of “*an alien* . . . pending a decision on whether the alien is to be removed from the United States” (emphasis added)). One can reasonably ask why Congress, in that event, would not have more clearly defined a narrower class of aliens as the ones subject to § 1226(a), as opposed to inviting a complicated debate about whether § 1225(b)(2)(A) splices them out. *See Barbosa da Cunha*, 175 F.4th at 86 (“Had Congress intended Section 1226(a) to apply more narrowly, it would not have written the section to cover ‘an alien’ without any further qualifications.”).

Section 1226(c), which creates exceptions to discretionary detention under § 1226(a), casts further doubt on the government’s new interpretation. As previously catalogued, Congress has, since before IIRIRA, mandated the detention of certain criminal aliens pending a determination on their removability. In IIRIRA, Congress continued that practice by providing that aliens “inadmissible” and “deportable” on various criminal and national security grounds are subject to mandatory detention. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Although some provisions of § 1226(c) refer to “deportable” aliens (that is, those who were admitted but are now removable), other provisions refer specifically to aliens who are inadmissible. *Compare id.* §§ 1226(c)(1)(B), (C) (deportable), *with id.* §§ 1226(c)(1)(A), (E) (inadmissible), *and id.* § 1226(c)(1)(D) (inadmissible and deportable). One of these provisions was added to the INA just last year in the Laken Riley Act. *See* Pub. L. No. 119-1, § 2, 139

Stat. 3 (2025). After those amendments, § 1226(c) now mandates the detention of aliens who are inadmissible—including aliens present here without admission—who have *also* committed certain enumerated crimes. *See* 8 U.S.C. § 1226(c)(E)(i)-(ii); *id.* § 1182(a)(6)(A), (6)(C), (7). That § 1226(c) disallows bond for certain categories of inadmissible aliens strongly suggests that the broader § 1226(a) covers inadmissible aliens present in the United States. *See supra* 15-17; *see also Santillan Quiroz*, 2026 WL 1876709, at *14 (“[T]he subsections of § 1226(c) addressing inadmissible aliens would be rendered useless since there would be no inadmissible aliens to except from bond eligibility under § 1226(a).”); *Hernandez Alvarez*, 175 F.4th at 1279 (“Why, then, would § 1226(c) include exceptions for *both* deportable and inadmissible aliens, if the provision it limits (§ 1226(a)) only applies to admitted aliens?”).

Under the government’s interpretation, moreover, Congress’s recent handiwork in the Laken Riley Act would be rendered superfluous, because those aliens subject to § 1226(c)(1)(E) would already be subject to mandatory detention under § 1225(b)(2)(A), as inadmissible aliens present in the United States. *See Barbosa da Cunha*, 175 F.4th at 87-88. This superfluity is not insignificant. If we consider the statute as an integrated whole, it is more reasonable and natural to regard § 1226(c)(1)(E) as an additional ground for mandatory detention above and beyond the grounds that the law previously directed. *See, e.g., Brown & Williamson Tobacco Corp.*, 529 U.S. at 133 (“A court must therefore interpret the statute as a symmetrical and coherent regulatory scheme, and fit, if possible, all parts into an harmonious whole.” (quotations and citations omitted)); *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995) (“When Con-

gress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.”). Section 1226(c)(1)(A), pertaining to aliens who are “inadmissible by reason of having committed any offense” covered in § 1182(a)(2), would also appear superfluous under the government’s new interpretation. That is because, in the vast majority of instances, the only aliens present in the interior who can be charged with inadmissibility are aliens who have not been admitted (that is, applicants for admission). *See Guzman-Andrade v. Gonzales*, 407 F.3d 1073, 1076 (9th Cir. 2005).

The government replies that these provisions in § 1226(c) would still do independent work under its interpretation because within the ambit of its coverage, § 1226(c) only allows the release of aliens for witness protection purposes. *See id.* § 1226(c)(4). In contrast, an alien detained under § 1225(b)(2)(A) can be released through discretionary parole on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). The government contends the availability of parole under § 1225(b)(2)(A) means that the redundancies visited by its position do not detract from its reading of the statute. *See also Buenrostro-Mendez*, 166 F.4th at 505; *Avila*, 170 F.4th at 1137.

The government’s argument about parole shows that, even if they cover the same aliens, § 1226(c)(1)(A) and (E) could have some arguable import beyond § 1225(b)(2)(A). But even assuming § 1226(c) could limit the availability of parole under § 1225(b)(2)(A), does § 1226(c) as a textual matter most naturally reflect this parole-based objective? It does not. If the import of § 1226(c)(1)(A) and (E) is merely to clarify the unavaila-

bility of parole for a narrow class of aliens already subject to mandatory detention under § 1225(b)(2)(A), there are far less obtuse ways Congress could have accomplished that objective, through any kind of particularized reference to parole. *See Hernandez Alvarez*, 175 F.4th at 1280. And while the government, like the dissent, points out that there is arguably some redundancy under § 1226(c) even on plaintiffs’ reading of § 1225(b)(2)(A), the government’s interpretation encounters much greater redundancy problems with § 1226(c). Those problems detract from the government’s theory that the 1996 amendments made a sharp change in the law and imposed a large-scale detention mandate that went unnoticed and unenforced for the last thirty years.

The government also argues that any concern that the Laken Riley Act is surplusage is alleviated by the fact that when Congress passed the Laken Riley Act in 2025, it immediately had a significant effect, given the government’s then-approach to § 1225(b)(2)(A). *See Buenrostro-Mendez*, 166 F.4th at 505 (“Congress passed the Act at a time when the Executive was still declining to exercise its full enforcement authority under the INA. Accordingly, the 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.” (footnote omitted)). This is true so far as it goes, although Congress could have also passed the Laken Riley Act on the understanding that § 1225(b)(2)(A) did not already cover these aliens. In any event, for present purposes the point is that in considering the statutory scheme as a whole, § 1226(c)(1)(E) more strongly supports the conclusion that the aliens it covers who did *not* commit qualifying criminal acts are already covered by § 1226(a). The gov-

ernment's interpretation would also make largely irrelevant § 1226(c)(1)(E), which Congress only recently added.

Were the text of § 1225(b)(2)(A) clearer in the government's favor, the redundancy in § 1226(c) caused by the government's reading would be of less concern. *See Barton*, 590 U.S. at 239. But as already discussed, we do not think that the words of § 1225(b)(2)(A), considered in context, direct the result the government claims, as that interpretation creates more textual and other difficulties than the traditional understanding of that provision. Accordingly, the redundancy in § 1226(c) introduced by the government's interpretation creates an additional cloud over the government's account of the statutory text. Section 1226 also continues to confirm what our reading of § 1225(b)(2)(A) suggests, namely, that the government at minimum is seeking to invoke a significant power "on an uncertain statutory basis." *Learning Resources*, 607 U.S. at 242.

Indeed, whereas the government in the context of § 1225(b)(2)(A) has affirmative arguments, when it comes to § 1226 the government is effectively on defense the entire time. It has to explain, among other things, why a broad provision (§ 1226(a)) is much narrower than it appears on its face; why it matters not that other provisions in § 1226(c) are rendered superfluous by its reading, including amendments that Congress made very recently; and why we should regard the availability of parole as a critical distinction between parts of §§ 1225 and 1226, when the text does not identify that as a key differentiator. As we move from § 1225 to § 1226, then, the government's position meets even further resistance. This makes the government's new interpretation of

§ 1225(b)(2)(A) further unlikely when the statute is considered as an integrated whole.

III

We now consider whether statutory purpose and the government's post-1996 enforcement practices can offer additional support for the government's interpretation of the statute.

A

The government and the other circuits holding in its favor have relied to some extent on the posited congressional purpose of IIRIRA in reasoning that § 1225(b)(2)(A) applies to all aliens present inside the United States without admission. *See Buenrostro-Mendez*, 166 F.4th at 508 (concluding that “the government’s interpretation better honors [the] predominant goal in the enactment of IIRIRA”); *Avila*, 170 F.4th at 1135-36 (same). The dissent in this case similarly places heavy reliance on perceived statutory purpose. Dissent at 73-78. The argument is that through IIRIRA’s rejection of the distinction between deportation and exclusion proceedings, Congress meant to equalize the treatment of aliens who enter the country illegally and those who present themselves for lawful inspection at the border. Considering that aim, the government argues that its interpretation of § 1225(b)(2)(A), which subjects aliens illegally present in the United States to mandatory detention just as it does those who seek admission at the border, better accords with congressional intent.

The government’s argument from statutory purpose is not without some support. This court’s case law has recognized that Congress in IIRIRA sought to rectify the “anomaly,” *Torres*, 976 F.3d at 928, that “non-citi-

zens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings.” *Hing Sum*, 602 F.3d at 1100. Indeed, we have recognized that one of the innovations directed at addressing that “anomaly” was Congress’s decision to deem all aliens present in the United States without admission “applicants for admission,” which “ensures 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*, 976 F.3d at 928. From this, the government argues that Congress meant to treat these aliens the same when it comes to mandatory detention.

But perceived statutory purpose is not the same as statutory text. And neither this court nor the Supreme Court has suggested that Congress intended to further its “equal footing” agenda by subjecting all unadmitted aliens inside the country to mandatory detention. To the contrary, as we noted above, the Supreme Court’s decision in *Jennings* reflects the traditional understanding of the distinction between § 1225 and § 1226. Although the government’s inference from statutory purpose is not an unreasonable one, it does not make up for the difficulties with the government’s new textual interpretation, because considerations of extra-textual purpose can only take us so far.

As an initial matter, our cases that have articulated Congress’s “equal footing” concern relied on IIRIRA’s legislative history. See *Torres*, 976 F.3d at 928 (citing House Report); *Hing Sum*, 602 F.3d at 1100 (citing leg-

islative history materials for the “reasons for the [IIRIRA] amendment” creating the concept of admission). The other circuits that have held for the government on the issue before us have likewise relied on legislative history for the “equal footing” point, as well as on case law that itself relies on that legislative history. *See Avila*, 170 F.4th at 1135-36; *Buenrostro-Mendez*, 166 F.4th at 508.

But the legislative history materials do not indicate that the “equal footing” principle extended to every possible aspect of immigration law. Instead, these materials reflect Congress’s purported intent to “replace *certain aspects* of the current ‘entry doctrine,’ under which illegal 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 at a port of entry.” H.R. Rep. No. 104-469, pt. 1, at 225 (emphasis added). The legislative history does not mention that the millions of aliens unlawfully present in the interior of the United States are now subject to mandatory detention, as might be expected for a purported change of this magnitude. To the contrary, where the legislative history references bond, it expressed an intent to continue the prior regime of affording bond hearings to unadmitted aliens apprehended in the interior pending their removal proceeding. *See* Conference Report, H.R. Rep. No. 104-828, at 210 (1996) (indicating that the new § 1226(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”). We do not invoke this legislative history as authoritative, nor do we rely on it concluding that the plaintiffs have offered a better interpretation of the

statute. Our point instead is that “equal footing” statements in our case law are rooted in legislative history, and that legislative history does not support the government’s position on the specific issue of detention under § 1225(b)(2)(A). This counsels against placing substantial reliance on perceived statutory purpose, as it has been described in our case law.

In addition, and more generally, our ability to derive clear answers from a broadly framed statutory purpose is constrained by the principle that “no legislation pursues its purposes at all costs.” *Rodriguez v. United States*, 480 U.S. 522, 525-26 (1987). As the Supreme Court has explained, “[d]eciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice—and it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute’s primary objective must be the law.” *Id.*; see also, e.g., *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 368-69 (2025); *American Express Co. v. Italian Colors Restaurant*, 570 U.S. 228, 233-34 (2013).

In this case, there are competing considerations that may have led Congress to continue to afford bond hearings to some aliens who are present inside the country illegally. *Rodriguez*, 480 U.S. at 525-26. For one, there were an estimated two million aliens present in the United States without admission as of the late 1990s. See *Barbosa da Cunha*, 175 F.4th at 90; H.R. Rep. No. 104-469, pt. 1, at 111 (1996). In the face of that substantial population, Congress may have been concerned with the government’s detention facility capacity, as well as the costs and other burdens associated with housing a

very large number of unadmitted aliens pending their oftentimes lengthy removal proceedings.

It is apparent from IIRIRA's actual implementation that these considerations did indeed factor into Congress's decisionmaking to some extent. As we noted above, Congress in IIRIRA gave the Attorney General the discretion to delay § 1226(c)'s extended detention mandate for two years to alleviate anticipated detention space constraints and afford the government time to build capacity. *See* IIRIRA § 303(b)(2); H.R. Rep. No. 104-469, pt. 1, at 123 (1996) ("The INS plans to increase its detention space to about 8,500 beds in [fiscal year] 1996, an increase of close to 50 percent."). The Attorney General invoked that safety valve authority. *See Hernandez Alvarez*, 175 F.4th at 1283; *Barbosa da Cunha*, 175 F.4th at 89-90. The plaintiffs in this case point out that Congress did not delay implementation of § 1225(b)(2)(A), even though, by the government's interpretation, substantial additional detention capacity would be required given the much larger number of aliens at issue. But we need not theorize as to why Congress did not delay implementation of § 1225(b)(2)(A) to make the more basic observation that the delay afforded for § 1226(c) shows that detention capacity is a countervailing concern when it comes to how many aliens Congress may wish to place in mandatory detention.

Additionally, Congress could have concluded that unadmitted aliens who reside in the United States for extended periods are likely to develop family ties or serve roles in the economy, making their mandatory detention pending removal proceedings less desirable and more costly. We do not attempt to ascribe these or any particular views to Congress in 1996. We simply observe

that a general desire to place on equal footing for purposes of removal proceedings those unadmitted aliens present in the United States and those aliens arriving in the United States, *see Torres*, 976 F.3d at 928, does not inexorably extend to mandatory detention, given that such detention could produce disruptions and adverse consequences for families, employers, and others. By the government's theory, unadmitted aliens present in the United States would apparently be subject to mandatory detention even if they were brought here as young children or have lived here for decades. Congress could have determined that such persons present different considerations.

We note in this regard that although IIRIRA in some respects is less forgiving to aliens who enter without permission, the statute continues to give the Executive Branch the authority to cancel the removal of aliens who have continuously resided here for ten years and meet other requirements. *See* 8 U.S.C. § 1229b(b)(1); *Niz-Chavez*, 593 U.S. at 158 (“For more than a century, Congress has afforded the Attorney General (or other executive officials) discretion to allow otherwise removable aliens to remain in the country.”). IIRIRA also limited expedited removal to aliens who had been present here for less than two years, 8 U.S.C. § 1225(b)(1)(A)(iii), thereby affording more robust removal processes to aliens who have resided here longer, even though illegally. These examples show that although IIRIRA generally treats entry without admission more severely, it does not do so in every possible respect.

And while it is generally reasonable to think that Congress would want to disincentivize illegal entry, the expedited removal provisions address this concern to a

notable extent. Aliens subject to expedited removal must be mandatorily detained. 8 U.S.C. §§ 1225(b)(1)(A)(iii), (B)(ii), (B)(iii)(IV); 8 C.F.R. § 235.3(b)(2)(iii); *Jennings*, 583 U.S. at 297. The expedited removal process applies to unlawful border entrants when apprehended at the border. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (iii) (applying expedited removal to aliens inadmissible under 8 U.S.C. § 1182(a)(7) for lacking valid entry documents). And the government has the discretion to apply the expedited removal process to aliens who have not been physically present in the United States continuously for two years prior to a determination of inadmissibility. *Id.* § 1225(b)(1)(A)(iii).

So entirely aside from § 1225(b)(2)(A), expedited removal and its associated mandatory detention authorities already cover illegal entrants and subject them to less favorable treatment. The same is true of § 1226(c). Aliens who illegally enter the country may also be subject to criminal prosecution. *See* 8 U.S.C. §§ 1325, 1326. Thus, to the extent there is concern that the traditional understanding of § 1225(b)(2)(A) lowers the costs of illegal entry, the expedited removal and other detention provisions, as well as the criminal prohibitions, address this concern to some degree. Regardless, the Supreme Court has recently confirmed that concerns that an interpretation “will create perverse incentives for aliens to enter the country illegally . . . cannot defeat the best reading of the text.” *Al Otro Lado*, 2026 WL 1825741, at *10.

In short, although the government’s appeal to statutory purpose is a plausible one, there are equally plausible reasons why Congress in 1996 may have stopped of short requiring mandatory detention for all unadmitted aliens present in the United States. Arguments from

statutory purpose are therefore not conclusive enough to overcome the textual difficulties associated with the government’s new interpretation.

B

We last consider the post-enactment practice and understanding surrounding IIRIRA’s detention authorities. These considerations likewise do not provide additional support for the government’s new interpretation. Instead, they detract from it.

As already explained, the government since IIRIRA maintained an unbroken practice of permitting the release on bond of noncriminal aliens detained inside the United States and charged with removability for being present without admission. *See Barbosa da Cunha*, 175 F.4th at 91 (“[T]he government concedes that, for five Presidential administrations over nearly three decades, it did consistently release detainees on bond whom the government now argues are covered by Section 1225(b)(2)(A).”). Only in 2025 did the government change its legal position. At no point during the intervening decades did prior Administrations indicate that the Executive Branch had been violating a detention mandate that the government now describes as “clear.” Indeed, as far as we can tell, no one over the course of the last thirty years (until very recently) expressed the view that the government’s longstanding approach to the detention of unadmitted aliens present in the United States contravened the statute.

It is true that “[a]uthority actually granted by Congress of course cannot evaporate through lack of administrative exercise.” *FTC v. Bunte Brothers, Inc.*, 312 U.S. 349, 352 (1941). And the government is permitted to change its position if the statute so allows. But “just

as established practice may shed light on the extent of power conveyed by general statutory language, so the want of assertion of power by those who presumably would be alert to exercise it, is equally significant in determining whether such power was actually conferred.” *Id.*; see also *Biden*, 600 U.S. at 519 (Barrett, J., concurring). That no Administration “has ever found” a duty mandatorily to detain unadmitted aliens present in the interior of the country “is strong evidence that it does not exist.” *Learning Resources*, 607 U.S. at 250; see also *id.* at 245 (“It is also telling that in IEEPA’s ‘half century of existence,’ no President has invoked the statute to impose *any* tariffs—let alone tariffs of this magnitude and scope. . . . The ‘lack of historical precedent’ for the IEEPA tariffs, ‘coupled with the breadth of authority’ that the President now claims, ‘is a telling indication’ that the tariffs extend beyond the President’s ‘legitimate reach.’” (quoting *NFIB v. Dep’t of Lab.*, 595 U.S. 109, 119 (2022))); *Abramski v. United States*, 573 U.S. 169, 202-03 (2014) (Scalia, J., dissenting) (“[T]he fact that the agency charged with enforcing the Act read it, over a period of roughly 25 years, not to apply to the type of conduct at issue here is powerful evidence that interpreting the Act in that way is natural and reasonable. . . .”).³

³ The dissent errs in attempting to cast as an exercise of “discretion” the government’s approximately thirty years of affording bond hearings to unadmitted aliens present in the interior of the United States. Dissent at 83-85. By the government’s new interpretation, there was no such discretion for it to exercise. The language of § 1225(b)(2)(A) is mandatory. See *Jennings*, 583 U.S. at 302. The import of the government’s new position is not that it was previously exercising discretion, but rather that it was violating the statute for three decades, without anyone having raised this issue until recently.

Although the government concedes the novelty of its policy, it points to one regulation promulgated in 1997 that arguably reflects the government’s current interpretation of § 1225(b)(2)(A). Specifically, 8 C.F.R. § 235.3(b)(1)(ii) provides:

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 [8 U.S.C. § 1225(b)(2)] for a proceeding under section 240 of the Act [8 U.S.C. § 1229a].

See also Buenrostro-Mendez, 166 F.4th at 507 (“This regulatory provision from 1997 looks no different from the government’s interpretation in 2025.”). But this sentence is included at the end of a broader provision about expedited removal, which has its own distinct mandatory detention provision, as discussed above. It is thus not apparent whether this regulation was meant to address the question before us. That is underscored by the fact that the government did not follow this interpretation. It instead followed an approach consistent with a different statement in the regulatory record: “*Despite being applicants for admission*, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) *will be eligible for bond* and bond redetermination.” 62 Fed. Reg. 10312, 10323 (March 6, 1997) (emphasis added); *see also id.* (stating that “inadmissible aliens, except for arriving aliens, *have available to them bond redetermination hearings*” (emphasis added)).

In short, statements in the regulatory record are at best mixed, but the government’s consistent practice over the last thirty years is not. The dissent therefore errs in suggesting that all we have here is Executive Branch “inactions.” Dissent at 83 (brackets omitted). We have thirty years of action—the government actively treating unadmitted aliens present in the interior of the country as entitled to bond hearings under § 1226(a). To the extent the dissent asks for further evidence of the Executive Branch embracing the traditional understanding of the relationship between §§ 1225 and 1226, Dissent at 83, the government (beyond the sources we have already cited) stated this same understanding before the Supreme Court in *Jennings*.⁴ If the dissent would ask for even further Executive Branch statements, their absence is, if anything, more indicative

⁴ See Br. for Pet’rs at 2-4, *Jennings*, 583 U.S. 281 (describing § 1225(b)(2)(A) and its predecessors as reflecting a “longstanding rule” of mandatory detention for “aliens who arrive at our Nation’s doorstep,” and § 1226 as providing “[a] different framework . . . for the detention and removal of aliens who are already inside the United States”); Supp. Br. for Pet’rs at 4, 12, *Jennings*, 583 U.S. 281 (explaining that “[i]n virtually all cases, Section 1225(b) is applied to aliens seeking initial entry,” except that in “unusual circumstances” it can apply to returning lawful permanent residents, but that “Section 1226(a) governs the detention and release of other aliens arrested inside the United States. 8 U.S.C. 1226(a). This encompasses aliens in a wide variety of circumstances, including those who are present after entering illegally[.]”); Transcript of Oral Argument at 12, *Jennings*, 583 U.S. 281 (Oct. 3, 2017) (on reargument) (“Sections 1225 and 1226 have traditionally been understood to get at different categories of aliens. 1226 is the provision that we use when we arrest somebody who is within the—who has entered the United States—or is within the United States; 1225 is the one we use when we are dealing with aliens who arrive at our shores.”); see also Transcript of Oral Argument at 7-8, *Jennings*, 583 U.S. 281 (Nov. 30, 2016).

of the fact that the traditional understanding of the detention regime was so well-accepted. That the government for decades did not exercise the new power it asserts is therefore both “strong evidence that it does not exist,” *Learning Resources*, 607 U.S. at 250, and at minimum does not help the government in overcoming the textual and interpretive problems with its current interpretation.

Meanwhile, over the course of the nearly thirty years that the government allowed for aliens like the plaintiffs to receive bond hearings, Congress amended the INA on various occasions. *See, e.g.*, Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105-100, tit. II, 111 Stat. 2193 (1997); USA PATRIOT Act, Pub. L. No. 107-56, §§ 411-12, 115 Stat. 272, 345-52 (2001); REAL ID Act, Pub. L. No. 109-13, div. B, 119 Stat. 302 (2005); Trafficking Victims Protection Reauthorization Act, Pub. L. No. 110-457, § 235, 122 Stat. 5044, 5074-82 (2008). On none of those occasions did Congress clarify that the Executive Branch had been avoiding its statutory obligation to detain the large number of aliens present inside the country without admission. And the Laken Riley Act, as we have discussed, ordered the mandatory detention of aliens who would already be subject to that form of detention under the government’s new interpretation of § 1225(b)(2)(A).

The dissent suggests that our interpretation fails to account for “how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued.” Dissent at 85 (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 33 (2012)). But there is no need to speculate about what such a reader would have understood

in 1996. As explained above, every reliable indicator of congressional, executive, and judicial understanding from IIRIRA's enactment until 2025 reflects the same view: unadmitted aliens apprehended in the interior remained eligible for release on bond pending removal proceedings. This historical understanding of the relationship between § 1225(b)(2)(A) and § 1226 is further evidence that the text both readily bears, and more probably supports, our interpretation.

IV

Especially in the context of a complicated statute like the INA, statutory interpretation does not always yield a crystal-clear answer. In those instances, the correct interpretation is the better one, even if both positions have shortcomings. In this case, the better and more natural interpretation of the text, considered in context, is that Congress in 1996 did what practice and precedent long understood it to have done: subject unadmitted aliens entering the United States at the border to § 1225(b)(2)(A), and unadmitted aliens present in the interior of the country to § 1226. The judgment of the district court is

AFFIRMED.

BEA, Circuit Judge, Dissenting:

Much of what I write here in dissent has been said before in the opinions and dissents of the five Circuit Courts which have decided cases similar to this appeal. Nonetheless, out of respect for the majority, I address their several arguments and explain why I dissent from each of them.

Because I conclude that the text determines that aliens present without admission who are apprehended inside the United States are subject to mandatory detention without bond under § 1225(b)(2)(A), I respectfully dissent.

I. Text

As with any question of statutory interpretation, “we start, of course, with the statutory text, and proceed from the understanding that unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning.” *Sebelius v. Cloer*, 569 U.S. 369, 376 (2013) (internal citations and quotation marks omitted).

Section 1225(a)(1) states: “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).

Section 1225(b)(2)(A) states: “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). As the majority has accurately stated, subparagraphs (B) and (C) are not relevant to this case. *See* Maj. Op. at 18.

And Section 1101(a)(13)(A) states: “The terms ‘admission’ and ‘admitted’ mean, with respect to an alien, 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).

Plaintiffs assert that they are not properly held under § 1225(b)(2)(A) because, while they are “applicants for admission,” they are not “seeking admission.” The government contends that all “applicants for admission” are necessarily seeking admission, and thus, plaintiffs may be held without bond under § 1225(b)(2)(A).

My thinking proceeds in three steps. First, I accept, as I must, the premise that Congress has “deemed” “[a]n alien present in the United States who has not been admitted” an “applicant for admission.” *See* 8 U.S.C. § 1225(a)(1). I must accept this premise because it is Congress’s diktat, applicable to all aliens present in the country who have not previously been legally admitted, including all members of the plaintiff class. This even though we would not usually think of an unadmitted alien illegally present in the United States as an applicant for “legal entry”; indeed, the alien has already entered the country illegally and is no longer seeking entry and claims *not* to be seeking legal entry. *See* 8 U.S.C. § 1101(a)(13)(A); *Sturgeon v. Frost*, 587 U.S. 28, 47 (2019) (“The key word here is ‘deemed.’ That term is used in legal materials to treat (something) as if . . . it were really something else. . . . Legislators (and other

drafters) find the word useful when it is necessary to establish a legal fiction, either by deeming something to be what it is not or by deeming something not to be what it is.” (internal citation and quotation marks omitted)); *see also Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (holding that in § 1225(a)(1), Congress included a “deeming provision, which places some physically-but-not-lawfully present noncitizens into a fictive legal status for purposes of removal proceedings”); *Hernandez Alvarez v. Warden*, 175 F.4th 1258, 1289 (11th Cir. 2026) (Lagoa, J., dissenting) (“The principle is straightforward. When a statute deems ‘A’ to be ‘B,’ it places A in the legal posture of B as a matter of law, with the consequences that follow. Otherwise, ‘there [is no] need to create a special legal fiction’ in the first place.” (internal citation omitted)). So, deemed an applicant for legal entry he is.

Second, I apply a non-specialized, ordinary meaning to both the phrases “applicant for admission” and “seeking admission” as neither phrase is defined in the statute. *See Wisconsin Cent. Ltd v. United States*, 585 U.S. 274, 277 (2018) (“As usual, our job is to interpret the words consistent with their ordinary meaning . . . at the time Congress enacted the statute.” (internal citation omitted)); *Cloer*, 569 U.S. at 376 (“[U]nless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning.” (internal citations and quotation marks omitted)).

Third and finally, considering the non-specialized meanings of “applicant for admission” and “seeking admission,” I ask whether an applicant for admission is someone who is seeking admission. As several judges before me have noted, an applicant for admission is one

who applies for admission, and the ordinary meaning of “apply for admission” is synonymous with “seeking admission.” The use of the gerund does not change its meaning. *See, e.g., Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 502 (5th Cir. 2026) (“When a person applies for something, [he is] necessarily seeking it.”); *Hernandez Alvarez*, 175 F.4th at 1291 (Lagoa, J., dissenting) (“The ordinary meaning of the two phrases is synonymous—a point the majority concedes.”); *Lopez-Campos v. Raycraft*, 175 F.4th 713, 736 (6th Cir. 2026) (Murphy, J., dissenting) (“Under basic interpretive rules, we must give the undefined word ‘applicant’ its ordinary meaning: one who applies for or seeks. We thus must regard the Petitioners as ‘applying for’ or ‘seeking’ admission when we see phrases like ‘alien applying for admission’ or ‘alien seeking admission’ in the INA—including in § 1225(b)(2)(A)’s detention provision.”).

Thus, I conclude that the government is correct that all those deemed to be “applicants for admission” are necessarily “seeking admission,” and plaintiffs may be properly detained without bond under § 1225(b)(2)(A). Again, this is the case even though the aliens in question are already present in the United States and would not traditionally be understood to be seeking legal entry; Congress has deemed them to be applicants for admission, and the Court may not ignore that.

Yet, if there were any ambiguity regarding how § 1225(a)(1) and § 1225(b)(2)(A) should be understood, the other provisions of § 1225 provide yet further proof that an “applicant for admission” is “seeking admission.” *See* 8 U.S.C. § 1225(a)(3); 8 U.S.C. § 1225(a)(5).

Section 1225(a)(3) states that “[a]ll aliens (including alien crewmen) who are applicants for admission *or oth-*

erwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3) (emphasis added). That the words “or otherwise” set off “applicants for admission” from “seeking admission” demonstrates that Congress denoted applicants for admission as a “subset” of those seeking admission. *Buenrostro-Mendez*, 166 F.4th at 503; *see also Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (“‘Otherwise’ means ‘in a different way or manner.’” (quoting Webster’s Third New International Dictionary 1598 (1971))); *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) (observing that Congress often uses the phrase “or otherwise” to denote a “subset”). An obvious example of an alien seeking admission “otherwise” than as an applicant for admission described in § 1225(a)(1) and § 1252(b)(2)(A) is an alien applying for admission at a U.S. Embassy or Consulate. The majority’s assertion that “the government’s reading of the word ‘otherwise’ in § 1225(a)(3) is not the only one,” does not defeat the argument that it is undoubtedly the simplest and most natural interpretation of the text. *See* Maj. Op. at 41.

For further proof that applicants for admission are persons seeking admission, one need only look to § 1225(a)(5). It provides 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). That provision, too, shows that Congress treated applicants for admission as among those seeking admission. *See Buenrostro-Mendez*, 166 F.4th at 503 (“Th[e] language [in § 1225(a)(5)] strongly sug-

gests that those who are applicants for admission are ‘seeking admission.’”); *Lopez-Campos*, 175 F.4th at 750 (Murphy, J., dissenting) (“This provision implies that an ‘applicant for admission’ is ‘seeking admission’ by connecting the two phrases.”). The majority asserts that “the required statement ‘under oath’ about the alien’s ‘intended length of stay,’ 8 U.S.C. § 1225(a)(5), is a less natural question to pose to an alien who has resided in the United States for many years, and would make more sense posed to an alien at the border.” *See* Maj. Op. at 44. This is unconvincing. “[A]n immigration officer can ask an unlawfully present alien each of [the] questions [raised in the statute], and the alien can answer them. How long do you intend to stay? Do you intend to remain permanently or become a United States citizen? Are you inadmissible? These questions are perfectly intelligible, and the answers perfectly informative.” *Hernandez Alvarez*, 175 F.4th at 1294 (Lagoa, J., dissenting). And in any case, “a more comfortable fit does not allow us to read an exception into § 1225—particularly when Congress provided none.” *Id.* at 1295. Indeed, these questions would be relevant preliminarily to the immigration officer informing the alien that he could avoid detention by returning to his country or otherwise leaving the United States, pursuant to § 1225(a)(4).

The plain meaning of the words used in § 1225(b)(2)(A), as well Congress’s intertwined usage of the relevant phrases throughout § 1225, support the government’s position that an “applicant for admission” is necessarily “seeking admission.”

II. Purpose

This straightforward textual interpretation meshes with the purpose of the statute. As the majority recog-

nizes, our en banc panel before us has already considered the context of IIRIRA’s enactment and has determined its purpose: 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—in the position of an ‘applicant for admission.’” *Torres*, 976 F.3d at 928.¹

Indeed, under the pre-IIRIRA regime, when and where an alien encountered immigration officials mattered significantly, because deportation proceedings of aliens who had successfully sneaked into the country were more favorable to the illegal alien than were exclusion proceedings applicable to aliens apprehended at the border. As the en banc panel explained it, the “distinction between those who had entered the United States and those who had not was important,” in that “[aliens] who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while [aliens] who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings.” *Torres*, 976 F.3d at 927-28 (quoting *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010)); see *Mullin v. Al Otro Lado*, 609 U.S. ____ (2026) (So-

¹ The majority asserts that the en banc panel in *Torres* relied in part on legislative history to ascertain IIRIRA’s purpose, but it does not suggest that *Torres*’s conclusion about IIRIRA’s purpose is not binding on this panel. See *United States v. Johnson*, 256 F.3d 895, 914 (9th Cir. 2001) (“[W]here a panel confronts an issue germane to the eventual resolution of the case, and resolves it after reasoned consideration in a published opinion, that ruling becomes the law of the circuit, regardless of whether doing so is necessary in some strict logical sense.”); see also *infra* at 86-90.

tomayor, J., dissenting) (“One incongruity in [the pre-IIRIRA] system was that deportation proceedings conferred greater procedural protections than exclusion proceedings, which benefited [aliens] who entered illegally without inspection compared to those who showed up legally at ports of entry.”); *see also Landon v. Plasencia*, 459 U.S. 21, 26 (1982) (summarizing the differences between deportation and exclusion proceedings); *Maldonado-Sandoval v. U.S. Immigr. & Naturalization Serv.*, 518 F.2d 278, 280 n.3 (9th Cir. 1975) (same).

The upshot was that prior to 1996, our immigration laws “created an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.” *Torres*, 976 F.3d at 928.

Congress in IIRIRA sought to “address[] this anomaly.” *Hing Sum*, 602 F.3d at 1100. Among other changes, IIRIRA eliminated the concept of “entry” as the basis for determining the immigration processes to which an alien would be subject. *Torres*, 976 F.3d at 928. In its place, Congress substituted the concept of “admission,” 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). Congress also eliminated the distinction between deportation and exclusion proceedings and replaced them with a singular “removal” proceeding. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025); *see* 8 U.S.C. § 1229a. As stated above, through these changes, IIRIRA “ensures 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*, 976 F.3d at 928; *see also*

Mullin, 609 U.S. ____ (2026) (Sotomayor, J., dissenting) (“IIRIRA was designed to ensure that noncitizens who have entered the United States without inspection do not gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry” (internal quotation marks and citation omitted)).

We have previously “refuse[d] to interpret the INA in a way” that “‘create[s] a perverse incentive to enter at an unlawful rather than a lawful location,’” because “this was the precise situation that Congress intended to do away with by enacting [IIRIRA].” *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024) (quoting *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020)). Indeed, it is not readily conceivable that the Congress that enacted IIRIRA, a law that clearly endeavored to strengthen our nation’s immigration laws against illegal entrants, would have wanted to give preferential bond treatment to those aliens who had entered this country without permission and had managed to avoid detection. *Buenrostro-Mendez*, 166 F.4th at 508 (“It seems strange to suggest that Congress would have preserved bond hearings exclusively for unlawful entrants.”).

And yet the majority asserts that despite Congress’s attempt to place those who lawfully present themselves at the border and those who enter illegally “on equal footing in removal proceedings,” Congress also intended to allow aliens who entered illegally to be released on bond into the country during their immigration proceedings, while denying bond to those who lawfully presented themselves at the border.

That does not sound at all like “equal footing” to me. Those released on bond are permitted to live within the United States often for several years before removal proceedings are finalized, and that is only after they have been apprehended.² See *INS v. Rios-Pineda*, 471 U.S. 444, 450 (1985) (“One illegally present in the United States who wishes to remain . . . has a substantial incentive to prolong litigation in order to delay physical deportation for as long as possible.”); David Hausman & Jayashri Srikantiah, *Time, Due Process, and Representation: An Empirical and Legal Analysis of Continuances in Immigration Court*, 84 Fordham L. Rev. 1823, 1824-25 (2016) (“The slowest-moving cases in immigration courts . . . are those of individuals who are not detained and not on a priority docket. Those cases regularly last several years.”); Donald Kerwin & Evin Millet, *The US Immigration Courts, Dumping Ground for the Nation’s Systemic Immigration Failures: The Causes, Composition, and Politically Difficult Solutions to the*

² Bond is set at a minimum of just \$1,500. 8 U.S.C. § 1226(a)(2)(A). In considering whether an alien merits release on bond, as well as the amount of bond that is appropriate, immigration judges consider the following factors:

- (1) whether the alien has a fixed address in the United States; (2) the alien’s length of residence in the United States; (3) the alien’s family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien’s employment history; (5) the alien’s record of appearance in court; (6) the alien’s criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien’s history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien’s manner of entry to the United States.

In Re Guerra, 24 I. & N. Dec. 37, 40 (BIA 2006).

Court Backlog, 11 J. Migration & Hum. Sec. 107 (2023) (“EOIR reports that as of March 10, 2023, there were: 731,149 cases in removal proceedings that had been pending for at least three years and 277,412 pending for at least five years.”). These long delays provide yet another benefit to aliens who cross the border illegally: as time passes, community ties strengthen, and families grow, the alien’s case for cancellation of removal under 8 U.S.C § 1229b only improves. *Barton v. Barr*, 590 U.S. 222, 245-46 (2020) (Sotomayor, J., dissenting) (noting that “factors such as family ties within the United States, residence of long duration in this country (particularly when the inception of residence occurred at a young age), and business ties all favor [an alien] seeking cancellation [of removal under 8 U.S.C § 1229b]” (internal citation and quotation marks omitted)). Those that present themselves lawfully at the border never receive such opportunities.

The majority’s interpretation would thus reintroduce the very inequality that *Torres* told us Congress sought to remedy in IIRIRA: that our immigration laws would incongruously privilege those who enter this country illegally and evade detection, as compared to those who responsibly present themselves at ports of entry consistent with legal requirements. Indeed, the majority’s view would “read IIRIRA to expand (rather than eliminate) the ‘perverse incentive to enter at an unlawful rather than a lawful location’ that existed before Congress passed that law.” *Lopez-Campos*, 175 F.4th at 755-56 (Murphy, J., dissenting) (quoting *Thuraissigiam*, 591 U.S. at 109); *see also Avila v. Bondi*, 170 F.4th 1128, 1136 (8th Cir. 2026) (“[U]nder Avila’s interpretation of the statute, he would be entitled to receive a bond hearing, even though aliens who ‘seek[] admission’ by ac-

tively engaging with the legal process would not be. Because this outcome is incongruous and contradicts the statute’s goal of placing all aliens ‘on equal footing,’ it cuts against Avila’s reading of the statute.” (internal citation omitted)).

The text of § 1225 and the purpose of IIRIRA thus demonstrate that the government is correct: “applicants for admission” may be properly detained under § 1225(b)(2)(A) without bond.

III. Further Considerations

As both the plain text of § 1225 itself and the purpose of IIRIRA establish that the government may detain without bond aliens present without admission under § 1225(b)(2)(A), the only question left to ask is whether there is any text in another section of IIRIRA or any other tool of statutory interpretation that would undermine this conclusion. The majority proposes several avenues, none of which are persuasive.

A. Congress’s Clarity

Pervading the majority’s opinion is an underlying demand for congressional clarity to authorize mandatory detention of aliens who entered the country illegally. *See, e.g.*, Maj. Op. at 48-49 (“In short, if the statute were departing from prior law and practice and imposing a new mass detention requirement, Congress would have drafted language more direct than what we have in § 1225(b)(2)(A) and the rest of § 1225 The ‘oblique’ and ‘elliptical’ language of § 1225(b)(2)(A), *West Virginia v. EPA*, 597 U.S. 697, 723 (2022), does not approach the ‘requisite clarity’ we would expect if ‘Congress wish[ed] to alter the fundamental details’ of the mandatory detention scheme. [*United States Forest*

Serv. v. Cowpasture River Pres. Ass’n, 590 U.S. 604, 621 (2020)] (quotations omitted).”).

Yet, the standard by which the expected “requisite clarity” ought to be judged is not itself very clear. Under this unbounded standard, a judge can stymie congressional action even when a statute’s plain text would allow for the challenged application; this opens the door to judicial legislation, by allowing a judge to claim any text is just short of the clarity he would require.

While the majority is correct that the Supreme Court has employed this heightened standard in recent Major Questions Doctrine cases, many of which the majority cites, as Judge Lagoa made clear, it is doubtful that the doctrine applies to the case at hand. *See Hernandez Alvarez*, 175 F.4th at 1299-1309 (Lagoa, J., dissenting). For one thing, only six members of the current Supreme Court have ever endorsed the use of the Major Questions Doctrine, *see, e.g., W. Virginia v. Env’t Prot. Agency*, 597 U.S. 697 (2022), and of those six, three found the doctrine inapplicable in cases involving foreign affairs, *see Learning Res., Inc. v. Trump*, 607 U.S. 229, 333-34 (2026) (Kavanaugh, J., dissenting) (noting that the Major Questions Doctrine “requires ‘clear congressional authorization’ for an executive action of major economic and political significance” and asserting that “[i]n foreign affairs cases, courts read the statute as written and do not employ the major questions doctrine as a thumb on the scale against the President.”).

The Supreme Court has long recognized that immigration is ineluctably tied to foreign affairs. *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-589 (1952) (“[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct

of foreign relations, the war power, and the maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.”); *Biden v. Texas*, 597 U.S. 785, 805-06 (2022) (“[T]he Court has taken care to avoid the danger of unwarranted judicial interference in the conduct of foreign policy, and . . . [t]hat is no less true in the context of immigration law, where [t]he dynamic nature of relations with other countries requires the Executive Branch to ensure that enforcement policies are consistent with this Nation’s foreign policy” (internal citations and quotation marks omitted)).

Considering also Justice Gorsuch’s concurrence in *Learning Resources*, in which he asserted that “the major questions doctrine may speak with less force where the President and Congress enjoy overlap[ping] . . . authority,” 207 U.S. at 284 (Gorsuch, J., concurring), it appears likely that there would be at most two votes at the Supreme Court for any doctrine that does not simply “read the statute as written” and instead places “a thumb on the scale against the President,” *id.* at 334 (Kavanaugh, J., dissenting). I am not inclined to follow the minority.

Not only is a doctrine demanding more congressional clarity ill-fitted to the case at hand because of the foreign affairs dimension, the case also lacks many of the other characteristics of a typical Major Questions Doctrine case. In enforcing immigration laws, the executive is not acting “outside its wheelhouse.” *See Biden v. Nebraska*, 600 U.S. 477, 518 (2023) (Barrett, J., concurring); *Hernandez Alvarez*, 175 F.4th at 1308 (Lagoa, J., dissenting) (“If detaining aliens for removal proceedings is not in the immigration enforcement wheelhouse,

nothing is.”). The text from which the detainment power is derived is not hidden in some “previously little-used [statutory] backwater.” *West Virginia*, 597 U.S. at 730; *Hernandez Alvarez*, 175 F.4th at 1308 (Lagoa, J., dissenting) (“[S]ection 1225(b)(2)(A) is the INA’s principal mandatory detention authority for applicants for admission. And the deeming provision on which it rests, § 1225(a)(1), is not buried in some ‘backwater.’ . . . It is the opening line of § 1225.”).

And finally, the agency has long recognized that it had the power to detain aliens who are present without having been admitted without bond under § 1225(b)(2)(A). *See West Virginia*, 597 U.S. at 747 (Gorsuch, J., concurring) (“A ‘contemporaneous’ and long-held Executive Branch interpretation of a statute is entitled to some weight as evidence of the statute’s original charge to an agency.”). Among other evidence, the 1997 interim rule, which implemented IIRIRA, stated: “*Despite being applicants for admission*, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.” Detention and Removal of Aliens, 62 Fed. Reg. 10312, 10323 (March 6, 1997) (codified at 8 C.F.R. pt. 1 et al.) (emphasis added). As Judge Lagoa stated: “The word ‘despite’ is telling. It concedes that aliens present without admission are, ‘applicants for admission,’ and frames bond eligibility not as a statutory entitlement, but as an accommodation notwithstanding what the statute would otherwise require.” *Hernandez Alvarez*, 175 F.4th at 1307 (Lagoa, J., dissenting).

There is even further evidence of the executive branch’s original understanding of IIRIRA. A regulation enacted in 1997 that is still on the books today pro-

vides the same interpretation of § 1225(b)(2)(A) for which the government advocates:

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 [8 U.S.C. § 1225(b)(2)] for a proceeding under section 240 of the Act [8 U.S.C. § 1229a].

8 C.F.R. § 235.3(b)(1)(ii). Aliens who are “applicants for admission” by virtue of being “present in the United States” without admission are plainly subject to § 1225(b)(2)(A) under this regulation. *See also Buenrostro-Mendez*, 166 F.4th at 507 (“This regulatory provision from 1997 looks no different from the government’s interpretation in 2025.”).

That the executive branch had until this point exercised its discretion in deciding not to detain aliens present without admission under § 1225(b)(2)(A) is irrelevant. Such previous governmental practice does nothing to change the text of the statute. The majority asserts that the executive has “traditionally understood” § 1252(b)(2)(A) as applying only to aliens at the border; for evidence, the majority relies largely on the executive’s prior practice of not detaining illegal aliens within the country under § 1252(b)(2)(A).³ Its conclusion is

³ The majority also cites the government’s briefing and oral argument in the 2018 Supreme Court case, *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *See* Maj. Op. at 65-66. The majority’s quotes from that briefing and argument make clear only that at that time, the

therefore apparently based on the homely nostrum, a bit modified: “[In]actions speak louder than [the] words [of the statute].”

But, as the majority concedes, the “[a]uthority actually granted by Congress of course cannot evaporate through lack of administrative exercise.” Maj. Op. at 62 (quoting *FTC v. Bunte Brothers, Inc.*, 312 U.S. 349, 352 (1941)); see also *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015) (“[A] ‘long-established practice’ does not justify a rule that denies statutory text its fairest reading.”); *Buenrostro-Mendez*, 166 F.4th at 506 (“The text says what it says, regardless of the decisions of prior Administrations.”); *Hernandez Alvarez*, 175 F.4th at 1307 (Lagoa, J., dissenting) (“That the Executive long preferred flexibility over rigidity is not evidence that the mandatory authority was never conferred.”); *Lopez-Campos*, 175 F.4th at 758 (Murphy, J., dissenting) (“[T]he Court did not hesitate to reject what had been the decades-old agency and judicial view of Title VII when it held that the text unambiguously covered sexual-orientation discrimination [in *Bostock v. Clayton County*]”); *Bob Jones Univ. v. United States*, 461 U.S. 574, 595 (1983) (“That [a change in the executive’s interpretation of a statute] may be seen as belated does not undermine its soundness.”); c.f. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024) (“Courts must exercise their independent judgment in deciding

government relied on § 1226(a) when detaining illegal aliens within the country and on § 1225(b)(2)(A) when detaining those at the border. This recitation of past usage was not a comment on the meaning of the text of §§ 1225 and 1226 and was certainly not a concession that § 1225(b)(2)(A) could not be used to detain aliens present within the country. Therefore, its probative value regarding the question in this case is limited.

whether an agency has acted within its statutory authority . . . [and] courts need not and under the APA may not defer to an agency interpretation of the law.”).

As political winds change and the resources available to the executive branch change with them, so do executive priorities. See *United States v. Morton Salt Co.*, 338 U.S. 632, 647-48 (1950) (“We know that unquestioned powers are sometimes unexercised from lack of funds, motives of expediency, or the competition of more immediately important concerns.”); see, e.g., *Sherman Antitrust Act*, Encyclopedia Britannica, <https://www.britannica.com/event/Sherman-Antitrust-Act> (“The first vigorous enforcement of the [1890] Sherman Act occurred during the administration of U.S. Pres. Theodore Roosevelt (1901-1909)”); Joseph W. Yockey, *Choosing Governance in the FCPA Reform Debate*, 38 J. Corp. L. 325, 326 (2013) (noting that while the Foreign Corrupt Practices Act was adopted in 1977, it lay “[m]ostly dormant for its first 25 years” due in part to primitive resolution tools and concerns that American companies would be disadvantaged as compared to international competitors); *Bob Jones University*, 461 U.S. at 579, 595 (where the Court upheld the Internal Revenue Service’s new interpretation of 26 U.S.C. § 501(c)(3) of the Internal Revenue Code of 1954 such that any organization practicing racial discrimination could not be considered a “charitable organization” and thus could not be considered “exempt from taxation” under the statute, even though the executive, based on political will, had never exercised its authority in such a manner and such organizations had always been considered worthy of § 501(c)(3) status). The language of a statute and what it permits, however, is unaffected by such exercises of executive discretion and interpretation.

Thus, having dismissed the potential bases for applying a standard that would require heightened congressional clarity, I see no reason to suggest that the Court should depart from its usual task, which is to “determin[e] the application of [the] governing text to the given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 33 (2012). No heightened standard of clarity is required or appropriate. See *Learning Resources, Inc.*, 607 U.S. at 333-34 (Kavanaugh, J., dissenting).

Still, whether this heightened demand for an untold level of clarity applies here is irrelevant in any case, because, as I hope to have laid out above, the text is indeed clear. One can ask why Congress did not arrange its words in a more pleasing manner or why Congress did not use an exclamation point to confirm its intended action. But a fair reading of the text leads to only one conclusion: § 1225(a)(1) deems plaintiffs to be applicants for admission, and § 1225(b)(2)(A) states that applicants for admission (who, by their congressionally deemed status, are necessarily seeking admission) can be held without bond. The statute’s purpose further confirms this interpretation.

B. *Torres v. Barr*

In *Torres v. Barr*, the Ninth Circuit held that although an alien was an “applicant for admission” under § 1225(a)(1), the use of that “term of art” did not mean that the alien had, “at a distinct point in time” submitted an “application of admission” for purposes of

8 U.S.C. § 1182(a)(7).⁴ In discussing the case, our later panel stated: “*Torres* merely rejected the view that an alien remains in a perpetual state of applying for admission.” *Gambino-Ruiz*, 91 F.4th at 989. The majority asserts that “if the legal construct ‘applicant for admission’ does not mean ‘an alien remains in a perpetual state of applying for admission’ . . . we do not think an alien present in the interior of the United States remains in the perpetual state of seeking admission (that is, seeking *entry*), either.” Maj. Op. at 37. But *Torres* and *Gambino-Ruiz* are readily distinguishable; the “perpetual state of applying for admission” language has no bearing on the outcome of this case.

The facts of *Torres* are as follows. In 2008, Congress passed the Consolidated Natural Resources Act of 2008, which “imposed U.S. immigration laws, in particular the INA, within the Commonwealth of the Northern Mariana Islands (CNMI) beginning November 28, 2009.” *Torres*, 976 F.3d at 921-22. The petitioner, a native of the Philippines, had entered CMNI as a guest worker before 2000 and was working there lawfully under previous CMNI law, but with the imposition of the INA, she became removable. *Id.* at 923. Congress enacted a two-year reprieve during which immigrants lawfully present in the CNMI under CNMI law on November 28, 2009 would not be deported under 8 U.S.C. § 1182(a)(6)(A)(i) for not having been admitted or paroled. *Id.* at 922. Nonetheless, in 2010, Petitioner was placed in removal

⁴ Section 1182(a)(7)(A)(i)(I) renders inadmissible “any immigrant at the time of application for admission . . . who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter”

proceedings under § 1182(a)(7)(A)(i)(I) as an alien who lacked a valid entry document “at the time of application for admission.” Petitioner challenged her removal on the basis that, because she had not yet submitted an application for admission into the United States, she was not removable under this provision. The IJ ordered her removed, and the BIA affirmed. She appealed. We reversed.

The en banc Court considered § 1182(a)(7)(A)(i)(I), which renders inadmissible: “any immigrant at the time of application for admission . . . who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter.” *Id.* The Court’s task was to “construe the meaning of the phrase ‘at the time of application for admission’” as it appears in § 1182(a)(7)(A)(i)(I). *Torres*, 976 F.3d at 924. The panel noted that the government’s interpretation would “render[] a complete nullity” both Congress’s two-year reprieve for immigrants lawfully present in the CNMI, and the neighboring § 1182(a)(6). *Id.* at 930. Ultimately, the Court concluded: “Given that an immigrant submits an ‘application for admission’ at a distinct point in time, stretching the phrase ‘at the time of application for admission’ to refer to a period of years would push the statutory text [of § 1182(a)(7)(A)(i)(I)] beyond its breaking point.” *Id.* at 926. Thus, the Court held that § 1182(a)(7)(A)(i)(I) did not apply to the petitioner, because although she was an applicant for admission under § 1225(a)(1), at no point in time during the yet-unexpired two-year reprieve period, had she submitted an application for admission for the purposes of removal under § 1182(a)(7)(A)(i)(I).

In *Gambino-Ruiz*, the Court clarified that the holding in *Torres* was limited to the factual situation in which the petitioner, unlike plaintiffs here, legally entered the country; as the Court stated in *Torres*, the petitioner in that case “never crossed the U.S. border; the border crossed [her]” when the INA was applied to CNMI. 91 F.4th at 989. In the normal case in which an alien illegally crosses the border and is later apprehended, the Court held that an alien may be deemed for purposes of § 1182(a)(7)(A)(i)(I) to have submitted an “application for admission” at the moment he crossed illegally into the United States and was thereafter apprehended. *Id.*; see also Maj. Op. at 35-37.

As is clear from the above, in neither *Torres* nor *Gambino-Ruiz* did the Court consider § 1225(b)(2)(A). In neither case did the Court consider the detention of immigrants. The Court recognized that the deeming clause of § 1225(a)(1) did not “alter[] the meaning of [the] substantive ground of inadmissibility [in § 1182(a)(7)(A)(i)(I)] that refers to the time of a real event: an actual application for admission,” but in no way did it purport to state that an “applicant for admission” under § 1225(a)(1) is not “seeking admission” under § 1225(b)(2)(A). See *Torres*, 976 F.3d at 928. Neither *Torres* nor *Gambino-Ruiz* stretched so far. See *Buenrostro-Mendez*, 166 F.4th at 502 n.8. (“*Torres* has nothing to do with the meaning of ‘seeking admission’ and whether an ‘applicant for admission’ is necessarily someone ‘seeking admission.’”).

And, while *Gambino-Ruiz* suggests that an alien may not be considered to be in a “perpetual state of *applying* for admission,” it says nothing about an alien being in a state of “*seeking* admission” after submitting a con-

structive application by entering the country illegally. 91 F.4th at 989 (emphasis added); see *Buenrostro-Mendez*, 166 F.4th at 502 (“It would make no sense to say that as soon as the applicant clicks ‘submit’ on her application, she is no longer seeking admission, merely because she does not take any further affirmative steps to gain admittance. Instead, she would ordinarily be understood to be seeking admission as long as her application is pending. The same is true here.”). That the en banc panel in *Torres* referred to the words “applicant for admission” as a “term of art” does nothing to change this fact. The majority thus seeks to push *Torres* and *Gambino-Ruiz* beyond their holdings to reach an unsupported conclusion.

Furthermore, under the majority’s approach, the deeming clause would be rendered a total nullity. The majority would have us believe that Congress “deemed for [the] purposes of [the] chapter” “alien[s] present in the United States who ha[ve] not been admitted” to be “applicants for admission” in § 1225(a)(1) and then meant for that deeming clause to be drained of all substance by the time a reader of the statute reaches § 1225(b)(2)(A). It strains belief that Congress would go to the trouble of “deeming” a group of aliens “applicants for admission” if it did not intend for that group of aliens to assume any of the characteristics of the plain meaning of those words. See *Hernandez Alvarez*, 175 F.4th at 1301 (Lagoa, J., dissenting) (“The question is whether Congress meant what it said in the immediately preceding subsection. That question has a right answer and a wrong answer.”); see also *Sturgeon*, 587 U.S. at 51 (holding that “[t]here is no reason [for Congress] to pretend” that something is what it is not through a deeming clause if there are no consequences that result from the legal fiction created).

An alien may not revoke the legal effect of Congress’s deeming clause simply because he personally claims not to intend to seek “legal entry.” *See* 8 U.S.C. § 1101(a)(13)(A).

C. Surplusage

The majority next argues that “if all applicants for admission are necessarily ‘seeking admission’ . . . it is unclear why Congress would have included the phrase ‘seeking admission’ in § 1225(b)(2)(A).” Maj. Op. at 32. This argument also fails to persuade that applicants for admission are not seeking admission.

First of all, the canon against surplusage is not always a checkmate move in statutory interpretation. *See, e.g., Rimini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019). In fact, such surplusage is common in statutory text. As the Supreme Court has explained, “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. When “the better overall reading of the statute contains some redundancy,” we must adopt that better reading. *Rimini Street, Inc.*, 586 U.S. at 346; *see also Mullin*, 609 U. S. ____ (2026) (“The anti-surplusage canon is not an iron rule . . . [and] it is subordinate to the cardinal canon that a legislature says in a statute what it means and means in a statute what it says there.” (internal citations and quotation marks omitted)). So it is here.

Any surplusage within § 1225(b)(2)(A) does not allow us to disregard the plain meaning of “applicants for admission” as including those who—as a matter of language, law, and logic—are “seeking admission.” That Congress could have written § 1225(b)(2)(A) differently does not

permit us to take two potentially redundant words and pull on that thread to unravel the statutory scheme.

That is especially the case when plaintiffs' reading of § 1225(b)(2)(A) would create its own apparent redundancy. If "seeking admission" refers only to those seeking lawful admission at the border, as plaintiffs claim, then any alien "seeking admission" is necessarily an "applicant for admission," since such aliens will always be "present in the United States" or "arriv[ing] in the United States." 8 U.S.C. § 1225(a)(1). On plaintiffs' reading, the phrase "in the case of an alien who is an applicant for admission" is seemingly unnecessary. In these circumstances, when both sides' interpretations could introduce some surplusage, we cannot prioritize a desire to avoid redundancy over the plain text of the statute Congress enacted.

Furthermore, as Judge Murphy explains, the phrase "seeking admission" may well not create any redundancy at all. *See Lopez-Campos*, 175 F.4th at 741-42 (Murphy, J., dissenting). Indeed, § 1225(a)(4) states that "[a]n alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States." 8 U.S.C. § 1225(a)(4). Thus, "immigrants who are here after illegally entering but who seek to 'withdraw' their constructive applications by requesting to 'depart' at the time of the inspection would qualify as 'applicants for admission' who are not 'seeking admission' at that time. . . . Just the opposite: they are seeking to withdraw their applications by departing. The 'seeking admission' phrase clarifies that the government need not detain and start removal proceedings against this group." *Lopez-Campos*, 175

F.4th at 742 (Murphy, J., dissenting). This exception will not apply to members of the plaintiff class unless the member opts for immediate voluntary departure upon his apprehension.

D. Examining Immigration Officer

Next, the majority notes that “although the INA defines ‘immigration officer’ [as it is found in § 1225(b)(2)(A)] broadly, *see* 8 U.S.C. § 1101(a)(18); 8 C.F.R. § 287.5(c) . . . [t]he word ‘examining’ more naturally describes a formal examination, something that traditionally occurs at the nation’s borders.” Maj. Op. at 30-31. While, with respect, I consider this a rather meek justification for the majority’s decision, I will provide what seems the obvious response.

As the majority notes, the INA defines “immigration officer” broadly. An ICE agent fits comfortably within the definition of an “examining immigration officer” mentioned in § 1225(b)(2)(A). *See* 8 U.S.C. § 1101(a)(18) (defining “immigration officer” as “any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title”). When an ICE officer determines that a member of the class that plaintiffs seek to represent (defined as those who “have entered or will enter the United States without inspection”) has indeed entered without inspection, the officer makes the determination that that person is presumptively inadmissible under § 1182(a)(6). *See* 8 U.S.C. § 1182(a)(6) (“An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmis-

sible.”) Having concluded that an alien entered without inspection, the officer must conclude that the alien is not “clearly and beyond a doubt entitled to be admitted” under § 1225(b)(2)(A). *See* 8 U.S.C. § 1225(b)(2)(A); *see also Lopez-Campos*, 175 F.4th at 740 (Murphy, J., dissenting) (describing the same progression). Thus, plaintiffs’ argument that there is no “examining immigration officer” in the interior to make the required determination of whether an alien is “clearly and beyond a doubt entitled to be admitted” under 1225(b)(2)(A) patently fails.

The majority seeks artificially to limit the definition of an “examining immigration officer” to someone behind a numbered window, counter or desk, with papers before him, to the exclusion of the ICE agent on the dusty road in Texas or the street corner in the Los Angeles barrio. The text of the statute offers no support for this interpretation.

E. Section 1226

Finally, the majority argues that upon considering § 1226, “it becomes even more difficult to say that § 1225(b)(2)(A) should be read the government’s way.” Again, these arguments are unpersuasive.

As the majority notes, § 1226(a) provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Aliens detained under § 1226(a) may be released on bond pending their removal proceedings. 8 U.S.C. § 1226(a)(2). However, § 1226(a) is subject to § 1226(c), which provides that detention is mandatory for aliens who have committed various criminal offenses or who raise terrorism concerns. 8 U.S.C. § 1226(c)(1). The Attorney General may release aliens subject to

§ 1226(c) only if required for witness protection and only then if the alien is not a danger or a flight risk. 8 U.S.C. § 1226(c)(4).

The majority argues that plaintiffs fall within § 1226(a); this may be true in a general sense, but where § 1225(b)(2)(A) applies, as the more specific provision—limited to “applicants for admission”—it must control over and above § 1226(a)’s general detention scheme, which is not limited to “applicants for admission” and uses instead the general term “aliens,” which, of course, includes those who have successfully applied for and been granted admission. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) (“[I]t is a commonplace of statutory construction that the specific governs the general.”). Section 1226 does not undermine or disturb the government’s detention authority under § 1225(b)(2)(A).

The majority next argues that by the government’s reading of § 1225(b)(2)(A), much of § 1226(a) is superfluous. That is not correct. That § 1225(b)(2)(A) applies to all aliens who are applicants for admission does not render § 1226(a) superfluous. Section 1226(a) remains applicable to the broad range of aliens who were admitted but who later become removable. *See Buenrostro-Mendez*, 166 F.4th at 505. As the Fifth Circuit explained, “Section 1226(a) undeniably does work independent from § 1225(b)(2)(A) because only § 1226(a) applies to admitted aliens who overstay their visas, become deportable on many different grounds, or were admitted erroneously due to fraud or some other error.” *Id.* at 504-05; *see also id.* at 505 n.11; 8 U.S.C. § 1227(a) (listing grounds of removability under the INA); *id.* § 1225(a)(1) (defining as an “applicant for admission” an alien “present

in the United States who has *not been admitted*") (emphasis added). Accordingly, § 1226(a) continues to do substantial independent work under the proper interpretation of § 1225(b)(2)(A), in that § 1226(a) is not limited to "applicants for admission," but includes those aliens previously admitted. Furthermore, while the majority argues that the government's interpretation of § 1225(b)(2)(A) minimizes the importance of § 1226(a), that argument loses force when one considers the fact that the majority's interpretation would render a significant portion of § 1225(b)(2)(A) inoperable, by making it inapplicable to "alien[s] present in the United States who ha[ve] not been admitted."v *See Yajure Hurtado*, 29 I. & N. Dec. at 222 (explaining that plaintiffs' same position would fail to give full effect to § 1225(b)(2)(A)).

In addition, § 1226(c)'s detention mandate for certain criminal aliens does not change matters. Section 1226(c) continues to operate in contexts that § 1225(b)(2)(A) does not by mandating detention of aliens who were previously admitted but later become removable on certain criminal grounds. *See* 8 U.S.C. § 1226(c)(1)(B)-(C); *Buenrostro-Mendez*, 166 F.4th at 505 (observing that § 1226(c)(1)(B)-(C) "sweep[s] in deportable aliens in addition to the inadmissible aliens covered by § 1225(b)(2)(A)"). Additionally, unlike § 1225(b)(2)(A), § 1226(c) disallows the possibility of parole for aliens detained under that subparagraph, another important difference. *Buenrostro-Mendez*, 166 F.4th at 505; *Avila*, 170 F.4th 1137; *see* 8 U.S.C. § 1226(c)(4). That is also true of aliens subject to § 1226(c)(1)(E), which was added by the Laken Riley Act. *See Buenrostro-Mendez*, 166 F.4th at 505.

It may be the case that 8 U.S.C. § 1226(c)(1)(A)⁵ and § 1226(c)(1)(E) do overlap with § 1225(b)(2)(A) under the government’s interpretation (although the availability of parole under the latter remains a key difference). But these overlaps once again cannot be the basis for disregarding the plain language of § 1225(b)(2)(A), given Congress’s ability to use a “belt-and-suspenders” approach. *See Atl. Richfield Co. v. Christian*, 590 U.S. 1, 14 n.5 (2020); *see also Barton*, 590 U.S. at 239; *Rimini Street, Inc.*, 586 U.S. at 346. And a “belt-and-suspenders” approach makes some sense, considering that the overlap concerns criminal aliens, for whom Congress has displayed special concern.

And as to the Laken Riley Act amendments under § 1226(c)(1)(E) in particular, any presumption against surplusage is substantially weakened by the fact that Congress passed that Act in 2025, against the backdrop of longstanding nonenforcement of § 1225(b)(2)(A) to the class of aliens relevant to this case. When Congress passed the Laken Riley Act, it immediately had a significant effect, given the government’s then-approach to § 1225(b)(2)(A). *See Buenrostro-Mendez*, 166 F.4th at 505. The Act’s effects are lessened now only as a result of the government’s new enforcement practices under § 1225(b)(2)(A). That is not a situation in which a strong-form presumption against surplusage is warranted. And although the majority views the 2025 Congress as having ratified the plaintiffs’ interpretation of § 1225(b)(2)(A), it is well-established that “the views of a subsequent

⁵ Section 1226(c)(1)(A) states that “[t]he Attorney General shall take into custody any alien who . . . is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,” which covers “criminal and related grounds.”

Congress form a hazardous basis for inferring the intent of an earlier one.” *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 520 (1992) (quoting *United States v. Price*, 361 U.S. 304, 313 (1960)).

In any case, plaintiffs’ own account of §§ 1225 and 1226 also introduces some redundancy. As the majority notes, the Attorney General can extend the expedited removal process to unadmitted aliens inside the United States with fewer than two years of continuous presence, when those aliens are inadmissible for lacking valid entry documents, 8 U.S.C. § 1182(a)(7), or for committing various forms of immigration fraud, *id.* § 1182(a)(6)(C). *See* 8 U.S.C. § 1225(b)(1)(A)(i), (iii); Maj. Op. at 17-18. Aliens subject to expedited removal proceedings are also subject to mandatory detention. 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV). Thus, both § 1225(b)(1) and § 1226(a) facially cover detention of that class of aliens. The same is true of aliens that plaintiffs concede are covered by § 1225(b)(2)(A) who are seeking lawful admission at the border—they too would otherwise be covered by § 1226(a). So even on the plaintiffs’ reading, there are aliens subject to § 1225(b) who otherwise fall within § 1226(a).

Additionally, even under the plaintiffs’ view of the statute, aliens will at times be subject to overlapping mandatory detention authorities. By the plaintiffs’ reading of § 1225(b)(2)(A), aliens who are subject to removal on the inadmissibility grounds in § 1226(c)(1)(A) and (D)⁶ would also be subject to § 1225(b)(2)(A) if they are

⁶ Section 1226(c)(1)(D) states that “[t]he Attorney General shall take into custody any alien who . . . is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,” which cover “terrorist activities.”

seeking lawful entry at the border. And again assuming the plaintiffs' reading, those aliens inside the United States who are inadmissible under § 1182(a)(6)(C) and subject to detention under § 1226(c)(1)(E) may also be subject to detention under § 1225(b)(1), if they meet the continuous presence requirements for expedited removal. The bottom line is that the INA's detention authorities overlap under any interpretation of the statute offered in this case. The mere overlap should have no effect on the applicability of the overlapping statutes.

Finally, the majority points to the fact that Congress gave the Attorney General discretion to delay implementation of § 1226(c)'s detention mandate to alleviate detention capacity constraints. *See* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Div. C, § 303(b)(2), 110 Stat. 3009-586. From this the majority argues that, if the government's interpretation of § 1225(b)(2)(A) is correct, Congress would have also delayed implementation of that provision as well, given that the number of aliens subject to § 1225(b)(2)(A) is considerably larger than that subject to § 1226(c), raising even more severe concerns about detention capacity.

This argument invites undue speculation as to what Congress would have done and why it would have done so. Although the plaintiffs would have us infer from the delay in implementation Congress's understanding of the statutory text, the delay could also reflect Congress's understanding of the executive's then-intended enforcement agenda. As the Fifth Circuit stated, "Congress could have declined to delay implementation of § 1225(b)(2)(A) for any number of reasons." *Buenrostro-Mendez*, 166 F.4th at 507-08; *see also Avila*, 170 F.4th at 1137-38 (rejecting this same argument). Congress may

have been more concerned with detention capacity for those aliens subject to § 1226(c) because they could require greater security measures given their criminal histories. Or Congress could have believed that detention capacity was a greater concern for § 1226(c) detainees because the government would be more likely to exercise its enforcement discretion to detain them. Whatever the reason, we cannot read into Congress's decision to delay implementation of § 1226(c) any counter-textual subjective intent about the scope of § 1225(b)(2)(A).

When considered both individually and as a whole, the majority's arguments regarding § 1226 cannot overcome the plain text of § 1225(b)(2)(A).

IV. Conclusion

Because I conclude that the text dictates that aliens present without admission who are apprehended inside the United States are subject to mandatory detention without bond under § 1225(b)(2)(A), I respectfully dissent.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

Case No. 3:25-cv-05240-TMC

RAMON RODRIGUEZ VAZQUEZ, ON BEHALF OF HIMSELF
AS AN INDIVIDUAL AND ON BEHALF OF OTHERS SIMI-
LARLY SITUATED, PLAINTIFF

v.

DREW BOSTOCK, ET AL., DEFENDANTS

Filed: Sept. 30, 2025

**ORDER ON GRANTING PLAINTIFFS’
PARTIAL MOTION FOR SUMMARY JUDGMENT
AND DENYING DEFENDANTS’
MOTION TO DISMISS**

I. INTRODUCTION

This case arises from a practice by the Tacoma Immigration Court of interpreting the Immigration and Nationality Act (“INA”) to require detention without the possibility of bond for noncitizens¹ who entered the United States without inspection, even if they have lived

¹ This order uses the term “noncitizen” as equivalent to the statutory term “alien.” *Nasrallah v. Barr*, 590 U.S. 573, 578, n.2 (2020); *see* 8 U.S.C. § 1101(a)(3).

here for years and can prove they present neither a flight risk nor a danger to the community.

On April 24, 2025, the Court granted named Plaintiff Ramon Rodriguez Vazquez’s (“Rodriguez”) individual motion for a preliminary injunction, concluding that the Tacoma Immigration Court’s practice was likely illegal. Although the Defendants opposed granting injunctive relief, they made no substantive arguments at the time regarding the applicable detention authority for noncitizens such as Rodriguez who were apprehended while residing in the United States.

One week later, the Court granted in part and denied in part Rodriguez’s class certification motion filed alongside his motion for preliminary injunction. The Court certified two classes of noncitizens. The first class seeks a declaration that the Tacoma Immigration Judges’ (“IJs”) bond denial policy is unlawful under the INA (the “Bond Denial Class”). The second class seeks a declaration that prolonged detention without timely appellate adjudication of an IJ’s bond ruling violates the Due Process Clause (the “Bond Appeal Class”).

While this case progressed over the summer, the government—including certain named Defendants here—adopted the Tacoma Immigration Court’s interpretation of the INA’s detention provisions as its new national policy. The Department of Homeland Security (“DHS”) issued a memorandum to all Immigration and Customs Enforcement (“ICE”) employees on July 8, 2025 instructing that “[e]ffective immediately,” all noncitizens who have not been lawfully admitted, including those already present in the United States, will no longer be eligible for release from ICE custody for the duration of their removal proceedings except by discretionary parole.

Dkt. 61-6 at 2. Under this policy, these noncitizens—even those with strong ties to the community and no criminal records—are no longer eligible for a bond hearing before an IJ. *Id.* The government’s policy shift has been estimated as requiring the detention of millions of individuals currently living in the United States.²

Since this Court’s initial rulings, district courts across the country have now considered the statutory question at the heart of this case: whether noncitizens residing in the United States who are arrested and detained for potential removal are entitled to a bond hearing before an IJ with the possibility of release under 8 U.S.C. § 1226(a), or if, as the government asserts, they are subject to mandatory detention under 8 U.S.C. § 1225(b)(2) throughout their removal proceedings. Every district court to address this question has concluded that the government’s position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice.³

² Maria Sacchetti & Carol D. Leonnig, *ICE declares millions of undocumented immigrants ineligible for bond hearings*, Washington Post (July 14, 2025), <https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/>.

³ See, e.g., *Aceros v. Kaiser*, et al., 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Maldonado Vazquez v. Feeley*, 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Romero v. Hyde*, CV 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025) (denying government’s motion for reconsideration); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *dos Santos v. Lyons*, No. 1:25-CV-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and rec-

Before the Court is the Bond Denial Class’s motion for partial summary judgment and Defendants’ cross-motion to dismiss all claims. Dkt. 41; Dkt. 49. First, the Court concludes that it has jurisdiction to reach the merits of Plaintiffs’ claims. Second, the Court concludes that the Bond Appeal Class has stated a plausible claim that delays by the Board of Immigration Appeals (“BIA”) in hearing appeals from bond denials are so prolonged

ommendation adopted sub nom. *Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Leal-Hernandez v. Noem*, 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Aguilar Maldonado v. Olson*, --- F. Supp. 3d ---, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Beltran Barrera v. Tindall*, 3:25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Campos v. Raycraft*, 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, 25-CV-326-LM-AJ, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Chogullo Chafila v. Scott*, 2:25-CV-00437-SDN, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-CV-01789-ODW (DFMX), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting individualized bond hearings on ex parte motion for temporary restraining order after finding likelihood of success); *Mosqueda v. Noem*, 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (same); *Kostak v. Trump*, CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (same); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (granting relief from stay of bond order pending BIA appeal); *Mayo Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025) (same); *But see Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025) (denying habeas petition of noncitizen because he was mandatorily detained under section 1225, but where individual is not similarly situated to Bond Denial Class members because his case was focused on the effect of an approved I-130 petition made on his behalf).

that they violate due process. Third, after full briefing, oral argument, and consideration of supplemental authority, the Court reaches the same conclusion as in its preliminary injunction: members of the Bond Denial Class are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and the Defendants' practice of denying bond hearings to class members based on that provision violates the INA. The Court therefore DENIES Defendants' motion to dismiss (Dkt. 49) and GRANTS Plaintiffs' motion for partial summary judgment (Dkt. 41). Finally, the Court concludes that it should enter its declaratory judgment on the claims brought by the Bond Denial Class immediately so that Defendants may seek prompt appellate review. *See* Fed. R. Civ. P. 54(b).

II. FACTUAL AND PROCEDURAL BACKGROUND

Rodriguez represents two classes of noncitizens, the Bond Denial Class and Bond Appeal Class, challenging government policies that Plaintiffs allege unlawfully deny them bond hearings and prolong their appeals when bond is denied. *See* Dkt. 1 ¶ 10; Dkt. 54 at 3.

Defendants are Drew Bostock, Seattle Field Office Director, Enforcement and Removal Operations, ICE; Bruce Scott, Warden at NWIPC; Kristi Noem, Secretary of DHS; Pamela Bondi, Attorney General of the United States; the Executive Office of Immigration Review ("EOIR"); Sirce Owen, Director of EOIR; and the Tacoma Immigration Court. Dkt. 1 ¶¶ 18-25. The facts discussed below are undisputed by the parties.

A. The relationship between 8 U.S.C. §§ 1225 and 1226.

The claims of the Bond Denial Class depend on the relationship between two provisions of the INA: 8 U.S.C. §§ 1225 and 1226. Bond Denial Class members contend

they are unlawfully detained under section 1225(b)(2), which requires detention for certain noncitizens, and that instead they should be eligible for release on bond under section 1226(a)’s discretionary detention scheme. Dkt. 41 at 2.

The INA authorizes the detention of noncitizens “awaiting removal from the United States.” *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1000 (N.D. Cal. 2018). Section 1226 “provides the general process for arresting and detaining” noncitizens “who are present in the United States and eligible for removal.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citation omitted). Section 1226(a) “sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an alien ‘pending a decision on whether the alien is to be removed from the United States.’” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting § 1226(a)). Except as provided in section 1226(c), “the Attorney General ‘may release’ an alien detained under § 1226(a) ‘on . . . bond’ or ‘conditional parole.’” *Id.* (quoting § 1226(a)(1)-(2)).

Section 1226(c) “carves out a statutory category” of noncitizens for whom detention is mandatory, comprised of individuals who have committed certain “enumerated . . . criminal offenses [or] terrorist activities.” *Id.* at 289 (citing § 1226(c)(1)). Among the individuals subject to mandatory detention under section 1226(c) are certain categories of “inadmissible” noncitizens. 8 U.S.C. §§ 1226(c)(1)(A), (D), (E). Several of these categories were added to the INA just months ago, in January 2025, by the Laken Riley Act (“LRA”). Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). The LRA amendments require detention for noncitizens who have

been charged as inadmissible under sections 1182(a)(6)(A) (the inadmissibility ground for a noncitizen “present in the United States without being admitted or paroled”), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) *and* have been arrested for, charged with, or convicted of certain crimes. *Id.*

Turning back to the default rule, “[w]hen a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination.” *Rodriguez Diaz*, 53 F.4th at 1196 (citing 8 C.F.R. § 236.1(c)(8)). If the detainee objects to the initial determination, they “may request a bond hearing before an IJ at any time before a removal order becomes final.” *Id.* at 1197 (citing 8 C.F.R. §§ 236.1(d)(1), 1003.19). At this stage, the noncitizen must “establish to the satisfaction of the Immigration Judge . . . that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.” *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th Cir. 2017) (quoting *In re Guerra*, 24 I. & N. Dec. 37, 38 (B.I.A. 2006)). A detainee can appeal an adverse decision to the BIA. *Id.* at 983 (citing § 236.1(d)(3)).

Section 1225(b) “supplement[s] § 1226’s detention scheme.” *Rodriguez Diaz*, 53 F.4th at 1197. Section 1225(b) “applies primarily to aliens seeking entry into the United States (‘applicants for admission’ in the language of the statute).” *Jennings*, 583 U.S. at 297; *see* § 1225(b) (“Inspection of applicants for admission”). Section 1225 defines an “applicant for admission” as a noncitizen “present in the United States who has not been admitted or who arrives in the United States.” 8 U.S.C. § 1225(a)(1); *see Jennings*, 583 U.S. at 287. As the Supreme Court noted, “[a]pplicants for admission

must ‘be inspected by immigration officers’ to ensure that they may be admitted into the country consistent with U.S. immigration law.” *Jennings*, 583 U.S. at 287 (quoting § 1225(a)(3)).

Section 1225(b)(1) is titled: “Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled.” 8 U.S.C. § 1225(b)(1). Specifically, “Section 1225(b)(1) applies to aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation,” as well as “certain other aliens designated by the Attorney General.” *Jennings*, 583 U.S. at 287 (citing §§ 1225(b)(1)(A)(i), (iii)). Individuals that fall into section 1225(b)(1) are “normally ordered removed ‘without further hearing or review’ pursuant to an expedited removal process” unless claiming asylum or a fear of persecution. *Id.* (first quoting § 1225(b)(1)(A)(i); then citing § 1225(b)(1)(A)(ii)).

Section 1225(b)(2) is titled: “Inspection of other aliens.” Section 1225(b)(2) “mandates detention ‘if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.’” *Rodriguez Diaz*, 53 F.4th at 1197 (quoting § 1225(b)(2)(A)).

To summarize the distinctions relevant to this case, noncitizens detained under section 1225(b)(2) must remain in custody for the duration of their removal proceedings, while those detained under section 1226(a) are entitled to a bond hearing before an IJ at any time before entry of a final removal order. As the Supreme Court has explained, “[i]n sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain al-

iens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).” *Jennings*, 583 U.S. at 289.

B. The Tacoma Immigration Court’s denial of bond hearings for lack of jurisdiction under section 1225(b)(2).

Beginning around November 2022, the Tacoma Immigration Court started denying bond hearings for noncitizens “who entered without inspection and who have since resided in the United States.” Dkt. 5 ¶ 3; *see also* Dkt. 6 ¶ 3. According to the Tacoma IJ’s bond memo in Rodriguez’s case, all noncitizens who enter the United States “without inspection or parole”—and who are not placed on the expedited removal or credible fear tracks of section 1225(b)(1)—are “inadmissible aliens who are ‘applicants for admission’” under section 1225. Dkt. 22 at 16; *see also* Dkt. 5 ¶ 5; Dkt. 6 ¶ 3. The immigration court has further held that an “applicant for admission” is also “‘seeking admission’ as that phrase is used” in section 1225(b)(2)(A). Dkt. 22 at 20; *see* § 1225(b)(2)(A) (“[I]n 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.”). Thus, the IJ reasoned, “[b]ecause Congress requires the detention of all applicants for admission, [an IJ] does not have jurisdiction to review . . . bond determination[s] made by DHS” for Bond Denial Class members. *See* Dkt. 22 at 21; Dkt. 5 ¶ 5.

The Tacoma Immigration Court’s interpretation of the relevant detention authorities has significantly reduced the likelihood that noncitizens apprehended while living in the United States will be released on bond.

Plaintiffs contend that “[h]undreds of people have been denied bond as a result” and “[m]any, if not most, of these individuals have resided in the United States for years, or even decades.” Dkt. 41 at 5; *see* Dkt. 5 ¶ 5 (summarizing stories of individual detainees similarly situated to Bond Denial Class members); Dkt. 6 ¶¶ 3, 6 (similar); Dkt. 1 ¶¶ 74-76, 80 (describing Rodriguez’s circumstances, including that he lived in Washington for sixteen years before he was detained and was denied bond because the IJ held he was subject to mandatory detention under section 1225).

According to national data, Tacoma IJs have granted bond in only three percent of the cases in which bond was requested in Fiscal Year 2023, a period that roughly aligns with the immigration court’s change in policy. *See* Transactional Records Access Clearinghouse (“TRAC”), *Detained Immigrants Seeking Release on Bond Have Widely Different Outcomes*, (July 19, 2023), <https://tracreports.org/reports/722/>; Dkt. 5 ¶ 3. During this period, the Tacoma Immigration Court’s bond grant rate was the lowest among immigration courts in the United States. *See* TRAC, *Detained Immigrants Seeking Release on Bond Have Widely Different Outcomes*.

C. Appeals to the BIA

The BIA is an appellate body within the EOIR. 8 C.F.R. § 1003.1(d)(1). The Board is “charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it.” *Id.* By regulation, the BIA can review IJ custody determinations. 8 C.F.R. §§ 236.1(d)(3), 1236.1(d)(3). Besides adjudicating individual cases, “the Board, through precedent decisions, shall provide clear and uniform guidance to DHS, the immigration judges,

and the general public on the proper interpretation and administration of the [INA] and its implementing regulations.” § 1003.1(d)(1).

At first, detainees denied bond based on the Tacoma Immigration Court’s interpretation of the mandatory detention provisions achieved some limited—if slow—success at the BIA. The BIA appeals process is long and often moots pending bond appeals before they are adjudicated. *See* Dkt. 5 ¶ 5; Dkt. 7 ¶¶ 5-6. In 2024, EOIR data showed an average processing time of 204 days for bond appeals. Dkt. 7 ¶ 5. EOIR data between 2015 and 2024 also showed that 200 bond appeal cases “took a year or longer to resolve.” *Id.* ¶ 6. During the time it takes the BIA to resolve an appeal, most detainees’ claims are mooted. *See* Dkt. 5 ¶ 5. Some detainees are released because ICE exercises its discretionary authority to place detainees on bond. *See id.* ¶ 5(a),(d),(g). Other detainees are ordered removed from the United States during their bond appeal. *Id.* ¶ 5(b), (c), (f). And still others not captured in the EOIR data elect not to appeal a negative bond determination. *Id.* ¶ 5(e); *see also id.* ¶ 7 (declining representation for a bond hearing “based on the Tacoma Immigration Court practice of finding such individuals subject to mandatory detention.”).

A few early cases to reach the BIA challenging the Tacoma IJs’ practice resolved in the detainee’s favor but had limited impact. *See id.* ¶¶ 3, 11; Dkt. 8 ¶¶ 4-5. In April 2023, the BIA issued an unpublished decision involving a noncitizen “present in the United States, [that] ha[d] not been admitted, and that an immigration officer found . . . [was] not clearly and beyond a doubt entitled to be admitted.” Dkt. 4-2 at 3. The Tacoma IJ determined that the individual was subject to mandatory de-

tention under section 1225(b)(2)(A). *Id.* at 2. The Board remanded the case to the IJ, concluding that if the individual was issued a warrant of arrest with a notice to appear, “he would be subject to detention under” section 1226. *Id.* at 3-4. Then in September 2023, the BIA issued a second unpublished decision for a person who had entered the United States “without being admitted or paroled.” Dkt. 4-1 at 4. The BIA remanded the case to the IJ, writing that it was “unaware of any precedent stating that an Immigration Judge lacks authority to re-determine the custody conditions of a respondent in removal proceedings under the circumstances here.” *Id.* But the BIA denied a request by advocates to publish one of these decisions as precedent, Dkt. 4-4 at 2, and three of the four Tacoma IJs continued to deny bond to individuals apprehended while residing in the country and treated as “present in the United States without inspection.” Dkt. 5 ¶¶ 3, 11; Dkt. 8 ¶¶ 4-5.

D. Developments since the Court’s preliminary injunction

As briefing concluded on the parties’ dispositive motions, DHS issued a memorandum to all ICE employees on July 8, 2025 which effectively adopts the Tacoma IJs’ interpretation of detention authorities under the INA. *See* Dkt. 61-6 at 2. The memo begins by noting that “DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities” and has determined “that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission.” *Id.* Section 235 of the INA is the provision codified at 8 U.S.C. § 1225, and Section 236 of the INA at 8 U.S.C.

§ 1226. DHS then defines “applicants for admission,” provides the government’s interpretation of its scope, and explains the significance of the policy change for bond hearing eligibility:

An “applicant for admission” is 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. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing (“bond hearing”) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated.

Dkt. 61-6 at 2 (emphasis in original).

The DHS memo also defines the limited circumstances in which it agrees noncitizens may still be eligible for bond under 8 U.S.C. § 1226 (section 236 of the INA), the previous “applicable immigration detention authority”:

The only aliens eligible for a custody redetermination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA, with the exception of those subject to mandatory detention under INA § 236(c).

Id. (emphasis in original).

The government's changed position on the detention authority for noncitizens living in the United States did not immediately translate to a shift at the BIA. In *Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA 2025), the Board stated that a noncitizen who had entered the United States unlawfully three years earlier was subject to discretionary detention under section 1226(a) ("The respondent's custody determination is governed by the provisions of section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a)[.]"). On August 4, 2025, nearly one month after the DHS memo was issued, the Attorney General designated the Board's decision in *Matter of Akhmedov* "as precedent in all proceedings involving the same issue or issues." 29 I. & N. at 166 n.1. But one month later, on September 5, 2025, the BIA issued another opinion in *Matter of Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025), holding for the first time that IJs lack authority to grant bond to noncitizens who are present in the United States without admission because they are "applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Id.*

E. Procedural history

On March 20, 2025, named Plaintiff Rodriguez filed his complaint, moved for a preliminary injunction, and moved to certify two classes. Dkt. 1; Dkt. 2; Dkt. 3. Rodriguez challenged the Tacoma IJs' practice of interpreting section 1225(b) as denying the immigration court jurisdiction to grant bond, arguing that he and putative class members are instead entitled to individualized bond hearings under section 1226(a)'s discretionary detention scheme. Dkt. 1 ¶¶ 1-12.

On April 24, 2025, the Court granted Rodriguez's individual request for a preliminary injunction and ordered Defendants to provide Rodriguez a bond hearing within 14 days. Dkt. 29 at 4. Then on May 2, 2025, the Court granted in part and denied in part Plaintiffs' class certification motion. Dkt. 32 at 43. Plaintiffs had moved to certify two classes of similarly situated noncitizens, seeking declaratory relief that the IJs' policy is unlawful under the INA and that prolonged detention without timely adjudication of their bond appeals violates due process. Dkt. 2 at 17. The Court ordered the following classes be certified:

Bond Denial Class: All noncitizens without lawful status detained at the Northwest ICE Processing Center who (1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, (3) are not or will not be subject to detention under 8 U.S.C. § 1226(e), § 1225(b)(1), or § 1231 at the time the noncitizen is scheduled for or requests a bond hearing.

Bond Appeal Class: All detained noncitizens who have a pending appeal, or will file an appeal, of an immigration judge's bond hearing ruling to the Board of Immigration Appeals.

Dkt. 32 at 43.

On June 2, 2025, the Bond Denial Class moved for partial summary judgment. Dkt. 41. As part of the motion, Plaintiffs requested permanent injunctive relief for four class members who at the time were detained under section 1225(b)(2). *Id.* at 2.

Defendants then filed two motions on June 6, 2025, moving to (1) dismiss all claims, Dkt. 49; and (2) stay

Plaintiffs’ partial summary judgment motion until the Court considered its motion to dismiss, Dkt. 48. In the alternative, Defendants requested an extension of time to respond to Plaintiffs’ partial summary judgment motion. Dkt. 48. The Court denied the motion to stay but granted Defendants’ request for an extension. Dkt. 53. The parties responded and replied to each motion. Dkt. 54, Dkt. 56, Dkt. 57, Dkt. 58.

In a Notice of Supplemental Authority filed on August 18, 2025, Plaintiffs updated the Court that three of the four class members for whom they requested individual injunctions had been released from detention or chosen to voluntarily depart the country. Dkt. 61 at 2-3. On September 11, 2025, Plaintiffs moved to withdraw their remaining request for individual injunctive relief because an IJ granted the class member’s application for cancellation of removal. Dkt. 64; Dkt. 64-1. Because all individual requests for injunctive relief are now moot, the Court declines to reach the parties’ arguments as to whether that relief may be granted as part of this class action.

Oral argument on the parties’ cross-motions took place on August 22, 2025. Dkt. 62. Both motions are fully briefed and ripe for the Court’s review.

III. LEGAL STANDARDS

A. Motion to dismiss

1. Rule 12(b)1

A Rule 12(b)(1) motion seeks dismissal of a claim for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). Such challenges may be either “facial” or “factual.” “A ‘facial’ attack accepts the truth of the plaintiff’s allegations but asserts that they ‘are insufficient

on their face to invoke federal jurisdiction.’” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (quoting *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004)). “A ‘factual’ attack, by contrast, contests the truth of the plaintiff’s factual allegations, usually by introducing evidence outside the pleadings.” *Id.* Where, as here, the Court responds to a facial attack, the Court will resolve the challenge “as it would a motion to dismiss under Rule 12(b)(6): Accepting the plaintiff’s allegations as true and drawing all reasonable inferences in the plaintiff’s favor, the court determines whether the allegations are sufficient as a legal matter to invoke the court’s jurisdiction.” *Id.*

2. Rule 12(b)6

Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Under Federal Rule of Civil Procedure 12(b)(6), the Court may dismiss a complaint for “failure to state a claim upon which relief can be granted.” Rule 12(b)(6) motions may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (citation omitted). To survive a Rule 12(b)(6) motion, the complaint “does not need detailed factual allegations,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007), but “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face,’” *Boquist v. Courtney*, 32 F.4th 764, 773 (9th Cir. 2022) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). “A claim is facially plausible ‘when the plaintiff pleads factual content that allows the court to draw the

reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Iqbal*, 556 U.S. at 678).

The Court “must accept as true all factual allegations in the complaint and draw all reasonable inferences in favor of the nonmoving party,” *Retail Prop. Tr. v. United Bhd. of Carpenters & Joiners of Am.*, 768 F.3d 938, 945 (9th Cir. 2014), but need not “accept as true a legal conclusion couched as a factual allegation,” *Twombly*, 550 U.S. at 555. “[A] plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (internal quotation marks omitted). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

B. Summary judgment

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A dispute as to a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The moving party has the initial burden of “‘showing’—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party meets its initial burden, the nonmoving party must go beyond the pleadings and “set

forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 248. Here, the parties agree that the material facts are not in dispute, and the Court may resolve the claims made by the Bond Denial Class as a matter of law.

IV. DISCUSSION

At the outset, the parties agree that Rodriguez’s individual claims are moot because he voluntarily departed the country and is no longer in DHS custody. Dkt. 49 at 16-17; Dkt. 54 at 7; *see* Dkt. 50 at 8 (IJ order granting Rodriguez’s application for “post-conclusion voluntary departure under INA § 240B(b)”). The Court briefly summarizes the structure of the remaining Order.

First, the Court addresses Defendants’ arguments that it lacks jurisdiction to review the claims of both the Bond Denial and Bond Appeal Classes under various provisions of 8 U.S.C. § 1252. It also considers Defendants’ related argument that the Bond Denial Class claims do not satisfy Rule 23(b)(2). Finding that none of Defendants’ asserted jurisdictional bars prevent reaching the claims on their merits, the Court next rejects Defendants’ argument that the Bond Appeal Class fails to state a claim under Rule 12(b)(6). Finally, the Court reviews Defendants’ 12(b)(6) motion to dismiss and Plaintiffs’ partial motion for summary judgment on the Bond Denial Class together, holding that Bond Denial Class members fall under section 1226(a)’s discretionary detention scheme and are not subject to mandatory detention under section 1225(b)(2).

A. The Court has jurisdiction to hear Bond Denial Class and Bond Appeals Class claims.

Defendants argue that various provisions of 8 U.S.C. § 1252 strip this Court of jurisdiction to hear Bond Denial Class and Bond Appeals Class claims. Dkt. 49 at 18-26, 34-35. Defendants also argue that if section 1252(f)(1) does not preclude Bond Denial Class claims, then the declaratory relief sought by Bond Denial Class members violates Federal Rule of Civil Procedure 23(b)(2). *Id.* at 23. The Court considers each of these arguments in turn.

1. Section 1252(g)

Defendants first argue that section 1252(g) bars the Court from hearing the Bond Denial Class’s claims because class members’ “detention arises from the decision to ‘commence [removal] proceedings.’” Dkt. 49 at 19 (quoting 8 U.S.C. § 1252(g)). Defendants similarly contend that this provision bars Bond Appeal Class claims because they “aris[e] from the Attorney General’s decision or action to adjudicate cases—here, the BIA’s adjudication of appeals.” *Id.* at 34. But both the Supreme Court and the Ninth Circuit have consistently recognized that section 1252(g)’s “narrow” scope does not sweep in non-discretionary, purely legal questions such as those presented by both classes here. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (“AADC”).

Section 1252(g) provides that “no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.”

The Supreme Court has described section 1252(g)'s application as "narrow." *AADC*, 525 U.S. at 487; *see also Jennings*, 583 U.S. at 294 ("We did not interpret this language to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. . . . [but] [i]nstead . . . read the language to refer to just those three specific actions themselves."). Characterizing section 1252(g) as a "discretion-protecting provision," *AADC*, 525 U.S. at 487, the Court stated that it is "directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion," *id.* at 485 n.9. As such, "[t]here are . . . many other decisions or actions that may be part of the deportation process" that are not implicated by section 1252(g). *Id.* at 482; *see Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 14 (2020) ("We have previously rejected as 'implausible' the Government's suggestion that § 1252(g) covers 'all claims arising from deportation proceedings' or imposes 'a general jurisdictional limitation.'") (quoting *AADC*, 525 U.S. at 482). A recent Ninth Circuit decision affirmed that courts "have jurisdiction to decide a 'purely legal question' that 'does not challenge the Attorney General's discretionary authority . . . even if the answer to that legal question . . . forms the backdrop against which the Attorney General later will exercise discretionary authority.'" *Ibarra-Perez v. United States*, --- F.4th ---, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (quoting *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004)).

Here, the Bond Denial Class claims raise a discrete, "purely legal question" about the legality of the detention statute applied to the class members. *See Ibarra-Perez*, 2025 WL 2461663, at *6. Defendants' argument

largely downplays the weight of authority against its interpretation, focusing instead on the scope of the jurisdictional bar implied by “‘any cause or claim’ arising from the commencement of removal proceedings.” Dkt. 57 at 4. But the Supreme Court has explicitly warned off such an expansive reading of section 1252(g)’s language, describing it as “uncritical literalism leading to results that no sensible person could have intended.” *Jennings*, 583 U.S. at 293-94 (citation modified). And although Defendants argue that “detention pending removal proceedings is part and parcel of the government’s commencement of proceedings,” Dkt. 57 at 4, the Ninth Circuit has “been clear that § 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders.” *Ibarra-Perez*, 2025 WL 2461663, at *7; *see Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (holding that plaintiff’s claim of improper detention was not barred by section 1252(g) because his “assertions of illegal detention are plainly collateral to ICE’s prosecutorial decision to execute [plaintiff’s] removal”).

The Ninth Circuit has also recognized the narrow application of “adjudicate” under section 1252(g) that would similarly not sweep in Bond Appeal Class claims. In *Barahona-Gomez v. Reno*, the Ninth Circuit explained that “the meaning of a discretionary decision to ‘adjudicate’ is readily apparent”: it refers to the “very decision to either abandon the endeavor or to adjudicate.” 236 F.3d 1115, 1120 (9th Cir. 2001) (citation modified); *see also id.* (citing approvingly to *Singh v. Reno*, 182 F.3d 504 (7th Cir. 1999), which denied the government’s argument that the court lacked jurisdiction because “the petitioner had stated a reviewable constitutional claim that [ICE] denied his due process rights by failing to

timely calendar his deportation hearing”). Here, the Bond Appeal Class alleges a violation of their due process rights based on the BIA’s failure to timely consider their bond appeals. Dkt. 1 ¶¶ 107-110. As another court in this district noted, “Congress did not intend Section 1252(g) to ‘deny any judicial forum for a colorable constitutional claim.’” *NWDC Resistance v. Immigr. & Customs Enf’t*, 493 F. Supp. 3d 1003, 1010 (W.D. Wash. 2020) (quoting *Webster v. Doe*, 486 U.S. 592, 603 (1988)).

Because “[t]he government’s broad reading of § 1252(g) would lead to a result that is not contemplated in the statute and that has been disavowed by the Supreme Court,” the Court concludes that neither the Bond Denial Class nor the Bond Appeal Class claims concern discretionary actions barred by section 1252(g). *See Ibarra-Perez*, 2025 WL 2461663, at *7.

2. Section 1252(b)(9)

Defendants next argue that section 1252(b)(9) bars the Court from hearing Bond Denial Class claims because the Class “challenges the decision and action to detain them, which arises from DHS’s decision to commence removal proceedings, and is thus an ‘action taken . . . to remove [them] from the United States.’” Dkt. 49 at 21. For the same reason, Defendants contend that the Court is precluded from reviewing Bond Appeal Class claims. *Id.* at 34-35 (“The Bond Appeal Claims arise from action taken by DHS to remove them, which forms the basis of their subsequent appeals to the BIA.”). But Defendants’ argument, like their assertions regarding section 1252(g), are foreclosed by Supreme Court and Ninth Circuit precedent.

The Supreme Court has referred to section 1252(b)(9) as an “unmistakable zipper clause,” *AADC*, 525 U.S. at 483 (citation modified), providing that:

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter [including §§ 1225 and 1226] shall be available only in judicial review of a final order under this section.

Nielsen v. Preap, 586 U.S. 392, 402 (2019) (quoting § 1252(b)(9)).

“This statutory scheme was designed to limit” all noncitizens “to one bite of the apple with regard to challenging an order of removal.” *Martinez v. Napolitano*, 704 F.3d 620, 622 (9th Cir. 2012) (citation modified). But section “1252(b)(9) does not bar claims that are ‘independent of or collateral to the removal process.’” *Ibarra-Perez*, 2025 WL 2461663, at *9 (quoting *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016)). And the Supreme Court has made clear that challenges to the interpretation of the INA’s detention provisions are collateral to the removal process. Defendants’ argument rests on the premise that Bond Denial Class and Bond Appeal Class members challenge the government’s underlying decision to detain them and seek their removal. *See* Dkt. 57 at 7 (“Despite what Plaintiffs contend, they *are* challenging the decision to detain them in the first place because their detention pending removal proceedings is mandatory under § 1225(b)(2).”) (emphasis in original). This argument is unpersuasive for two reasons.

First, Defendants’ assertion that Plaintiffs are challenging the government’s initial decision to detain them—as opposed to their entitlement to a bond hearing and timely bond appeal once detained—is contradicted by the allegations in their Complaint, which the Court accepts as true on a motion to dismiss. *See Leite*, 749 F.3d at 1121; Dkt. 1 ¶ 100 (“Such [Bond Denial Class] noncitizens *are detained* under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c), or § 1231.”) (emphasis added); *id.* ¶ 58 (“The lengthy delays in bond appeal determinations . . . affect[] all noncitizens *who are detained*, who have a right to a bond hearing, and who have their request for a bond denied[.]”) (emphasis added).

Second, the Supreme Court has directly considered and rejected the argument that section 1252(b)(9) bars review of legal questions concerning the detention provisions of sections 1225 and 1226. In *Jennings*, noncitizens brought a class action challenging the legality of indefinite detention without a bond hearing under sections 1225 and 1226, the same provisions at issue here. *See* 583 U.S. at 291-92. In evaluating the scope of section 1252(b)(9) preclusion, the Court considered the same argument Defendants make now: whether “questions of law” as to whether “certain statutory provisions require detention without a bond hearing” can be said to “arise from” actions taken to remove the class members. *Id.* at 292-93. The Court’s answer was clear: “[R]espondents are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined. Under these circumstances, § 1252(b)(9) does not present a jurisdictional

bar.” *Id.* at 294-95; *see also Preap*, 586 U.S. at 396, 402 (rejecting that section 1252(b)(9) bars the Court from considering a class action comprised of noncitizens challenging their mandatory detention for the same reasons).

In reaching that conclusion, the Court also observed that adopting the government’s “extreme” interpretation of section 1252(b)(9)—that any claims testing the legality of detention may be raised only in a single challenge to a final removal order—“would also make claims of prolonged detention effectively unreviewable.” *Jennings*, 583 U.S. at 293. “By the time a final order of removal was eventually entered, the allegedly excessive detention would have already taken place. And of course, it is possible that no such order would ever be entered in a particular case, depriving that detainee of any meaningful chance for judicial review.” *Id.* This analysis applies with equal force to the claims here.

Finally, Defendants cannot distinguish *Jennings*’ clear holding by citing Justice Thomas’s “concurring” opinion. *See* Dkt. 49 at 22 (“The fact that the BDC is challenging the basis upon which they are detained is enough to trigger § 1252(b)(9) because ‘detention *is* an action taken . . . to remove an alien.’”) (quoting *Jennings*, 583 U.S. at 319 (Thomas, J., concurring in part and concurring in the judgment)) (citation modified).

As another district court pointed out in addressing the government’s same use of authority to argue that section 1252(b)(9) creates a jurisdictional bar, “Justice Thomas’s opinion is not a ‘concurring’ opinion . . . but rather a concurrence *in part* and a concurrence in the judgment.” *Romero*, 2025 WL 2403827, at *5 (emphasis in original) (citing *Jennings*, 583 U.S. at 314). More im-

portantly, the *Jennings* plurality expressly rejected Justice Thomas’s expansive interpretation of section 1252(b)(9):

[Justice Thomas] contends that “detention *is* an ‘action taken . . . to remove’ an alien” and that therefore “even the narrowest reading of ‘arising from’ must cover” the claims raised by respondents. *Post*, at 855. (Thomas, J., concurring in part and concurring in judgment). We do not follow this logic . . . The question is not whether detention is an action taken to remove an alien but whether the legal questions in this case arise from such an action. And . . . those legal questions are too remote from the actions taken to fall within the scope of § 1252(b)(9).

Jennings, 583 U.S. at 295 n.3. Thus, section 1252(b)(9) does not prevent this Court from hearing the Bond Denial Class or Bond Appeal Class claims.

3. Section 1252(f)(1) and Rule 23(b)(2)

Lastly, Defendants contend that this Court either lacks jurisdiction to grant the Bond Denial Class declaratory relief under section 1252(f)(1) or that seeking only classwide declaratory relief violates Federal Rule of Civil Procedure 23(b)(2). Dkt. 49 at 23-30. The Court has already rejected each of these arguments in granting Plaintiffs’ motion for class certification, *see* Dkt. 32 at 41-43, and Defendants raise no new binding authority that precludes the relief sought by the Bond Denial Class. *See* Dkt. 49 at 23-30.

Defendants argue that section 1252(f)(1) bars the declaratory relief sought by the Bond Denial Class because the provision “prohibits court orders that ‘enjoin or *restrain*’ the Executive Branch’s operation” of sec-

tions 1225(b)(2) and 1226(a). *Id.* at 24 (quoting 8 U.S.C. § 1252(f)(1)) (emphasis in Defendants’ brief). Defendants assert that “the ‘declaratory’ relief sought by the [Bond Denial Class] is impermissibly coercive” and in truth “seeks injunctive relief, or at least, relief that would restrain the operation of § 1225(b)(2),” and is thus barred by section 1252(f)(1). *Id.* at 25. If the Court is barred from providing the declaratory relief sought, then Defendants contend that Bond Denial Class members’ “injuries are not redressable, and they lack Article III standing.” *Id.* at 29-30. But as the Court noted in its prior order, both the Supreme Court and the Ninth Circuit have affirmed that declaratory relief remains available under section 1252(f)(1). Dkt. 32 at 42 (citing *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 120 F.4th 606, 625 n.14 (9th Cir. 2024)).

Under the heading “Limit on injunctive relief,” section 1252(f) provides that:

Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

In *Garland v. Aleman Gonzalez*, the Supreme Court held that section 1252(f)(1) prevents federal courts from “entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provi-

sions.” 596 U.S. 543, 550 (2022). Notably, the Court declined to consider the government’s argument that section 1252(f)(1) “not only bars class-wide injunctive relief but also prohibits any other form of relief that is practically similar to an injunction, including class-wide declaratory relief.” *Id.* at 552 n.2 (citation modified).

Two weeks later in *Biden v. Texas*, the Court reaffirmed the “narrowness of [section 1252(f)’s] scope” by analyzing the statutory text and structure. 597 U.S. 785, 798-800 (2022). As the Court noted, reading section 1252(f)(1) to eliminate district courts’ ability to hear all but individual claims would functionally eliminate the Supreme Court’s jurisdiction as well. *Id.* at 799 (“If section 1252(f)(1) deprived lower courts of subject matter jurisdiction to adjudicate any non-individual claims under sections 1221 through 1232, no such claims could ever arrive at this Court, rendering the provision’s specific carveout for Supreme Court injunctive relief nugatory. Indeed, that carveout seems directed at precisely the question before us here: whether section 1252(f)(1)’s ‘[l]imit on injunctive relief’ has any consequence for the jurisdiction of this Court. Congress took pains to answer that question in the negative.”). Finally, the *Biden v. Texas* majority cited with approval the Court’s plurality decision in *Preap*, which reviewed a case where the putative class sought declaratory and injunctive relief that they should not be mandatorily detained under section 1226(c) and were awarded only the latter by the district court, in “apparent violation of section 1252(f)(1).” *Id.* at 800; *Preap*, 586 U.S. at 399. Despite the lower court’s error, the Supreme Court “proceeded to reach the merits of the suit . . . by reasoning that whether the District Court had jurisdiction to enter such an injunction is irrelevant because the District Court had ju-

risdiction to entertain the plaintiffs' request for declaratory relief." *Biden v. Texas*, 597 U.S. at 800 (citation modified); *see also id.* at 801 ("By its plain terms, and even by its title, [section 1252(f)(1)] is nothing more or less than a limit on injunctive relief.") (quoting *AADC*, 525 U.S. at 481).

Likewise, the Ninth Circuit has also recently rejected the government's argument that section 1252(f)'s limitations reach beyond injunctive relief, affirming that classwide declaratory relief remains available. *See Al Otro Lado*, 138 F.4th at 1123-24, n.13 ("The Supreme Court recently declined to reach the question whether § 1252(f)(1) prohibits classwide declaratory relief. . . . Because the Supreme Court's reservation of a question is not clearly irreconcilable with a precedent of our court that resolves the same question, we follow our binding precedent.").

This Court must follow the Supreme Court's repeated insistence that section 1252(f) limits only injunctive relief and the Ninth Circuit's specific holding that the provision allows classwide declaratory relief as sought in this case. *See Hart v. Massanari*, 266 F.3d 1155, 1170 (9th Cir. 2001) ("Binding authority must be followed unless and until overruled by a body competent to do so."). Section 1252(f) is therefore no bar to the Bond Denial Class claims.

Nor does the Court find persuasive Defendants' argument that classwide declaratory relief violates Rule 23(b)(2). Defendants contend that the declaratory relief sought by the Bond Denial Class is "inappropriate because Rule 23 requires that any non-injunctive relief granted must be 'corresponding declaratory relief,'" Dkt. 49 at 26 (quoting Rule 23(b)(2)), and "[a]ny declar-

atory judgment here would be limited to stand-alone declaratory relief, which is not contemplated by Rule 23(b)(2).” *Id.* at 27.

Rule 23(b)(2) “allows class treatment when ‘the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.’” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011) (quoting Rule 23(b)(2)). In its prior ruling, this Court directly addressed Defendants’ argument that declaratory relief is unavailable under Rule 23(b)(2) when not paired with injunctive relief:

Defendant’s argument is foreclosed by existing case-law. As noted above, Rule 23(b)(2) permits class actions for declaratory or injunctive relief where “the party opposing the class has acted or refused to act on grounds generally applicable to the class.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). The rule uses the word “or,” not “and,” indicating that a request for declaratory relief alone is adequate to satisfy the rule’s requirements. *See, e.g., Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 87 (2018) (the “word ‘or’ . . . is almost always disjunctive.”) (citation omitted). And the Supreme Court has repeatedly described the rule as allowing class actions for both types of relief. *See Amchem*, 521 U.S. at 614 (“Rule 23(b)(2) permits class actions for declaratory or injunctive relief”); *Dukes*, 564 U.S. at 360 (“[t]he key to the (b)(2) class is ‘the indivisible nature of the injunctive *or* declaratory remedy warranted—the notion that the conduct is such that it can be enjoined *or* declared unlawful only as to all of the class mem-

bers or as to none of them.’”) (emphasis added) (citation omitted).

Dkt. 32 at 41. Defendants acknowledge that the Court has previously “rejected Defendants’ argument,” but they assert that the “caselaw indicates that this issue is not as well-settled, nor clear-cut, as the Court may have previously determined.” Dkt. 49 at 26 n.5. But Defendants marshal only a single out-of-circuit district court decision and a Third Circuit dissent as authority for their position. *See id.* at 27-29 (first citing *Onosamba-Ohindo v. Searls*, 678 F. Supp. 3d 364 (W.D.N.Y. 2023); then citing *Alli v. Decker*, 650 F.3d 1007, 1020 (3d Cir. 2011) (Fuentes J., dissenting)). Neither of Defendants’ citations overcome the weight of binding authority that allows the Bond Denial Class to seek standalone declaratory relief. *See, e.g., Dukes*, 564 U.S. at 360; *Al Otro Lado*, 138 F.4th at 1123-24 (analyzing separately the availability of classwide declaratory and injunctive relief in case challenging immigration enforcement policy); *see also* § 1775 Class Actions for Injunctive or Declaratory Relief Under Rule 23(b)(2)—In General, 7AA Fed. Prac. & Proc. Civ. § 1775 (3d ed.) (“Because of the close nexus between injunctive and declaratory relief, it is quite common for parties seeking a declaration of their rights also to include a request for an injunction. But the rule does not require that both forms of relief be sought and a class action seeking solely declaratory relief may be certified under subdivision (b)(2).”). Classwide declaratory relief is permitted by Rule 23(b)(2). Thus, Bond Denial Class members’ injuries are redressable, and they have standing.

Because the Court has jurisdiction to review the Bond Denial Class and Bond Appeal Class claims on their

merits, the Court denies Defendants' Rule 12(b)(1) motion.

B. Bond Appeal Class members have stated a plausible claim for relief.

Defendants advance two bases to dismiss Plaintiffs' Bond Appeal Class claims under Rule 12(b)(6). Dkt. 49 at 35. First, Defendants assert that the Complaint "fails to plead a protected interest in the pace of adjudication of immigration bond appeals." *Id.* Second, Defendants argue that Plaintiffs' complaint "cannot identify a constitutionally mandated timeframe for bond appeals or that the current process is deficient." *Id.*

Defendants' first argument is plainly unsupported. In the introduction to the Complaint, Plaintiffs allege that untimely adjudication of their bond denial appeals amounts to a violation of their liberty interest:

Rather than treat the custody appeals as cases involving *a person's core right to liberty under the Due Process Clause*, the BIA lets them languish for months, and in some cases, years. This practice stands in stark contrast to federal courts facing the similar context of pretrial detention. Both district judges and courts of appeals act within days, weeks, or at most a couple of months, of appeals from magistrate judge detention decisions. *By systematically delaying bond appeal determinations, the BIA fails to similarly acknowledge the serious liberty issues at stake* in these civil detention cases.

Dkt. 1 ¶ 8 (emphasis added).

Defendants acknowledge that the Complaint "references liberty in its introduction," but contends that the Bond Appeal Class "fails to identify either interest or so

much as outline its legal basis in the barest terms.” Dkt. 49 at 36. But Defendants’ assertion is conclusory and unsupported. Plaintiffs’ Bond Appeal Class claim “incorporates by reference” factual allegations including those in paragraph eight, Dkt. 1 ¶ 107, and connects the deprivation alleged to its operative Due Process Claim, *id.* ¶¶ 108-10 (“The Due Process Clause guarantees persons in civil detention timely appellate review of the decision to detain. . . . By not adjudicating appeals within sixty days of the filing of a notice of appeal, the BIA does not provide timely appellate review of detention decisions. . . . This failure to provide timely appellate review violates the Due Process Clause of the Fifth Amendment.”). Plaintiffs need only “plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. The Bond Appeal Class has done so, and the Court will not warp Rule 12(b)(6)’s pleading requirements to construe factual allegations *against* the non-moving Plaintiffs. *See Retail Prop. Tr.*, 768 F.3d at 945; *see also Urban Accessories, Inc. v. Iron Age Design & Imp., LLC*, C14-1529JLR, 2015 WL 1510027, at *5 (W.D. Wash. Apr. 1, 2015) (“[Defendant’s] critique suffers from an overly formalistic approach to reading the complaint. A factual allegation does not cease to be such merely because it appears in a section of the complaint with another title. Moreover, construing the complaint’s well-pleaded allegations in favor of [plaintiff] . . . the court has no trouble connecting the allegations that [defendant] committed infringement[.]”).

Defendants’ second basis for dismissal—that the Bond Appeal Class “cannot plausibly state a claim that the Due Process Clause requires the adjudication of bond appeals within 60 days”—conflates an argument

about the proper remedy for an alleged deprivation of due process rights with the absence of a claim alleging such a deprivation. *See* Dkt. 49 at 36.

First, Defendants contend that the Bond Appeal Class’s reliance on EOIR data that shows average processing times for appeals of 204 days is “unpersuasive” because the Complaint “fails to attach[] the full data set” for Fiscal Year (“FY”) 2024⁴ and “includes the processing times for those individuals who have been released from detention.” *Id.* at 38-39. But Defendants again mistake the Court’s role on a 12(b)(6) motion to dismiss, where it “must accept as true all factual allegations in the complaint.” *Retail Prop. Tr.*, 768 F.3d at 945. The Court is required to accept as true the Bond Appeal Class’s allegations about the BIA’s processing time for appeals, including that between FY 2015 and FYI 2024, 200 bond appeal cases “took a year or longer to resolve.” Dkt. 7 ¶¶ 4, 6; Dkt. 1 ¶ 57; Dkt. 55-2 (EOIR producing dataset to Plaintiffs). Defendants’ complaint that the processing time allegations include cases where the appellant has been released from detention is similarly an attack on the substance of the underlying evidence that is outside the scope of a 12(b)(6) challenge. And rather than undercutting the Bond Appeal Class claims, the fact that BIA’s average appeals processing time includes individuals who have been released from detention may make the data *more persuasive* because it incorporates shorter resolution times where the BIA never reached the merits. *See* Dkt. 50 at 8 (IJ order granting Rodriguez’s “post-conclusion voluntary depar-

⁴ Plaintiffs subsequently attached the full data set for FY 2024. *See* Dkt. 55-1.

ture under INA § 240B(b)"); *id.* at 14 (BIA decision dismissing Rodriguez's appeal as moot).

Next, Defendants argue that because the INA does not prescribe a deadline for deciding an appeal, "there is no reason to conclude that Congress intended to restrict the Board's pace of adjudication." Dkt. 49 at 37. But as Defendants themselves acknowledge, there is an appeals timeline "laid out by regulation." *Id.*; 8 C.F.R. § 1003.1(e)(8) ("[A]fter completion of the record on appeal . . . the Board member or panel to which the case is assigned shall issue a decision on the merits as soon as practicable, with a priority for cases or custody appeals involving detained noncitizens."); § 1003.1(e)(8)(i) ("[T]he Board shall dispose of all cases assigned to a single Board member within 90 days of completion of the record, or within 180 days after a case is assigned to a three-member panel[.]"). Defendants point out that EOIR regulations only "aspire[] to adjudicate" Board appeals within 180 days. Dkt. 49 at 37; *see* 8 C.F.R. § 1003.1(e)(8)(vi) ("The provisions . . . establishing time limits for the adjudication of appeals reflect an internal management directive in favor of timely dispositions . . . and shall not be interpreted to create any substantive or procedural rights[.]"). Although Defendants are correct that timely appeals are not required by statute, the Bond Appeal Class brings a *constitutional* challenge that the agency's untimely adjudication of their appeals violates their due process rights. *See* Dkt. 1 ¶¶ 108-10; ¶ 60 ("These processing times defy the Due Process Clause."). And while "the mere failure of an agency to follow its regulations is not a violation of due process," the Bond Appeal Class may "still be able to state a constitutional claim based on the underlying gov-

ernmental conduct.” *Brown v. Holder*, 763 F.3d 1141, 1148-49 (9th Cir. 2014).

Finally, Defendants take issue with the Bond Appeal Class’s use of criminal case precedent defining the rights of pretrial detainees to “timely adjudication” of trials and appeals. Dkt. 49 at 38. Defendants argue that this authority is “inapplicable to the instant case” and to the appeals timeframe that “applies in the civil immigration context.” *Id.* But Defendants ignore that the Supreme Court has characterized its own pretrial criminal cases as a baseline from which to determine the scope of protections afforded to immigrant detainees under the Due Process Clause. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92 (2001). In *Zadvydas*, even when analyzing the government’s justification for detaining noncitizens who had already been issued a final removal order, the Court repeatedly relied on precedent defining the rights of pretrial criminal detainees. *See, e.g., id.* at 690 (citing *Jackson v. Indiana*, 406 U.S. 715 (1972), concerning detention of criminal defendant deemed incompetent to stand trial); *id.* at 690-91 (“[W]e have upheld preventive detention based on dangerousness only when limited to specially dangerous individuals and subject to strong procedural protections.”) (citing *United States v. Salerno*, 481 U.S. 739 (1987), concerning detention of federal criminal defendants).

Although outside the immigration context, the Ninth Circuit has also analyzed liberty protections afforded to criminal detainees, as well as to post-adjudication civil detainees, to calibrate what protections pre-adjudication civil detainees are entitled to. *See Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) (“[I]t stands to reason that an individual detained awaiting civil commitment pro-

ceedings is entitled to protections at least as great as those afforded to a civilly committed individual and at least as great as those afforded to an individual accused but not convicted of a crime.”). And district courts in this circuit have also looked to precedent from criminal cases to identify the liberty protections required of the government in immigration detention. *See, e.g., Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (“Just as people on preparole, parole, and probation status have a liberty interest, so too does Ortega have a liberty interest in remaining out of custody on bond.”). There is nothing inherently “inapposite” about Plaintiffs’ use of authorities outside the immigration context that articulate the scope of due process rights to timely adjudications while detained. *See* Dkt. 57 at 14.

Plaintiffs have stated a “facially plausible” claim that the BIA’s delayed adjudication of their appeals, while Bond Appeal Class members remain detained, deprives them of their liberty interests under the Due Process Clause. *See Boquist*, 32 F.4th at 773. Plaintiffs cite *Salerno*, 481 U.S. at 752, to support their claim that “*timely* appellate review is a key feature of any civil detention scheme.” Dkt. 1 ¶ 62-63 (emphasis in original). There, the Supreme Court upheld the federal pretrial detention scheme under the Bail Reform Act against a facial due process challenge. *Salerno*, 481 U.S. at 751-52. Among the Court’s reasons for upholding the pretrial detention scheme was the “immediate appellate review of the detention decision,” which the Court noted as one of the “extensive safeguards” sufficient to repel a due process challenge. *Id.* at 752; *see Stack v. Boyle*, 342 U.S. 1, 4 (1951) (granting certiorari and overturning lower court’s pretrial bail determination in criminal case while noting that “[r]elief in this type of case must be speedy if it is

to be effective”); *see also* *Zadvydas*, 533 U.S. at 690-91 (citing *Salerno* multiple times to compare the “adequate procedural protections” upheld by the Court to their corollaries in the immigration detention context).

Plaintiffs also point to Ninth Circuit precedent that emphasizes the importance of timely appeals and appellate procedures, including in immigration cases. *See* Dkt. 1 ¶ 61, 63; Dkt. 54 at 27, 29. In *Fernandez-Alfonso*, the Ninth Circuit held that a district judge’s failure to consider an appeal of a magistrate judge’s detention order for thirty days violated the Bail Reform Act’s promptness requirement. 813 F.2d at 1572-73 (9th Cir. 1987). Although nominally a statutory violation, the Ninth Circuit explained that the statute’s “procedural safeguards serve the important purpose of protecting the liberty interests of presumably innocent pretrial detainees” and “effectiveness demands timeliness.” *Id.* at 1572. And in *Singh v. Holder*, 638 F.3d 1196, 1209 (9th Cir. 2011), *abrogation recognized on other grounds* *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022), the Ninth Circuit held that the Due Process Clause required EOIR to produce a “contemporaneous record” of bond hearings to adequately facilitate appeals.⁵

⁵ Defendants assert that *Singh* “has been largely abrogated or overruled” by *Jennings*. Dkt. 57 at 14 (citing *Rodriguez Diaz*, 53 F.4th at 1202). Plaintiffs contend that *Rodriguez Diaz* “overruled the statutory basis for the bond hearing in *Singh*, but did not disturb its constitutional holding regarding the necessity of certain procedures.” Dkt. 54 at 27 n.7. In *Rodriguez Diaz*, the court both noted that *Singh* “relied on the Due Process Clause in determining the procedural rights available to” noncitizen detainees, but that it did so “in service of an implied statutory right to a bond hearing for persons detained under § 1226(c)—an implied right that the Supreme Court has now rejected.” 53 F.4th at 1202. The Ninth Cir-

In sum, the Bond Appeal Class plausibly alleges that BIA processing times exceed (and in some cases, far surpass) its own guidelines, especially considering that adjudication of bond appeals is classified as a “priority.” *See* 8 C.F.R. § 1003.1(e)(8) (“[A]fter completion of the record on appeal . . . the Board member or panel to which the case is assigned shall issue a decision on the merits as soon as practicable, with a *priority for cases or custody appeals involving detained noncitizens.*”) (emphasis added); Dkt. 55-1. While the regulations alone are not a sufficient basis for a due process challenge, Plaintiffs have also pointed to a line of Supreme Court and Ninth Circuit cases establishing the importance of timely appellate procedures to protect the liberty interests of detainees, particularly in pretrial settings. *See supra*. And the Supreme Court has recognized the relevance of precedent from criminal and civil detention cases when analyzing the constitutional sufficiency of protections afforded to immigrant detainees. *See Zadvydas*, 533 U.S. at 690-91. Therefore, drawing all reasonable inferences in Plaintiffs’ favor, Bond Appeal Class members have stated a plausible claim that Defendants’ current pace of processing appeals at the BIA violates their liberty interest in freedom from imprisonment without due process of law. *Zadvydas*, 533 U.S. at 690; *see Iqbal*, 556 U.S. at 678; Dkt. 1 ¶¶ 108-10. The Court thus denies Defendants’ 12(b)(6) motion to dismiss Bond Appeal Class claims. *See* Dkt. 49 at 35.

cuit declined to “address[] the potential applicability, if any, of *Singh*’s holding absent that perceived statutory right[.]” *Id.*; *see also id.* n.4 (“[W]e have no occasion to decide whether *Singh* remains good law in any respect following *Jennings*.”). This Court will (and must) continue to follow the portions of *Singh* that have not been overruled.

C. Bond Denial Class members are detained under section 1226(a) and are not subject to mandatory detention under section 1225(b)(2).

Plaintiffs move for partial summary judgment, asking the Court to “[d]eclare that Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2). . . . [and that] the Tacoma Immigration Court’s practice of denying bond to Bond Denial Class members on the basis of § 1225(b)(2) violates the Immigration and Nationality Act.” Dkt. 41-1 at 1; Dkt. 41 at 2. Defendants oppose summary judgment and contend that a plain text reading of section 1225 requires that Bond Denial Class members be detained pending the outcome of their removal proceedings. Dkt. 56 at 11-13. Defendants also argue that to the extent legislative history is relevant, it supports their reading of the statute, *id.* at 15-16, and that “[p]rior agency practices are not entitled to deference under *Loper Bright*.” *Id.* at 16. Defendants make the same substantive arguments in their 12(b)(6) motion to dismiss. *See* Dkt. 49 at 30-33; Dkt. 57 at 11-13. Because the material facts are undisputed and whether Bond Denial Class members are governed under section 1226(a)’s discretionary detention scheme or subject to mandatory detention under section 1225(b)(2) “presents a purely legal question of statutory interpretation,” the Court will consider the motions together. *See* Dkt. 53 at 4 (quoting *Rivera v. Holder*, 307 F.R.D. 539, 552 (W.D. Wash. 2015)).

At the outset, the Court recognizes that the INA provisions at issue do not present a straightforward answer as to which detention authority governs the Bond Denial Class. *See Torres v. Barr*, 976 F.3d 918, 923 (9th Cir.

2020) (“[D]ivining [the] meaning . . . of [t]he complex provisions of the INA . . . is ordinarily not for the faint of heart.”). Yet even when a statute is ambiguous or internally contradictory, courts must “use every tool at their disposal to determine the best reading of the statute.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024). The Court begins its analysis with the statute’s plain text. *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017) (“Our analysis begins with the language of the statute.”) (citation omitted); *Shulman v. Kaplan*, 58 F.4th 404, 410 (9th Cir. 2023) (“As always, we begin with the statute.”) (citation omitted).

1. The plain text of section 1226(a) applies to Bond Denial Class members.

Section 1226(a) authorizes that “on a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). “Except as provided in subsection (c),” when a noncitizen is arrested under section 1226(a), the Attorney General may detain him or release him on bond or conditional parole. § 1226(a)(1)-(2). This process includes the right to a bond hearing before an immigration judge. *See* 8 C.F.R. § 1236.1(d). At that hearing, the noncitizen may present evidence of their ties to the United States, lack of criminal history, and other factors that show they are not a flight risk or danger to the community. *See generally In re Guerra*, 24 I. & N. Dec. at 40; *see also Martinez v. Clark*, 124 F.4th 775, 783 (9th Cir. 2024) (discussing *Guerra* factors).

Section 1226(c) then “carves out a statutory category of aliens who may *not* be released under § 1226(a).” *Jennings*, 583 U.S. at 289 (emphasis in original). This sub-

section mandates detention for a noncitizen “who falls into one of several enumerated categories involving criminal offenses and terrorist activities.” *Id.* Importantly, the plain text of section 1226(c) requires detention for certain noncitizens who are “deportable” (meaning they were previously admitted to the United States) *as well as* certain noncitizens deemed “inadmissible” (meaning they have not been admitted to the United States).⁶ *See* §§ 1226(c)(1)(A)-(E). Relevant here, section 1226(c) requires detention for a noncitizen who is deemed inadmissible because he is “present in the United States without being admitted or paroled” under section 1182(a)(6)(A) *and* “is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements” of certain crimes. § 1226(c)(1)(E)(i)-(ii).

A plain reading of this exception implies that the default discretionary bond procedures in section 1226(a) apply to noncitizens who, like Bond Denial Class members, are “present in the United States without being admitted or paroled” under section 1182(a)(6)(A) but *have not been* implicated in any crimes as set forth in section 1226(c). *See* § 1226(a) (Attorney General may release noncitizen on bond “except as provided in subsection (c)”). As the Supreme Court has recognized, when Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *See Shady Grove*

⁶ Generally, grounds for “deportability” (found in 8 U.S.C. § 1227) apply to people who have previously been admitted, such as lawful permanent residents, while grounds of inadmissibility (found in 8 U.S.C. § 1182) apply to those who “have not previously been admitted” to the United States. *See Barton v. Barr*, 590 U.S. 222, 234 (2020).

Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010). This lends strong textual support that “inadmissible” noncitizens, including Bond Denial Class members who are “present in the United States without being admitted or paroled,” are included within section 1226. *See id.*; Dkt. 41 at 13-15.

But this plain reading of section 1226 conflicts with the Tacoma IJs’ and government’s plain reading of section 1225. Section 1225(a)(1) states that a noncitizen “present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission.” Section 1225(b)(2)(A) then states that “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.” According to the Tacoma IJs, a plain reading of section 1225 requires that Bond Denial Class members, who are noncitizens “present in the United States who ha[ve] not been admitted,” be subject to mandatory detention as “applicants for admission.” *See, e.g.*, Dkt. 22 at 17 (section 1225(b)(2)(A) “is quite clear that anyone who meets the definition of an applicant for admission and is not covered under another provision of [section 1225] shall be detained”) (internal quotation marks omitted). And as discussed above, the Tacoma IJs’ interpretation has now been adopted by DHS. *See* Dkt. 61-6 at 2 (“An ‘applicant for admission’ is 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. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to deten-**

tion under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.”).

The Court’s task, then, is to try and use other tools of statutory interpretation to resolve this potential conflict between the text of sections 1225 and 1226. The Bond Denial Class argues that “seeking admission” in section 1225(b)(2)(A) should be read to narrow mandatory detention to “only those who take affirmative acts, like submitting an ‘application for admission,’” while noncitizens arrested while “already present in the United States” continue to be governed under the discretionary detention scheme in section 1226. Dkt. 41 at 17-18. In support of this argument, Bond Denial Class members point to traditional canons of statutory construction, the recent Laken Riley Act (“LRA”) amendments to section 1226, the legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), and the longstanding practice of the agency. Dkt. 41 at 13-20. The government counters that canons of statutory construction affirm its reading that Bond Denial Class members are subject to mandatory detention; that redundancies in its interpretation presented by the LRA amendments are “common”; that IIRIRA’s legislative history supports its position that noncitizens already in the country should not be treated differently than arriving noncitizens; and that past agency interpretation is not afforded deference post-*Loper Bright*. Dkt. 56 at 11-16. Considering each of these arguments, the Court concludes that Bond Denial Class members are subject to discretionary detention under section 1226(a) rather than mandatory detention under section 1225(b)(2).

2. *Canons of statutory construction support the Bond Denial Class’s interpretation of sections 1226 and 1225.*

The Bond Denial Class members argue that their interpretation is supported by two traditional canons of statutory construction: that statutes should be construed as a whole, giving effect to all their provisions; and that recent amendments to a statute should be read in harmony with an agency’s longstanding construction. *See* Dkt. 41 at 13-18; Dkt. 3 at 10-13. The Court agrees that both canons support applying section 1226 to the Bond Denial Class.

First, if the Court were to adopt the reading of section 1225 advanced by the Tacoma IJs and the government, it would render significant portions of section 1226(c) meaningless. *See* Dkt. 22 at 20 (justifying named Plaintiff Rodriguez’s bond denial based on the IJ’s interpretation that section 1225 “applies to applicants for admission” and section 1226 “applies only to those who have been admitted”). Under “one of the most basic interpretive canons . . . [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” *Corley v. United States*, 556 U.S. 303, 314 (2009) (citation modified); *Shulman*, 58 F.4th at 410-11 (“[A] court must interpret the statute as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous.”) (citation modified). “This principle . . . applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times.” *Bilski v. Kappos*, 561 U.S. 593, 607-08 (2010).

Here, if the Tacoma IJs and government’s interpretation is correct and section 1225, “rather than section [1226], is the applicable immigration detention authority for all applicants for admission,” Dkt. 61-6 at 2, then it would render superfluous provisions of section 1226(c). *See* § 1226(c)(1)(A), (D), (E); *Shulman*, 58 F.4th at 410-11; *see also Torres*, 976 F.3d at 930 (noting in the context of interpreting inadmissibility grounds “that a contrary reading would render other provisions of the immigration code superfluous”). Put another way, section 1226(c)(1)(E)’s mandatory detention for inadmissible noncitizens who are implicated in an enumerated crime, including those “present in the United States without being admitted or paroled,” would be meaningless since all noncitizens “present in the United States who ha[ve] not been admitted” would already be subject to mandatory detention under the government’s reading. *See* § 1225(a)(1); § 1182(a)(6)(A)(i); Dkt. 61-6 at 2 (“An alien present in the United States who has not been admitted or who arrives in the United States . . . [is] subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.”) (emphasis removed); Dkt. 5-2 at 2-3 (Tacoma IJ memo denying hearing for Bond Denial Class member because “the custody provision under INA § 235(b)(2)(A) mandates the detention of all inadmissible noncitizens” and “applies to all applicants for admission”). As the Supreme Court put it in *Corley*, the government’s reading of section 1225(b) thus “seems clear . . . only until one reads” section 1226(c) and recognizes that if section 1225(b) means what the government says, portions of section 1226(c) “serve no purpose.” 556 U.S. at 314, n.5.

Second, it is important that some of the exceptions in section 1226(c) that would be made superfluous by the

Tacoma IJs and government’s reading were enacted by Congress just months ago. “When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.” *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995) (citations omitted) (giving effect to a congressional amendment of the INA). Congress passed the LRA in January 2025 amending several provisions of the INA, including sections 1226 and 1225. *See* LRA, Pub. L. No. 119-1, 139 Stat. 3 (2025). Relevant here, the LRA carved out an additional category of noncitizens from section 1226(a)’s discretionary detention scheme who now fall under section 1226(c)’s mandatory detention authority. *Id.*; *see Jennings*, 583 U.S. at 289. As described above, this category includes those noncitizens who are deemed inadmissible, including for being “present in the United States without being admitted or paroled,” *and* who have been arrested, charged with, or convicted of certain crimes. § 1226(c)(1)(E); *see* LRA, Pub. L. No. 119-1, 139 Stat. 3 (2025); §1182(a)(6)(A)(i). These “specific exceptions” for a subset of inadmissible noncitizens logically leaves those *not* criminally implicated under section 1226(a)’s default rule for discretionary detention. *See Shady Grove Orthopedic Assocs., P.A.*, 559 U.S. at 400; *Jennings*, 583 U.S. at 289.

And as explained further below, *see infra* Sec. III.C.4, Congress enacted the LRA against the backdrop of longstanding agency practice applying section 1226(a) to inadmissible noncitizens already residing in the country. Another “customary interpretive tool” is the principle that “[w]hen Congress adopts a new law against the backdrop of a ‘longstanding administrative construction,’” a court “generally presumes the new provision should be understood to work in harmony with what has come before.” *Monsalvo v. Bondi*, 604 U.S.

_____, 145 S. Ct. 1232, 1242 (2025) (quoting *Haig v. Agee*, 453 U.S. 280, 297-98 (1981)). In *Monsalvo*, while recognizing that “[i]n truth, the statute is susceptible to both understandings,” the Supreme Court interpreted a deadline expressed in terms of “days” in section 1229c of the INA to “extend deadlines falling on a weekend or legal holiday to the next business day,” rather than counting “every calendar day.” *Id.* at 1241. The Court adopted this interpretation because Congress enacted the relevant subsection “against the backdrop of [a] consistent, longstanding administrative construction” giving this specialized meaning to the term “day.” *Id.* at 1242. Similarly, here, Congress adopted the new amendments to section 1226(c) against the backdrop of decades of post-IIRIRA agency practice applying discretionary detention under section 1226(a) to noncitizens inadmissible by virtue of being “present in the United States without being admitted or paroled,” such as the Bond Denial Class members. It is therefore presumed that Congress intended “the same understanding.” *See id.*

Nonetheless, Defendants’ position is that Bond Denial Class members who are already present and have been residing in the United States for several years are subject to mandatory detention under section 1225(b). Dkt. 56 at 11-13. Defendants discount the importance of the LRA amendments and contend that traditional interpretive canons favor its reading of section 1225(b)(2) as the detention authority for Bond Denial Class members. *Id.* at 11, 15. But their arguments only reinforce that section 1226(a) lawfully governs the Bond Denial Class.

Defendants first minimize the significance of this year's LRA amendments, which require detention of inadmissible noncitizens implicated in certain crimes under section 1226. *Id.* at 15. Defendants posit that the amendments merely reflect a statutory redundancy and that "redundancies in statutory drafting are 'common . . . sometimes in a congressional effort to be doubly sure.'" *Id.* (quoting *Barton*, 590 U.S. at 239). But Defendants base their argument solely on isolated statements from individual House members who expressed outrage at the circumstances of Laken Riley's death. *See id.* at 15-16. When legislative history is even considered, the Supreme Court has "repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill" and has "eschewed reliance on the passing comments of one Member . . . and casual statements from the floor debates." *Garcia v. United States*, 469 U.S. 70, 76 (1984). And even allowing for some redundancy in statutory drafting, it is a "cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant." *Kungys v. United States*, 485 U.S. 759, 778 (1988) (citing cases); *United States v. \$133,420.00 in U.S. Currency*, 672 F.3d 629, 643 (9th Cir. 2012) (same). Defendants' expansive reading of section 1225 that all noncitizens "present in the United States who ha[ve] not been admitted" are "subject to detention under [1225(b)] and may not be released from ICE custody" would render section 1226(c)(1)(E) "entirely redundant." *See id.*; Dkt. 61-6 at 2. "[T]he Court does not lightly assume Congress adopts two separate clauses in the same law to perform the same work," and this Court is not persuaded that Congress did so in passing the Laken Riley Act. *See United States v. Taylor*, 596 U.S. 845, 857 (2022).

Defendants next contend that the antisuperfluosity canon shows that its reading of the detention statutes is the better one because Plaintiffs' interpretation would make "applicant for admission" in section 1225(b)(2)(A) meaningless. *See* Dkt. 56 at 12-13. But rather than resolving a conflict between the two provisions, Defendants' interpretation would introduce another one by rendering the phrase "seeking admission" in section 1225(b)(2)(A) superfluous.

Defendants argue that "applicants for admission" are synonymous with those "seeking admission." *Id.* at 12 ("Applicants for admission are both those individuals present without admission and those who arrive in the United States. . . . Both are understood to be 'seeking admission' under §1225(a)(1)."). Defendants rely on a BIA case, *Matter of Lemus-Losa*, in which the Board stated that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Id.* (quoting 25 I. & N. Dec. 734, 743 (BIA 2012)) (emphasis in original). That case involved a noncitizen who initially entered the United States without inspection, departed, and then reentered the country. *Id.* at 735. As relevant here, the Board's discussion was in the context of the noncitizen who, while residing in the United States for the second time, had *affirmatively* applied for adjustment of status to be admitted as a lawful permanent resident. *Id.* And while it considered different statutory provisions than the ones at issue here, the Board distinguished the acts defining an "applicant for admission" from those "seeking admission." *Id.* at 744 ("[I]n some cases such an alien will have reentered the United States unlawfully, thereby making himself an 'applicant for admission' by

operation of law, while *seeking ‘admission’ through adjustment of status.*”) (emphasis added).

Rather than addressing how the “seeking admission” language supplements the “applicant for admission” phrase that Defendants assert gives them sweeping mandatory detention authority, they insist that the terms are coterminous by pointing to a separate provision of section 1225. *See* Dkt. 56 at 12. Defendants argue that section 1225(a)(3), which is subtitled “Inspection” and requires noncitizens “who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States” to be inspected by immigration officers, supports their reading that the phrases are synonyms of each other. *See id.* (“The word ‘or’ here ‘introduce[s] an appositive—a word or phrase that is synonymous with what precedes it[.]’”) (quoting *United States v. Woods*, 571 U.S. 31, 45 (2013)).⁷ But Defendants’ example in this provision, like its argument concerning section 1225(b)(2), conflates *distinct* categories of noncitizens. In the same BIA case Defendants point to in arguing that the “seeking admission” language sweeps more broadly, the Board described the circumstances in which a noncitizen could “seek admission” without being present in the United States. *See*

⁷ As another district court pointed out when it encountered the same argument and citation, “the case cited by the government to suggest that the word ‘or’ ‘introduce[s] an appositive’ actually says that the opposite is generally true.” *Romero*, 2025 WL 2403827, at *10 n.31(citation omitted); *see Woods*, 571 U.S. at 45 (“Moreover, the operative terms are connected by the conjunction ‘or.’ While that can *sometimes introduce an appositive*—a word or phrase that is synonymous with what precedes it . . . —*its ordinary use is almost always disjunctive*, that is, the words it connects are to be given separate meanings.”) (citation modified) (emphasis added).

Matter of Lemus-Losa, 25 I. & N. Dec. at 741 (a noncitizen can “seek[] admission . . . without entering the United States unlawfully—for example, by applying for a visa at a consulate abroad”). Contrast that with an “applicant for admission,” who must be physically present in the United States or right at its door. See § 1225(a)(1) (“An alien present in the United States who has not been admitted or who arrives in the United States. . . .”). Thus, section 1225(a)(3)’s inspection protocol applies to two different categories of noncitizens: (1) those already present or arriving in the United States, in other words “applicant[s] for admission”; and (2) those who may “seek[] admission” from anywhere in the world. See, e.g., 8 U.S.C. § 1225a(a) (requiring pre inspection at certain foreign airports before such noncitizen “passengers . . . arrive from abroad”); 19 U.S.C. § 1629(a) (authorizing inspection of persons in foreign countries “prior to their arrival in . . . the United States”).

This distinction reaffirms that Congress chose to use different phrases to delineate separate categories of noncitizens in section 1225. See *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 457-58 (2022) (applying another “well-settled canon[] of statutory interpretation,” the meaningful-variation canon, in which courts presume that where Congress has “used one term in one place, and a materially different term in another, the different term denotes a different idea”). Giving separate meaning to these phrases in section 1225(a)(3) or the subsection at issue here, section 1225(b)(2), does not read out “applicant for admission,” Dkt. 56 at 12-13, but rather gives effect to Congressional intent. See *Sw. Airlines Co.*, 596 U.S. at 457-58; see also Dkt. 58 at 7 (arguing that inclusion of “applicant for admission” language in section 1225(b)(2)

“underscores that people who *were* admitted are not covered.”) (emphasis in original). Compare that with Defendants’ approach equating “applicants for admission” with those “seeking admission,” which robs the latter phrase of any meaning within the broader provision. Another district court that analyzed the government’s interpretation of “seeking admission” summarized this effect succinctly:

If, as Respondents argue, § 1225(b)(2)(A) were intended to apply to all “applicant[s] for admission,” there would be no need to include the phrase “seeking admission” in the statute. That is, rather than stating that mandatory detention is required for any “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,” § 1225(b)(2)(A) (emphasis added), the statute would instead provide for mandatory detention for any “applicant for admission, if the examining immigration officer determines that [the] alien ~~seeking admission~~ is not clearly and beyond a doubt entitled to be admitted.”

Lopez Benitez v. Francis, 25 CIV. 5937 (DEH), 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025) (emphasis in original); see *United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432, (2023) (“[E]very clause and word of a statute should have meaning.”) (citation omitted). Here too, the Court concludes that adopting the Tacoma IJs and government’s interpretation that mandatory detention applies to all “applicants for admission” would make the “seeking admission” language entirely superfluous. See *id.*; see also, e.g., *Martinez*, 2025 WL 2084238, at *6 (same); *Romero*, 2025 WL

2403827, at *9 (same); *Lopez-Campos*, 2025 WL 2496379, at *7 (similar); *Maldonado*, 2025 WL 2374411, at *12 (“[A]ccepting Respondents’ one-size-fits-all application of § 1225(b)(2) to all aliens, with no distinctions, would violate fundamental canons of statutory construction.”).

Defendants have not pointed to a single district court that has agreed with its construction of section 1225(b)(2). When asked for such authority at oral argument, Defendants referenced one case in Florida, but that case involved the court holding that noncitizens *arriving at the border* are detained under 1225(b)(2). *See* Dkt. 56 at 14 (citing *Florida v. United States*, 660 F. Supp. 3d 1239 (N.D. Fla. 2023)); Dkt. 57 at 7. There, Florida sued federal officials, arguing that they “were violating the statutory detention mandates in § 1225(b)(1) and (b)(2) by releasing aliens arriving at the Southwest Border into the country *en masse* through various ‘non-detention policies.’” *Florida*, 660 F. Supp. 3d at 1248-49. The parties agreed that the “illegal border crossers” at issue in the case met “the statutory definition for applicants for admission and [were] subject to inspection under § 1225(a).” *Id.* at 1273. Nowhere in that decision did the court hold that “applicants for admission” who were *not* apprehended while arriving at the border, but rather were arrested while residing in the United States, were subject to mandatory detention under section 1225. *See generally id.*; *see* Dkt. 32 at 43 (Bond Denial Class consisting of noncitizens who, among other factors, “are not apprehended upon arrival”). In fact, when explaining that noncitizens “apprehended at the Southwest Border” could not be granted discretionary detention under section 1226(a), the court suggested that members of the Bond Denial Class may be among the noncitizens who *are* properly subject to section 1226(a). *See Florida*, 660

F. Supp. 3d at 1275 (“As the Supreme Court stated in *Jennings*, § 1226 applies to ‘certain aliens *already in the country*.’”) (quoting *Jennings*, 583 U.S. at 289).

Canons of statutory interpretation are, of course, interpretive aids for the statutory text and do not override the plain meaning when such language is unambiguous. See *Esquivel-Quintana*, 581 U.S. at 391. But even if there were no ambiguity within the detention provisions at issue—a position this Court does not adopt—the plain meaning of “seeking admission” further supports Plaintiffs’ position that Bond Denial Class members are not encompassed by that phrase. Defendants’ “interpretation of § 1225(b)(2)(A) simply ignores the statute’s present-tense active language.” *Lopez Benitez*, 2025 WL 2371588, at *6; *Martinez*, 2025 WL 2084238, at *6 (“[T]he phrase ‘seeking admission’ is undefined in the statute but necessarily implies some sort of present-tense action.”); *Lopez-Campos*, 2025 WL 2496379, at *6 (“Respondents completely ignore the term ‘seeking’ when attempting to broaden what ‘seeking admission’ means. This implies action—something that is currently occurring[.]”). The Ninth Circuit has endorsed this approach when it recently interpreted similar present-tense language in section 1225(b). See *Al Otro Lado v. Wolf*, 952 F.3d 999, 1011 (9th Cir. 2020) (finding that the phrase “*arriving* in the United States” and its “use of the present progressive, like use of the present participle . . . denotes an ongoing process”) (citation omitted) (emphasis in original).

Defendants ignore the implication by section 1225(b)(2)(A) that a noncitizen must be engaged in an “ongoing process”—or any affirmative act for that matter—towards “admission” to trigger the provision’s

mandatory detention scheme. *See id.*; 8 U.S.C. § 1101(a)(13)(A) (“The terms ‘admission’ and ‘admitted’ mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.”). Unless “seeking admission” is subsumed entirely by “applicant for admission,” Defendants’ interpretation of section 1225(b)(2) could only make sense if the Court presumed that Bond Denial Class members—many of whom have lived in the country for years and made no attempts to be admitted—were in a perpetual state of “seeking admission.” But such an interpretation defies the rule against surplusage, the everyday meaning of “seeking” and “admitted,” and logic. *See Lopez Benitez*, 2025 WL 2371588, at *7 (“[S]omeone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as ‘seeking admission’ to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as ‘seeking admission’ (or ‘seeking’ ‘lawful entry’) at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there.”).

Finally, Defendants argue that when there is “an irreconcilable conflict in two legal provisions,” principles of statutory interpretation require that “the specific governs over the general.” Dkt. 56 at 11 (quoting *Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1015 (9th Cir. 2017)). Because Plaintiffs reference section 1226(a) as “the INA’s default detention authority,” *see* Dkt. 41 at 13, Defendants argue that section 1225’s focus only on “applicants for admission” is narrower and

thus “governs over the general authority found at § 1226(a).” Dkt. 56 at 11. But Defendants misconstrue Plaintiffs’ argument—and by extension, the Supreme Court’s explanation of section 1226. Plaintiffs’ reference to section 1226(a) as the “default rule” arises from the Supreme Court’s description of the provision in *Jennings*. See Dkt. 58 at 3 (“The correct analysis, however, begins with § 1226(a)’s ‘default rule.’”) (quoting *Jennings*, 583 U.S. at 288).

As another district court explained, “*Jennings* did not, as the government suggests, describe Section 1226 as the ‘default’ detention authority in federal immigration law writ large.” *dos Santos, v. Noem, et al.*, 1:25-CV-12052-JEK, 2025 WL 2370988, at *8 (D. Mass. Aug. 14, 2025). Instead, the Supreme Court explained that in circumstances where section 1226 applies, “[s]ection 1226(a) sets out the default rule,” referring to its discretionary detention scheme, with section 1226(c)’s mandatory detention serving as the exception. See *Jennings*, 583 U.S. at 289 (“Section 1226(c), however, carves out a statutory category of aliens who may *not* be released under § 1226(a).”) (emphasis in original). Thus, section 1225 is not a “narrower” subset of section 1226’s detention authority. Dkt. 56 at 11. If anything, Defendants’ argument gives weight to Plaintiffs’ interpretation that section 1226 governs the Bond Denial Class because this year’s LRA amendments created a *specific* exception within section 1226’s carveout. § 1226(c)(1)(E); see LRA, Pub. L. No. 119-1, 139 Stat. 3 (2025).

Finally, although it does not directly address the question presented, the Supreme Court’s opinion in *Jennings* makes clear that sections 1225 and 1226 apply in different circumstances, and it lends some support to

Plaintiffs’ proposal for harmonizing the different authorities. The Court framed its discussion of section 1225 as part of a process that “generally begins at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible.” 583 U.S. at 287. Then, when discussing section 1226, *Jennings* describes it as governing “the process of arresting and detaining” noncitizens who are living “inside the United States” but “may still be removed,” including noncitizens “who were inadmissible at the time of entry.” *Id.* at 288. The Court then summarizes the distinction as follows: “In sum, U.S. immigration law authorizes the Government to detain certain aliens *seeking* admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).” *Id.* at 289 (emphasis added); *cf. Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (a noncitizen “who *tries to enter* the country illegally is treated as an applicant for admission,” and a noncitizen “who is detained *shortly after unlawful entry* cannot be said to have effected an entry”) (emphasis added) (citation modified); *Matter of Q. Li*, 29 I. & N. Dec. 66, 67-68 (BIA 2025) (treating an individual encountered by DHS “approximately 5.4 miles away from a designated port of entry and 100 yards north of the border” as a noncitizen “who arrives in the United States” under section 1225 because they are “apprehended just inside the southern border, and not at a point of entry, on the same day they crossed into the United States”) (citation modified). Plaintiffs’ reading of the statute follows this distinction and is the most sensible way to harmonize the provisions of sections 1225 and 1226.

3. *Legislative history from IIRIRA supports the Bond Denial Class's interpretation of section 1226.*

The legislative history behind section 1226 also tends to support the Bond Denial Class's argument that it governs noncitizens like them who reside in the United States but previously entered without inspection.

Before IIRIRA's enactment, the predecessor statute to section 1226(a) governed deportation proceedings for all noncitizens arrested within the United States. *See* 8 U.S.C. § 1252(a)(1) (1994) ("Pending a determination of deportability . . . any alien . . . may, upon warrant of the Attorney General, be arrested and taken into custody."); *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) ("A deportation hearing was the usual means of proceeding against an alien already physically in the United States[.]"). This predecessor statute, like section 1226(a), included discretionary release on bond. *See* § 1252(a)(1) (1994) ("[A]ny such alien taken into custody may, in the discretion of the Attorney General . . . be continued in custody . . . [or] be released under bond[.]"). Upon passing IIRIRA, Congress declared that the new section 1226(a) "restates the current provisions in [the predecessor statute] 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; *see also* H.R. Rep. No. 104-828, at 210 (same). Because noncitizens arrested while unlawfully residing in the United States were entitled to discretionary detention under section 1226(a)'s predecessor statute, and Congress declared its scope unchanged by IIRIRA, this background

supports the position that Bond Denial Class members too are subject to discretionary detention.

Defendants counter that to the extent legislative history is relevant to the analysis, it favors the government's view. Dkt. 57 at 13; Dkt. 56 at 15-16. They cite a Ninth Circuit decision, *Torres v. Barr*, to argue that "Congress passed IIRIRA to correct 'an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.'" Dkt. 56 at 15 (quoting 976 F.3d at 928). Defendants point to language in the same House Report from IIRIRA's passage to argue Congress intended noncitizens to be treated the same whether they were living in the United States or encountered at the border. *See id.*; H.R. Rep. 104-469, pt. 1, at 225 ("[R]eplacing the definition of 'entry' with a definition for 'admission' and 'admitted' under section 1101(a)(13)(A) because IIRIRA was "intended to replace certain aspects of the current 'entry doctrine,' under which illegal 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 at a port of entry"). In Defendants' view then, Bond Denial Class members living in the United States cannot be afforded a bond hearing because other noncitizens arriving at or encountered near the border would be ineligible to receive one. *See* Dkt. 56 at 15.

The Court disagrees. As another district court in this circuit recently observed, the government "err[s] in its analysis by identifying *one* of Congress's concerns in enacting IIRIRA and then treating it as Congress's sole concern driving the statute." *Aceros, v. Kaiser, et al.*,

25-CV-06924-EMC, 2025 WL 2637503, at *11 (N.D. Cal. Sept. 12, 2025) (emphasis in original). Although Defendants correctly point out Congress’s concern with the “entry doctrine anomaly,” IIRIRA resolved this problem by placing noncitizens “on equal footing in *removal* proceedings under the INA.” *Torres*, 976 F.3d at 928 (citation modified) (emphasis added). Thus, when the Ninth Circuit discussed the legislative history surrounding “admission” and “applicant for admission,” it applied this background to the greater burden of proof noncitizens living in the United States face in defending against removal after IIRIRA. *See id.* at 928 (“Now, in removal proceedings, the relevant distinction for procedural purposes is whether the immigrant has been lawfully admitted, regardless of actual physical presence.”); *id.* (comparing noncitizen’s burden of proof when considered an “applicant for admission” under section 1229a(c)(2)(A) with government’s burden of proof when noncitizen has been admitted under section 1229a(c)(3)(A)); H.R. Rep. 104-469, pt. 1, at 225 (“[T]he pivotal factor in determining a alien’s *status* will be whether or not the alien has been lawfully admitted.”) (emphasis added). But creating a level playing field in removal proceedings “says nothing about detention pending the outcome of those proceedings.” *Romero*, 2025 WL 2403827, at *12; 8 C.F.R. § 1003.19(d) (noting that an IJ’s consideration of requests for “custody or bond . . . shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding”).

Nor can Defendants enlarge Congress’s stated concern that noncitizens living in the United States had an advantage during *removal* proceedings pre-IIRIRA to an unarticulated aim to mandate *detention* for all such noncitizens post-IIRIRA. It is easy to conceive of rea-

sons Congress would distinguish between these concepts; for one, noncitizens who have lived for years in this country are more likely to be working in critical industries, parenting U.S. citizen children, or otherwise serving their communities. *See, e.g.*, Dkts. 9; 35; 43; 44; 45 (declarations of named Plaintiff and Bond Denial Class members). The mass detention of these individuals—without regard to flight risk or danger to the public—is far more disruptive to local American economies, families, and communities than the detention of noncitizens who have just crossed the border. And as discussed above, to the extent legislative history is a guide, Congress declared its intention that noncitizens taken into custody while residing in the United States retain the ability to secure release on bond. *See* § 1252(a)(1) (1994); H.R. Rep. No. 104-469, pt. 1, at 229.

If Congress had wished to enact the transformation of the immigration detention system that Defendants contend it did—requiring the detention of millions of people currently living and working in the United States—then it would have said so more clearly. *See Whitman v. Am. Trucking Associations*, 531 U.S. 457, 468 (2001) (“Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.”); *Torres*, 976 F.3d at 928 (holding that a separate provision of the INA was not altered by a later law because “Congress would have made it plain if the . . . provision, enacted some four decades later, altered the longstanding meaning”). As another district court put it, “[r]ealistically speaking, if Congress’s intention was so clear, why did it take thirty years to notice?” *Romero*, 2025 WL 2403827, at *12.

4. *Longstanding agency practice supports the Bond Denial Class’s interpretation of section 1226.*

Finally, the Court considers the weight that should be given to the interpretation of the INA by executive branch agencies over time. In this case, for decades since the passage of IRRIRA, the government and Plaintiffs generally agreed that noncitizens arrested while living in the United States were detained under section 1226(a). The bond denial practices at the Tacoma Immigration Court reaching the opposite conclusion were so aberrational that they led to this lawsuit. *See* Dkt. 5 ¶ 3; Dkt. 6 ¶ 3. But in the few months this case has been pending, both DHS and the BIA have changed course and concluded that noncitizens such as the Bond Denial Class members are subject to mandatory detention. Dkt. 61-6 at 2-3 (DHS memo); *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2015).

As the Supreme Court has recently clarified, this Court is not required to give either interpretation any deference. *Loper Bright*, 603 U.S. at 412-13. While “the judgment of the Executive Branch may help inform” the Court’s inquiry, *id.* at 413, it does so only to the extent of its “power to persuade.” *Id.* at 402 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). Here, the previous longstanding practice of allowing bond hearings for noncitizens such as the Bond Denial Class members has some persuasive value, because it began contemporaneously with the statute’s enactment and endured for many years. In contrast, the new interpretation advanced by DHS and the BIA adds little to the arguments the Court has already rejected.

DHS’s previous “longstanding practice” of treating noncitizens arrested while living in the United States,

including those who entered without inspection, as detained under section 1226(a) lends some additional support to Bond Denial Class members' position. *See Loper Bright*, 603 U.S. at 386. "[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is." *Id.* (citation modified). The Supreme Court has observed that respect for executive branch interpretations of federal statutes is "especially warranted when [it] was issued roughly contemporaneously with enactment of the statute and remained consistent over time." *Id.* (citing cases).

"DHS's longstanding practice of considering people like Plaintiffs as detained under [section] 1226(a)," the Bond Denial Class argues, supports their inclusion within its discretionary detention scheme rather than mandatory detention under section 1225(b)(2). Dkt. 41 at 19; *id.* at 3 ("For decades, people in this situation—people who have been residing in the United States, often for years—received bond hearings before an Immigration Judge[.]"). Plaintiffs point to contemporaneous executive branch regulations issued to interpret and apply IIRIRA. Dkt. 41 at 20. In a 1997 interim rule issued "to implement the provisions of [IIRIRA]," which had passed six months earlier, the agencies charged with enforcing the Nation's immigration laws directly addressed the detention scheme noncitizens like Bond Denial Class members would be held under. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Under the heading of "Apprehension, Custody, and Detention of Aliens," the agencies first stated that IIRIRA dictated a new \$1,500 minimum bond amount for "non-criminal aliens." *Id.*; *see also* § 1226(a)(2) (directing that the Attorney General "may release the alien on . . . bond of at least \$1,500"). Then

in the following sentence, the agencies explained that “[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323; *see also* Dkt. 4-6 at 2 (Notice to Appear stating that named Plaintiff Rodriguez is a noncitizen “present in the United States who has not been admitted or paroled.”).

Compare this with how the same implementing regulations, which have never changed since they were issued, define “arriving” noncitizens. 62 Fed. Reg. at 103212-13; 8 C.F.R. § 1.2. Under the regulations, an “arriving” noncitizen means “an applicant for admission coming or attempting to come into the United States.” 8 C.F.R. § 1.2. In other words, an “arriving” noncitizen is an “applicant for admission” who takes an *affirmative act*: “coming or attempting to come into the United States.” *See id.* As other district courts considering which detention provision applies to noncitizens residing in the United States have noted, the regulations “mirror[] the text of section 1225(b)(2)(A), which applies where an individual is an ‘applicant’ who is also *doing* something: ‘seeking admission.’” *Martinez*, 2025 WL 2084238, at *6; *Lopez Benitez*, 2025 WL 2371588, at *7 (same); *see also supra* Sec. IV.C.2. While not subject to deference, this regulatory guidance—which reinforces the Court’s own analysis of the text and canons of interpretation—and the agency’s previous decades of unchanged practice is persuasive. *See Loper Bright*, 603 U.S. at 386.

Defendants mostly concede Plaintiffs’ description of “longstanding agency practice,” *see* Dkt. 49 at 33, but they maintained at oral argument that the government has not “always” interpreted section 1226(a) this way. Still, the government acknowledged that its position as to which detention authority applies to Bond Denial Class members was a recent change. *See also* Dkt. 61-6 at 2 (“DHS . . . has revisited its legal position on detention and release authorities[.]”). But Defendants argue in their briefing (and emphasized at oral argument) that the “asserted longstanding agency practice carries little, if any, weight under *Loper Bright*.” Dkt. 56 at 16; Dkt. 49 at 33 (“The asserted ‘longstanding’ agency practice does not change the analysis.”). They contend that under *Loper Bright*, an agency’s “power to persuade” depends on the “thoroughness evident in its consideration, the validity of its reasoning, [and] its consistency with earlier and later pronouncements[.]” 603 U.S. at 388 (quoting *Skidmore*, 323 U.S. at 140); Dkt. 49 at 33. Defendants assert that “the agency has provided little, if any, analysis to support its” earlier reasoning. Dkt. 49 at 33; Dkt. 56 at 16 (similar).

After oral argument, Defendants urged the Court to instead follow a new agency interpretation, in the form of a recent BIA decision “that provides additional support to Defendants’ argument that Plaintiff and the Bond Denial Class are properly detained under 8 U.S.C. § 1225(b)(2).” Dkt. 63 at 1. In *Matter of Hurtado*, 29 I. & N. at 216, the BIA held on September 5, 2025 that IJs “lack authority to hear bond requests or to grant bond” to noncitizens “who are present in the United States without admission.” Dkt. 63-1 at 11.

But the BIA decision does not alter the Court’s previous analysis. As Defendants have pointed out, an agency’s “power to persuade” rests at least in part on “its consistency with earlier and later pronouncements[.]” Dkt. 49 at 33 (quoting *Loper Bright*, 603 U.S. at 432-33). Here, the BIA’s current position is inconsistent with its earlier pronouncements. *See id.* Prior to its September 5 decision, Plaintiffs provided evidence that the Board took the *opposite* position. *See* Dkt. 4-1; Dkt. 4-2. In two unpublished decisions from 2023, the BIA overturned the Tacoma IJs’ denial of bond for noncitizens present in the United States without being admitted based on the IJs’ interpretation of section 1225. *See id.* In one of those decisions involving a noncitizen who entered the United States “without being admitted or paroled,” the BIA stated that it was “unaware of any precedent stating that an Immigration Judge lacks authority to redetermine the custody conditions of a respondent in removal proceedings under the circumstances here.” Dkt. 4-1 at 4.

Nor was the BIA’s position on the proper detention authority for noncitizens like Bond Denial Class members confined to unpublished dispositions. In *Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA 2025), the Board stated unequivocally that a noncitizen who had entered the United States unlawfully three years earlier was subject to discretionary detention under section 1226(a). *See also Matter of Hurtado*, 29 I. & N. at 226 (“The Board’s statement in that decision [was] that the respondent’s custody determination was governed by section 236(a) of the INA, 8 U.S.C.A. § 1226(a), even though the respondent was present in the United States without inspection[.]”). As recently as August 4, 2025, the Attorney General designated the Board’s decision in *Matter*

of *Akhmedov* “as precedent in all proceedings involving the same issue or issues.” 29 I. & N. at 166 n.1.⁸

Under *Loper Bright*, the Court has no obligation to defer to the BIA. *Murillo-Chavez v. Bondi*, 128 F.4th 1076, 1086-87 (9th Cir. 2025) (holding that after *Loper Bright*, BIA decisions “have only that power [to persuade] and we ‘need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous’”) (quoting *Loper Bright*, 603 U.S. at 413). This is especially true where, as here, the BIA’s position has not “remained consistent over time.” *Loper Bright*, 603 U.S. at 394; cf. *Biden v. Texas*, 597 U.S. at 805 (supporting its analysis of a subsection of section 1225(b)(2) by noting that “[s]ince IIRIRA’s enactment 26 years ago, every Presidential administration has interpreted” it the same). In addition to its inconsistency, the Court disagrees with the “validity of [the Board’s] reasoning” that all inadmissible noncitizens living in the United States are subject to mandatory detention under section 1225(b)(2). See *Loper Bright*, 603 U.S. at 388; Dkt. 63-1 at 2-15. In *Matter of Hurtado*, the BIA adopts many of Defendants’ arguments on the text of section 1225, canons of interpretation, legislative history, and prior agency practice. See Dkt. 63-1 at 2-15. For the reasons already explained in this Order, the Court is not persuaded by the Board’s analysis.

⁸ In *Matter of Hurtado*, the BIA stated that *Matter of Akhmedov* did not “nullify” section 1225(b)(2) as the proper detention authority for noncitizens present in the United States without inspection because it was “not [an] issue[] presented to the Board in that case.” 29 I. & N. at 226.

D. The Court will enter partial judgment under Rule 54(b).

The Bond Denial Class has shown that the text of section 1226, canons of interpretation, legislative history, and longstanding agency practice demonstrate that they are governed by section 1226(a)'s "default" rule for discretionary detention. *See Jennings*, 583 U.S. at 289. The Court is persuaded that the detention of Bond Denial Class members under section 1225(b)(2)'s mandatory detention provision violates the INA. The Court therefore GRANTS Plaintiffs' motion for partial summary judgment (Dkt. 41) and GRANTS summary judgment to the Bond Denial Class. The Court DENIES Defendants' motion to dismiss (Dkt. 49).

Because the grant of summary judgment applies only to the Bond Denial Class, the claims of the Bond Appeal Class remain. The Court's decision therefore "adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties." Fed. R. Civ. P. 54(b). Under that same rule, however, "the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." *Id.* Here there is no just reason for delay. The remaining claims apply only to the Bond Appeal Class and concern different substantive arguments. *See Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980). Entering final judgment now for the Bond Denial Class will also allow Defendants to seek prompt appellate review.

V. CONCLUSION

For the reasons explained above, the Court ORDERS as follows:

1. Defendants' motion to dismiss (Dkt. 49) is DENIED.
2. Plaintiffs' motion for partial summary judgment (Dkt. 41) is GRANTED.
3. Summary judgment is GRANTED to the Bond Denial Class on their claims that their detention under 8 U.S.C. § 1225(b)(2) is unlawful. As set forth in the class certification order, the Bond Denial Class is defined as all noncitizens without lawful status detained at the Northwest ICE Processing Center who (1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the noncitizen is scheduled for or requests a bond hearing.
4. The Court declares that Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2). The Court further declares that the Tacoma Immigration Court's practice of denying bond to Bond Denial Class members on the basis of § 1225(b)(2) violates the Immigration and Nationality Act.
5. The Court will enter final judgment in a separate document on the claims of the Bond Denial Class.

Dated this 30th day of September, 2025.

/s/ TIFFANY M. CARTWRIGHT
 TIFFANY M. CARTWRIGHT
 United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

Case No. 3:25-cv-05240-TMC

RAMON RODRIGUEZ VAZQUEZ, ON BEHALF OF HIMSELF
AS AN INDIVIDUAL AND ON BEHALF OF OTHERS
SIMILARLY SITUATED, PLAINTIFF

v.

DREW BOSTOCK, ET AL., DEFENDANTS

Filed: May 2, 2025

**ORDER ON GRANTING IN PART AND DENYING IN
PART MOTION FOR CLASS CERTIFICATION**

I. INTRODUCTION

This case arises from a practice by the Tacoma Immigration Court of interpreting the Immigration and Nationality Act (“INA”). The practice mandates detention without the possibility of bond for noncitizens who entered the United States without inspection, even if they have lived here for years. Plaintiff Ramon Rodriguez Vazquez (“Rodriguez”) is a noncitizen resident of Grandview, Washington who is currently detained at the Northwest Ice Processing Center (“NWIPC”). Rodriguez seeks to challenge, on behalf of himself and classes of similarly situated noncitizens, the bond denial prac-

tice at the Tacoma Immigration Court and chronic delays in administrative appellate review of bond denials by the Board of Immigration Appeals. *See* Dkt. 1. On April 24, 2025, the Court granted Rodriguez’s individual motion for a preliminary injunction and ordered Defendants to provide him a bond hearing within 14 days. Dkt. 29. The Court now considers Rodriguez’s motion for class certification. Dkt. 2. For the reasons explained below, the Court GRANTS in part and DENIES in part the motion for class certification.

II. FACTUAL BACKGROUND

Plaintiff Ramon Rodriguez Vasquez is detained at the Northwest Ice Processing Center (“NWIPC”). Dkt. 1 ¶¶ 1, 17; Dkt. 9 ¶ 2. Defendants are various immigration officials, including Drew Bostock, Seattle Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (“ICE”); Bruce Scott, Warden at NWIPC; Kristi Noem, Secretary of the United States Department of Homeland Security (“DHS”); the United States Department of Homeland Security; Pamela Bondi, Attorney General of the United States; the Executive Office of Immigration Review (“EOIR”); Sirce Owen, Acting Director, EOIR; and the Tacoma Immigration Court. Dkt. 1 ¶¶ 18-25.

On behalf of himself and the classes that he seeks to represent, Rodriguez has challenged Defendants’ policy on bond hearings and related appeals. *Id.* ¶¶ 1, 10-12. Specifically, Rodriguez claims that he is detained at NWIPC because of a policy adopted by the immigration judges (IJs) at the Tacoma Immigration Court. *Id.* ¶ 1. He alleges that the Tacoma Immigration Court IJs, save for one, have “adopted a practice of denying all requests

for release on bond by noncitizens in removal proceedings who entered the United States without inspection, including . . . those who have lived here for decades.” *Id.* ¶ 2. Rodriguez maintains that the policy prevents him and others from being released on bond during civil immigration proceedings. *Id.* ¶ 1. Further, he alleges that delays in consideration of the bond denials by the Board of Immigration Appeals (“BIA”) deprive detainees of meaningful review of those denials. *Id.* ¶ 6-8.

A. The INA’s Statutory Structure for Bond Hearings

The Tacoma Immigration Court IJs apply and enforce the Immigration and Nationality Act (“INA”). The INA “authorizes the detention of [noncitizens]¹ awaiting removal from the United States.” *De Paz Sales v. Barr*, No. 19-CV-07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (quoting *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1000 (N.D. Cal. 2018)). The INA prescribes several bases for detention of noncitizens in removal proceedings. Dkt. 1 ¶ 26.

First, Section 1226 “provides the general process for arresting and detaining [noncitizens] who are present in the United States and eligible for removal.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022). Section 1226(a) “sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of a[] [noncitizen] ‘pending a decision on whether the [noncitizen] is to be removed from the United States.’” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting

¹ “This opinion uses the term ‘noncitizen’ as equivalent to the statutory term ‘alien.’” *Nasrallah v. Barr*, 590 U.S. 573, 578 n.2 (2020) (citing 8 U.S.C. § 1101(a)(3)).

8 U.S.C. § 1226(a)). Except as provided in Section 1226(c),² “the Attorney General ‘may release’ a[] [noncitizen] detained under § 1226(a) ‘on . . . bond’ or ‘conditional parole.’” *Id.* (quoting 8 U.S.C. § 1226(a)(1)-(2)).

“When a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination.” *Rodriguez Diaz*, 53 F.4th at 1196 (citing 8 C.F.R. § 236.1(c)(8)). “[A] detainee may [then] request a bond hearing before an IJ at any time before a removal order becomes final.” *Id.* at 1197 (citing 8 C.F.R. §§ 236.1(d)(1), 1003.19). An IJ “must consider whether the detainee ‘is a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk.’” *Delgado v. Sessions*, No. C17-1031-RSL-JPD, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017), *report and recommendation adopted*, No. C17-1031-RSL, 2017 WL 4700360 (W.D. Wash. Oct. 19, 2017) (citing *In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006)). The IJ “considers various factors in making [a bond] determination, including the individual’s ties to the United States as well as his employment history, criminal record, history of immigration violations, and manner of entry into this country.” *Rodriguez Diaz*, 53 F.4th at 1197 (citing *Guerra*, 24 I. & N. Dec. at 40). In sum, under Section 1226(a) detention, an individual is entitled to a bond hearing if they have not been arrested, charged with, or convicted of certain crimes that require mandatory de-

² Section 1226(c) “carves out a statutory category” of noncitizens for whom detention is mandatory, comprised of individuals who have committed certain “enumerated . . . criminal offenses [or] terrorist activities.” *Jennings*, 583 U.S. at 289 (citing 8 U.S.C. § 1226(c)(1)). Among the individuals carved out and subject to mandatory detention are certain categories of “inadmissible” noncitizens. § 1226(c)(1)(A), (D), (E).

tention under Section 1226(c). And a detainee can also appeal an adverse decision to the BIA. *Id.* (citing 8 C.F.R. § 236.1(d)(3)).

Section 1225(b) “supplement[s] § 1226’s detention scheme.” *Rodriguez Diaz*, 53 F.4th at 1197. Section 1225(b) “applies primarily to [noncitizens] seeking entry into the United States (‘applicants for admission’ in the language of the statute).” *Jennings*, 583 U.S. at 297; *see* § 1225(b) (“Inspection of applicants for admission”). Section 1225 defines an “applicant for admission” as a “[noncitizen] present in the United States who has not been admitted or who arrives in the United States.” 8 U.S.C. § 1225(a)(1); *see Jennings*, 583 U.S. at 287. As the Supreme Court has noted, “[a]pplicants for admission must ‘be inspected by immigration officers’ to ensure that they may be admitted into the country consistent with U.S. immigration law.” *Jennings*, 583 U.S. at 287 (quoting § 1225(a)(3)).

Section 1225(b)(1) concerns the “[i]nspection of [noncitizens] arriving in the United States and certain other [noncitizens] who have not been admitted or paroled.” Specifically, “Section 1225(b)(1) applies to [noncitizens] initially determined to be inadmissible” based on Sections 1182(a)(6)(C) (misrepresentation) and 1182(a)(7) (lack of valid documentation) and “certain other [noncitizens] designated by the Attorney General[.]” *Jennings*, 583 U.S. at 287 (citing § § 1225(b)(1)(A)(i), (iii)). Individuals that fall under Section 1225(b)(1) are “normally ordered removed ‘without further hearing or review’ pursuant to an expedited removal process” unless claiming asylum or fear of persecution. *Id.* (first quoting § 1225(b)(1)(A)(i)); then citing § 1225(b)(1)(A)(ii)).

Section 1225(b)(2) concerns the “[i]nspection of other [noncitizens].” Section 1225(b)(2) “mandates detention ‘if the examining immigration officer determines that a[] [noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted[.]’” *Rodriguez Diaz*, 53 F.4th at 1197 (quoting § 1225(b)(2)(A)). In sum, noncitizens detained under Section 1225(b)(2) must remain in custody for the duration of their removal proceedings, while those detained under Section 1226(a) are entitled to a bond hearing before an IJ at any time before entry of a final removal order.

B. The Tacoma Immigration Court’s Interpretation of the INA and Denial of Bond Hearings

As noted above, the most relevant portions of the INA here are Sections 1226(a) and 1225(b)(2). Dkt. 1 ¶ 30. After the provisions at 1226(a) and 1225(b)(2) were enacted, EOIR promulgated guidance that, “in general, people who entered the country without inspection were not considered detained under § 1225 and . . . were instead detained under § 1226(a).” *Id.* ¶ 32 (citing 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)). Subsequently, “most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings.” *Id.* ¶ 33. Rodriguez claims that this practice reflected “many more decades of prior practice, in which noncitizens who were not deemed ‘arriving’ were entitled to a custody hearing before an IJ or other hearing officer.” *Id.* (first citing 8 U.S.C. § 1225(a); and then citing H.R. Rep. No. 104-469, pt. 1 at 229 (1996)).

But, Rodriguez alleges, in 2022 the IJs at the Tacoma Immigration Court “abruptly departed from their policy of holding bond hearings for individuals who entered the

United States without inspection.” *Id.* ¶ 34. The IJs “began holding that they lacked jurisdiction to hold bond hearings for all such individuals,” reasoning that “the mandatory detention provision of § 1225(b)(2)(A) applies to people who enter without inspection because that subparagraph of the statute references ‘applicant[s] for admission.’” *Id.* ¶¶ 34-35. The IJs thus applied the mandatory detention provisions to all individuals subject to grounds for inadmissibility. Consequently, “all noncitizens detained at NWIPC who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, are now considered to be in mandatory detention under § 1225(b) and ineligible for bond.” *Id.* ¶ 36.

Rodriguez argues that the differences between the Tacoma Immigration Court’s bond granting rates and those of other immigration courts highlight the IJs’ disparate interpretation of the law. Statistics show that IJs in Tacoma deny bond hearings at higher rates than their counterparts in other immigration courts. *Id.* ¶ 54; Dkt. 7. In 2023, for example, the rate of granted bonds was just three percent. Dkt. 1 ¶ 54; *see also* Transactional Records Access Clearinghouse (“TRAC”), *Detained Immigrants Seeking Release on Bond Have Widely Different Outcomes*, <https://tracreports.org/reports/722/> (July 19, 2023). So far in 2025, 13 bond cases were granted, 126 were denied, and 65 were withdrawn. Dkt. 1 ¶ 55. This is 6 percent of bonds. *Id.* Rodriguez alleges that “many of the ‘withdrawn’ decisions occur in cases where the IJ indicates he or she will deny on jurisdiction because 8 U.S.C. § 1225(b)(2) applies.” *Id.* And, Rodriguez claims, “these numbers likely mask the true rate of denial, as many noncitizens likely forgo seeking bond in

the first place because they know the IJ will conclude there is no jurisdiction to set bond.” *Id.*

Thus, Rodriguez concludes, “[o]ver the past few years, IJs at the Tacoma Immigration Court have deprived dozens and likely hundreds of noncitizens detained at NWIPC of their right to be released on bond[.]” *Id.* ¶ 5.

Attorneys for other similarly situated detainees have attested that they “had around twenty-five clients who were subject to the Tacoma Immigration court’s practice” of requiring “mandatory detention of individuals who entered without inspection and who have since resided in the United States.” Dkt. 6 ¶ 3; *see also* Dkt. 5 ¶ 4 (“Since November 2022, NWIRP attorneys focused on representing individuals detained at the Northwest ICE Processing Center in Tacoma, Washington have represented individuals in at least 12 cases where an IJ denied a bond, citing § 1225(b)(2)’s mandatory detention provision. In all of these cases, the person was denied a bond even though the individual was present in the United States, was not identified as ‘arriving,’ was not apprehended shortly after entering, and was placed in standard removal proceedings under 8 U.S.C. § 1229a.”).

Thus, these attorneys’ “clients have not been able to get bonds set by the immigration judges in [T]acoma. All of these clients were placed in regular removal proceedings under 8 U.S.C. § 1229(a) and were not in expedited removal proceedings, reinstatement proceedings, or withholding only proceedings.” Dkt. 6 ¶ 3. And those attorneys have also attested that they had “many other clients or potential clients decline to hire [them] or decline to seek a bond hearing because they knew there was no hope to obtain release.” *Id.* ¶ 4.

C. The BIA's Review of Bond Denials

Rodriguez also argues that the appeals process affords little relief for those wrongfully denied bond. *See, e.g.*, Dkt. 1 ¶ 56-60. The BIA handles appeals from immigration courts. *See id.* ¶ 6. “According to the agency’s own data, during FY 2024, the agency’s average processing time for a bond appeal was 204 days, or nearly seven months.” *Id.* ¶ 57; Dkt. 7 at 1. Appeals often remain unheard for a year or more. Dkt. 1 ¶ 59; Dkt. 7 at 1.

In this time, Rodriguez alleges that “a detained noncitizen will be forced to defend themselves against their removal on the merits, depriving them of a meaningful chance to assemble evidence outside detention, coordinate with family, or communicate with potential witnesses in other countries.” *Id.* ¶ 66. Detention itself may reduce “their likelihood of obtaining legal representation.” *Id.* ¶ 67. “Those detained while in removal proceedings face significant challenges to accessing and communicating with counsel or other forms of legal assistance.” *Id.* And the “lack of legal representation in turn dramatically reduces the potential for successful outcomes in their underlying removal proceedings.” *Id.* ¶ 68; *see also* Dkt. 6 ¶ 5 (“Some clients cannot afford an appeal of the decision denying bond, others are deterred by the many months of waiting that an appeal entails, and still others are removed before any appeal can be completed. Often times [individuals’] main cases are resolved prior to receiving a decision on a bond appeal and therefore it is a waste of resources to try and file an appeal of a finding that the court lacks jurisdiction. As a result, and as a practical matter, review by the Board of Immigration Appeals is unable to fix this problem for my clients.”).

D. Rodriguez’s Detention at NWIPC

As noted above, Rodriguez is detained at NWIPC. Dkt. 1 ¶ 73; Dkt. 9 ¶ 2. Rodriguez has been living in Grandview, Washington with his family since 2009. Dkt. 9 ¶ 3. He owns a home there. *Id.* He has several children and is the “proud grandfather of ten United States citizen children[.]” *Id.* ¶ 4. He also has eight siblings who live in California—all of whom are citizens. *Id.* On February 5, 2025, Rodriguez was arrested at his home and transferred to NWIPC, where he was placed in removal proceedings. *Id.* ¶¶ 5-6. He has been charged as removable because he entered the United States without inspection. *Id.* ¶ 6. He has now been detained for more than a month. *Id.* And he has never been arrested for, charged with, or convicted of a crime anywhere. *Id.* ¶ 8.

On March 12, 2025, Rodriguez had a bond hearing before a Tacoma Immigration Court IJ. *Id.* ¶ 11. He was represented by an attorney. *Id.* At the hearing, the IJ “said that he could not consider” Rodriguez’s case. *Id.* Rodriguez’s “understanding is that [he] was denied a bond because the immigration judge concluded [he] had entered the United States without inspection and therefore [he is] subject to mandatory detention, meaning [he is] not eligible for release under any bond. That was the only reason of why the immigration judge denied [his] bond.” *Id.*

An amended memorandum by the IJ supports this contention. Dkt. 26-1. The IJ explained in the memorandum that “[t]he critical issue here is whether this court has jurisdiction to redetermine the custody status an inadmissible alien who is an ‘applicant for admission.’ . . . the court finds that [Rodriguez] is an applicant for admission detained under INA section 235 and it does

not have jurisdiction to redetermine [Rodriguez’s] bond.” *Id.* at 3. The IJ continued, “a plain reading of the statutes undergirding immigration detention, along with current caselaw from the Supreme Court of the United States and Attorney General, makes clear to this court that Congress did not give immigration judges jurisdiction to redetermine bond for inadmissible aliens who are ‘applicants for admission’ under INA section 235.” *Id.* at 4.

Rodriguez filed an appeal on March 13, 2025. Dkt. 1 ¶ 12. The appeal is pending. *Id.* Rodriguez explains that being detained has been “extremely” difficult. *Id.* ¶ 13. He has faced difficulties with both his physical and mental health. *Id.* He does not yet have a lawyer to defend him from deportation, and being detained has made this harder logistically and financially. *Id.* ¶ 14. His family “cannot afford to hire an attorney so [he has] no possibility of being represented while detained.” *Id.* ¶ 15.

E. The Motion for Class Certification

On March 20, 2025, Rodriguez filed his complaint and moved to certify two classes. Dkt. 1; Dkt. 2. Rodriguez seeks to represent two classes:

Bond Denial Class: All noncitizens detained at the Northwest ICE Processing Center who (1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the noncitizen is scheduled for or requests a bond hearing.

Bond Appeal Class: All detained noncitizens who have a pending appeal, or will file an appeal, of an im-

migration judge's bond hearing ruling to the Board of Immigration Appeals.

Dkt. 2 at 3. Both proposed classes seek only declaratory relief under Federal Rule of Civil Procedure 23(b)(2). Dkt. 1 at 22. Rodriguez brings four causes of action: (1) violation of 8 U.S.C. §1226(a) for unlawful denial of bond hearings; (2) violation of the Administrative Procedure Act (APA) for unlawful denial of bond hearings; (3) violation of the Due Process Clause of the Fifth Amendment for delayed adjudication of bond appeals; and (4) violation of the APA for delayed adjudication of bond appeals. *Id.* ¶¶ 99-115. He requests two forms of declaratory relief:³

1. A declaratory judgment finding Defendants' policy and practice denying bonds for lack of jurisdiction to Named Plaintiff Ramon Rodriguez Vazquez and Bond Denial class members to violate the INA and the APA;

. . .

3. A declaratory judgment finding that the Due Process Clause or the APA provides that the Named Plaintiff and the Bond Appeal Class Members have a right to timely adjudication of their bond appeal by receiving a decision within 60 days of filing the notice of appeal so long as the noncitizen remains detained[.]

Id. at 22. Neither class seeks monetary relief. *Id.*

The parties met with the Court on April 2, 2025 and agreed on a briefing schedule. Dkt. 19. Defendants re-

³ Rodriguez also requested individual injunctive relief. *Id.* A preliminary injunction was issued for Rodriguez. Dkt. 29.

sponded on April 14. Dkt. 23. Rodriguez replied on April 17. Dkt. 24. In his reply, Rodriguez amended the Bond Denial Class definition to address some of the concerns raised by Defendants in their response. Dkt. 24 at 4-5. The amended proposed Bond Denial Class definition is:

Bond Denial Class: All noncitizens *without lawful status* detained at the Northwest ICE Processing Center who (1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the noncitizen is scheduled for or requests a bond hearing.

Id. at 5. The briefing is complete, and the motion is ripe for the Court’s consideration.

III. LEGAL STANDARD

The class action is “an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700-01 (1979)). To justify a departure from that rule, “a class representative must be part of the class and ‘possess the same interest and suffer the same injury’ as the class members.” *Id.* at 348-49 (quoting *East Tex. Motor Freight System, Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977)).

Federal Rule of Civil Procedure 23 is designed to protect the interests of those class members. *Id.* at 345. Rule 23(a) “ensures that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate.” *Id.* at 349. Under Rule 23(a), the party

seeking certification must show that “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” *Mansor v. United States Citizenship & Immigr. Servs.*, 345 F.R.D. 193, 202-03 (W.D. Wash. 2023) (quoting Fed. R. Civ. P. 23(a)). “The Rule’s four requirements—numerosity, commonality, typicality, and adequate representation—‘effectively limit the class claims to those fairly encompassed by the named plaintiff’s claims.’” *Dukes*, 564 U.S. at 349 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 156 (1982)).

If a proposed class satisfies Rule 23(a), the class must then also meet “at least one of the three requirements listed in 23(b).” *Id.* at 345; see *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 512 (9th Cir. 2013). Plaintiffs seek to certify a class under Rule 23(b)(2), which demands that “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). “Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class.” *Dukes*, 564 U.S. at 360.

The Court’s examination of these requirements is not cursory. Rule 23 “does not set forth a mere pleading standard.” *Id.* at 350. Rather, “certification is proper only if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied.” *Id.* at 350-51 (cleaned up). “[I]t may be necessary

for the court to probe behind the pleadings before coming to rest on the certification question.” *Falcon*, 457 U.S. at 160. This is because “the class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff’s cause of action.” *Id.* (cleaned up).

“‘[P]laintiffs wishing to proceed through a class action must actually *prove*—not simply plead—that their proposed class satisfies each requirement of Rule 23 . . . ’ and must carry their burden of proof ‘before class certification.’” *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 664 (9th Cir. 2022) (en banc) (quoting *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 275-76 (2014)). Plaintiffs must “prove the facts necessary to carry the burden of establishing that the prerequisites of Rule 23 are satisfied by a preponderance of the evidence” through any admissible evidence. *Id.* at 665.

Finally, “at least one named plaintiff” must satisfy Article III’s standing requirements. *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (citing *Armstrong v. Davis*, 275 F.3d 849, 860 (9th Cir. 2001)). The named plaintiff “bears the burden of showing that the Article III standing requirements are met.” *Id.* (citing *Armstrong*, 275 F.3d at 860-61). Standing requires that (1) the plaintiff suffered an injury in fact—one that is sufficiently “concrete and particularized” and “actual or imminent, not conjectural or hypothetical,” (2) the injury is “fairly traceable” to the challenged conduct, and (3) the injury is “likely” to be “redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (cleaned up). “Standing must be shown with respect to each form of relief sought, whether it be

injunctive relief, damages or civil penalties.” *Bates*, 511 F.3d at 985 (citing *Friends of the Earth, Inc. v. Laidlaw Env’tl Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000)).

IV. DISCUSSION

A. Rodriguez has standing as named Plaintiff to pursue the requested relief.

Because Rodriguez is the sole named Plaintiff, the Court begins by assessing his standing. Rodriguez alleges (1) that he was wrongfully denied bond by the IJ under the challenged policy and (2) that the inevitable delay of a decision on appeal from this denial violates the Due Process Clause and the APA. Dkt. 1 ¶¶ 1, 17, 73-87, 99-115. The Court takes each of Rodriguez’s claims in turn. *See Friends of the Earth*, 528 U.S. at 185 (“[A] plaintiff must demonstrate standing separately for each form of relief sought.”).

Rodriguez’s claim that he was wrongfully denied bond because of the IJs’ policy meets the standing requirement. The Ninth Circuit has held that “[r]emaining confined in jail when one should otherwise be free is an Article III injury plain and simple[.]” *Gonzalez v. United States Immigr. & Customs Enf’t*, 975 F.3d 788, 804 (9th Cir. 2020) (quoting *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014)). Rodriguez claims that, but for the IJs’ policy, he would have been released from custody. *See* Dkt. 1 ¶ 1, 73-81. Defendants do not challenge his standing to represent the bond denial class. *See* Dkt. 23 at 14-16.

Rodriguez’s claim that the timeline for a hearing on his appeal violates the Due Process Clause and the APA also satisfies the standing requirement. “The Supreme Court has consistently recognized that threatened ra-

ther than actual injury can satisfy Article III standing requirements.” *Cent. Delta Water Agency v. United States*, 306 F.3d 938, 947 (9th Cir. 2002) (citation omitted); *Friends of the Earth*, 528 U.S. at 180-81 (“[T]he threat of . . . ‘injury in fact’” is enough to confer standing.). “The standing formulation for a plaintiff seeking prospective injunctive relief is simply one implementation of *Lujan’s* requirements.” *Bates*, 511 F.3d at 985. The plaintiff must show that he has suffered or is threatened with a “concrete and particularized” legal harm. *Id.* (quoting *Lujan*, 504 U.S. at 560).

To show that he is threatened with such legal harm, a “party facing prospective injury” must show “the threatened injury is real, immediate, and direct[.]” *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 734 (2008); *see also Thorsted v. Gregoire*, 841 F. Supp. 1068, 1083 (W.D. Wash. 1994), *aff’d sub nom. Thorsted v. Munro*, 75 F.3d 454 (9th Cir. 1996) (“Threatened harm that has not yet occurred, but that will occur unless judicial relief is afforded, is enough to support a civil rights claim.”) (citing *Wright v. Roanoke Redevelopment & Hous. Auth.*, 479 U.S. 418, 431-32 (1987)). “[P]ast wrongs do not in themselves amount to [a] real and immediate threat of injury necessary to make out a case or controversy.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 (1983). But “past wrongs are evidence bearing on whether there is a real and immediate threat of repeated injury.” *O’Shea v. Littleton*, 414 U.S. 488, 496 (1974). “In addition, the claimed threat of injury must be likely to be redressed by the prospective injunctive relief.” *Bates*, 511 F.3d at 985 (quoting *Graham v. Fed. Emergency Mgmt. Agency*, 149 F.3d 997, 1003 (9th Cir. 1998)).

Defendants do not expressly dispute Rodriguez’s standing. Defendants do, however, contest typicality (below), and argue that Rodriguez has not suffered the same injury as the proposed Bond Appeal Class.⁴ They explain that “Plaintiff alleges that the Bond Appeal class is subject to prolonged delays in adjudication of their appeals”—defining prolonged delay as more than sixty days. Dkt. 23 at 21. But, they argue, “Plaintiff does not share the same or similar injury as the proposed class members he seeks to represent. Indeed, as of the time of this filing, Plaintiff’s bond denial appeal will have been pending for about one month. . . . This falls short of Plaintiff’s assertion that the BIA ought to render an appeal decision within 60 days.” *Id.*

Defendants are correct that Rodriguez filed his appeal less than two months ago. Dkt. 23 at 21; Dkt. 9 ¶ 12 (“I filed an appeal of the immigration judge’s decision denying me a bond hearing on March 13, 2025. The appeal is pending.”). But, Rodriguez replies, “Defendants conflate the remedy sought with the fact that [he], like all proposed class members, faces a custody appeals system that fails to implement timelines or safeguards to

⁴ At oral argument, the Court asked Defendants’ counsel if Defendants were making a standing argument, rather than a typicality argument, regarding Rodriguez’s ability to represent the proposed class. Defendants responded that standing could be addressed through a Motion to Dismiss, and so here, they had addressed the issue under the typicality requirement of Rule 23. But standing is a “threshold issue” concerning an “essential and unchanging part of the case-or-controversy requirement of Article III.” *Horne v. Flores*, 557 U.S. 433, 445 (2009) (quoting *Lujan*, 504 U.S. at 560). If Rodriguez lacks standing, there is no Article III case or controversy over which this Court may exercise jurisdiction. *See id.* Thus, the Court addresses the standing question now.

ensure a timely decision.” Dkt. 25 at 10. And “Defendants’ counterarguments depend on their confusion between the *injury*—which is continued detention without a timely, meaningful opportunity to seek review of a custody determination—and the *remedy*—which the complaint proposes as a requirement of adjudication within sixty days of filing a notice of appeal.” *Id.* at 11.

Rodriguez thus argues that, because he faces the same imminent injury as the other class members, he may challenge the same practice that harms them all. *Id.*

Without delving too deeply into the typicality analysis here, the Court finds that Rodriguez has sufficiently alleged standing. In his complaint, Rodriguez alleges that he is detained at NWIPC. Dkt. 1 ¶ 73. He was arrested at his home by police and immigration authorities on February 5, 2025. *Id.* ¶ 77. He has been detained at NWIPC since. *See id.* ¶¶ 73, 77. Rodriguez requested a bond hearing, but was denied bond by an IJ who held that Rodriguez was subject to mandatory detention under the challenged provision, 8 U.S.C. § 1225(b)(2). *Id.* ¶ 80. Rodriguez has appealed the IJ’s order to the BIA and the appeal is pending. *Id.* ¶ 81. According to the complaint, and based on the BIA’s own data, during fiscal year 2024, the agency’s average processing time for a bond appeal was 204 days. *Id.* ¶ 57; *see* Dkt. 7 ¶ 5. Rodriguez has alleged, based on EOIR’s data, that some appeals take a year or more. Dkt. 1 ¶ 59.

First, as noted above, wrongful confinement is an Article III injury. *See, e.g., Gonzalez*, 975 F.3d at 804; *Mendia*, 768 F.3d at 1012 (“[I]t’s difficult to imagine an injury that could affect one more personally and individually than a deprivation of one’s liberty. That’s presumably why no one questions the existence of Article III

injury when a civil rights plaintiff sues on the theory that the actions of the defendants . . . resulted in wrongful confinement[.]”). Rodriguez’s allegations show that he faced “an ongoing and a prospective detention injury when he commenced suit.” *Gonzalez*, 975 F.3d at 804; Dkt. 1 ¶¶ 57, 59, 73, 80.

Second, though Rodriguez has not yet waited sixty days for his appeal to the BIA to be heard, he has alleged that he faces a “prospective injury” that is “real, immediate, and direct.” *Davis*, 554 U.S. at 734; *see Cent. Delta Water Agency*, 306 F.3d at 948. His allegations demonstrate a very real and immediate threat of being confined at NWIPC for far longer while waiting for a decision on appeal. Dkt. 1 ¶¶ 57, 59.

The two other elements of Article III standing—causation and redressability—are met here as well. “[F]or Article III purposes causation requires a showing that his injury is ‘fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.’” *Mendia*, 768 F.3d at 1012 (quoting *Bennett v. Spear*, 520 U.S. 154, 167 (1997)). Rodriguez has satisfied causation. He has pleaded that his ongoing detention stems from the IJ’s actions, Dkt. 1 ¶ 2, and the BIA’s delayed review of his appeal. *Id.* ¶¶ 6-9.

Because Rodriguez faced ongoing and prospective detention injuries when he commenced suit, his “injury was at that moment capable of being redressed through injunctive relief.” *Gonzalez*, 975 F.3d at 806 (first quoting *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 51 (1991); and then citing *Cent. Delta Water Agency*, 306 F.3d at 947). A court order determining that the IJ’s policy misreads the law and that the BIA’s delayed re-

view deprives Rodriguez of his due process rights could permit him to receive a bond hearing or have his appeal decided promptly by the BIA. Such an order would address the ongoing injury he faced when he commenced suit. *See Gonzalez*, 975 F.3d at 806 (similar).

Thus, Rodriguez has standing to seek declaratory relief on behalf of the Bond Denial Class and on behalf of the Bond Appeal Class.

B. Rodriguez has satisfied the requirements of Rule 23(a).

1. Numerosity

The first requirement of Rule 23(a) is numerosity. Numerosity is satisfied if “the class is so large that joinder of all members is impracticable.” *Mansor*, 345 F.R.D. at 203 (W.D. Wash. 2023) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998)). “The numerosity requirement requires the examination of the specific facts of each case, though ‘in general, courts find the numerosity requirement satisfied when a class includes at least 40 members.’” *Wagafe v. Trump*, No. C17-0094-RAJ, 2017 WL 2671254, at *12 (W.D. Wash. June 21, 2017) (quoting *Rannis v. Recchia*, 380 Fed. Appx. 646, 651 (9th Cir. 2010)).

Defendants do not dispute that Rodriguez has satisfied numerosity. *See generally* Dkt. 23. And the Court finds that both classes are sufficiently numerous.

First, the Bond Denial Class is “currently comprised of at least dozens of individuals currently detained at NWIPC.” Dkt. 2 at 12. Counsel explains that, over the last few years, they have “had around twenty-five clients who were subject to the Tacoma Immigration Court’s practice of concluding that 8 U.S.C. § 1225(b)(2) pro-

vides for the mandatory detention of individuals who entered without inspection and who have since resided in the United States.” Dkt. 6 ¶ 3. And this number fails to account for the “many other clients or potential clients [who] decline to hire [counsel] or decline to seek a bond hearing because they knew there was no hope to obtain release.” *Id.* ¶ 4; *see also* Dkt. 5 ¶ 9. Further, recently, the number of people detained at NWIPC—the number of people potentially subject to the IJs policy—has ballooned. *Id.* at 5.

The Court may still certify the class even if it contains fewer than 40 members. “Relatively small class sizes have been found to satisfy this requirement where joinder is still found impractical.” *Rivera v. Holder*, 307 F.R.D. 539, 550 (W.D. Wash. 2015) (citing *McCluskey v. Trustees of Red Dot Corp. Emp. Stock Ownership Plan & Trust*, 268 F.R.D. 670, 673 (W.D. Wash. 2010)). In assessing the impracticability of joinder, courts may consider “judicial economy, geographic dispersal of the class members, the ability of individual claimants to bring separate suits, and whether plaintiffs seek prospective relief affecting future class members.” *Id.* (citing *McCluskey*, 268 F.R.D. at 673).

Rodriguez has explained that bringing, and sustaining, a case challenging the IJs policy is exceedingly difficult. Plaintiffs are all detained and face “numerous barriers to accessing counsel, imposing a significant barrier for any individual seeking to challenge” the policy. Dkt. 2 at 13. For example, given that many of the putative plaintiffs have limited resources, *id.*, they often decline counsel “because they kn[o]w there [is] no hope to obtain release.” Dkt. 6 ¶ 4.

Further, Rodriguez seeks prospective relief affecting future class members: all those who may be subject to the policy. Dkt. 2 at 12-13. When faced with a class of “unnamed, unknown future members,” joinder is impracticable and numerosity may be met. *Ali v. Ashcroft*, 213 F.R.D. 390, 408-09 (W.D. Wash. 2003); *see also Rivera*, 307 F.R.D. at 550 (“[E]specially given the transient nature of the class and the inclusion of future class members, the Court finds the class sufficiently numerous and joinder impractical.”).

The same is true for the Bond Appeal Class. This class, Rodriguez alleges, is “likely comprised of hundreds or thousands of individuals who appeal the outcome of their bond hearings to the BIA each year.” Dkt. 2 at 12. Similarly, counsel for the proposed class attests that it is hard to estimate the number of members of the class. Dkt. 6 ¶ 5. (While “[s]ome clients cannot afford an appeal of the decision denying bond, others are deterred by the many months of waiting that an appeal entails, and still others are removed before any appeal can be completed.”). And many of these cases are resolved before the BIA resolves the bond appeal “and therefore it is a waste of resources to try and file an appeal of a finding that the court lacks jurisdiction.” *Id.* ¶ 5; *see also* Dkt. 5 ¶ 9.

Thus, the numerosity requirement is met for both classes.

2. Commonality

The second Rule 23(a) requirement is commonality. This prong requires “a plaintiff [] show that ‘there are questions of law or fact common to the class.’” *Dukes*, 564 U.S. at 349 (quoting Fed. R. Civ. P 23(a)(2)). The proposed class’s claims must “depend upon a common

contention[.]” *Id.* And the common contention “must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* Accordingly, “what matters to class certification . . . is not the raising of common questions—even in droves—but rather, the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation.” *Id.* at 350 (cleaned up).

The commonality requirement is “construed permissively.” *Hanlon*, 150 F.3d at 1019. Thus, “[a]ll questions of fact and law need not be common to satisfy the rule.” *Id.*; see also *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012) (“Where the circumstances of each particular class member vary but retain a common core of factual or legal issues with the rest of the class, commonality exists.”). Rather, the “standard is ‘readily met’ when plaintiffs seek prospective relief ‘challeng[ing] a system-wide practice or policy that affects all of the putative class members.’” *Mansor*, 345 F.R.D. at 204 (quoting *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499, 504-05 (2005)). Indeed, the Ninth Circuit has held that “in a civil-rights suit . . . commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members.” *Gonzalez*, 975 F.3d at 808 (citations omitted).

a) The Bond Denial Class

Rodriguez argues that the proposed Bond Denial Class members “all suffer from the same injury caused by the Tacoma Immigration Court’s policy: the denial

of an individualized custody determination by the IJ.” Dkt. 2 at 15. He claims the issue is “capable of classwide resolution through declaratory judgment[] making clear that . . . [c]lass members are entitled to a bond hearing before the IJ[.]” *Id.*

The Court agrees. The Ninth Circuit’s decision in *Rodriguez v. Hayes* is instructive.⁵ The petitioner, a lawful permanent resident, was arrested and charged with being removable based on past drug and theft convictions. 591 F.3d 1105, 1111-12 (9th Cir. 2010). He was later detained by DHS. *Id.* at 1112. The petitioner contested his removability before an IJ, who determined that he was subject to mandatory removal based on these past offenses. *Id.* The BIA reversed the IJ’s finding for the drug offense but upheld the IJ’s finding about the theft conviction. *Id.* The petitioner appealed to the Ninth Circuit, and while awaiting review, filed a writ of habeas corpus and sought relief for himself and a class of other noncitizens who “1) are or will be detained for longer than six months pursuant to one of the general immigration detention statutes pending completion of removal proceedings, including judicial review, and 2) have not been afforded a hearing to determine whether their prolonged detention is justified.” *Id.* The petitioner claimed the detention of the proposed class members was not authorized by statute, and, in the alterna-

⁵ *Rodriguez v. Hayes* was abrogated on other grounds, as recognized in *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1200 (9th Cir. 2022) (“In *Jennings v. Rodriguez*, --- U.S. ---, 138 S. Ct. 830, 200 L.Ed.2d 122 (2018), the Supreme Court reversed our decision in *Rodriguez III*, and with it, some of the prior circuit precedent on which *Rodriguez III* was based.”). The Court does not rely on portions that have been abrogated. The discussion of the class action factors remains good law.

tive, that their detention violated the Fifth Amendment's due process clause. *Id.*

Respondents challenged certification of the proposed class. *Id.* at 1122. On commonality, respondents argued that, because class members suffered detention “for different reasons and under the authority of different statutes[,]” “the question of whether individual class members’ detention may be continued without a bond hearing turns on divergent questions of statutory interpretation and consideration of different factual circumstances.” *Id.* The court acknowledged that respondents were “undoubtedly correct that members of the proposed class do not share every fact in common or completely identical legal issues.” *Id.* But, the court explained, Rule 23(a)(1) does not demand uniformity. *Id.* Rather, “the commonality requirements ask[] [the court] to look only for some shared legal issue or a common core of facts,” which “the proposed members of the class certainly have.” *Id.* at 1122-23.

Mansor v. United States Citizenship & Immigration Services is also instructive. There, the plaintiffs had applied for Temporary Protected Status (“TPS”) and authorization to work in the United States but had not received notices from USCIS confirming their submission of complete applications. 345 F.R.D. at 200. The plaintiffs claimed that they met the prima facie eligibility criteria for TPS but had yet to receive temporary employment authorization. *Id.* The court concluded that the proposed class met the commonality requirement. *Id.* at 204. The court explained that the class posed “a common contention: namely, that USCIS’s practice of not issuing temporary employment authorization upon receipt of a complete TPS application that establishes prima

facie eligibility violates the TPS statute.” *Id.* (citing *Dukes*, 564 U.S. at 350). And the “class’s common contention is capable of classwide resolution because Plaintiffs challenge ‘a system-wide practice or policy that affects all of the putative class members.’” *Id.* (citing cases). Thus, USCIS could address all of the proposed class members’ injuries by “changing its practice ‘in one stroke.’” *Id.* (quoting *Dukes*, 564 U.S. at 350).

The facts and legal questions of the Bond Denial Class echo those in *Rodriguez v. Hayes* and *Mansor*. Here, the Bond Denial Class asks the Court to consider one common legal question: whether Defendants’ “policy and practice denying bonds for lack of jurisdiction” violates the INA and the APA. Dkt. 1 at 22. Of course, as Defendants point out, some circumstances of the individual class members will differ in ways that could affect individualized bond determinations. *See* Dkt. 23 at 16. But such differences are not enough to destroy commonality—and the common answer that drives the litigation. Each person was found subject to mandatory detention under the IJs Section 1225(b)(2) policy. *See id.* ¶¶ 5(a), (d).

Yet this is exactly what Defendants argue. Defendants respond that the proposed class cannot satisfy the commonality requirement because some class members may still be subject to discretionary detention. Dkt. 23 at 16. They explain that the Bond Denial Class includes individuals who have received bond decisions that “already include alternative findings under § 1226.” *Id.* at 15. Defendants argue that, because some of these class members “are subject to *both* an § 1225(b)(2) holding and an alternative § 1226(a) review, . . . a judgment affirming their right to a bond hearing under § 1226(a)

would afford them no further answers or measurable relief from detention.” *Id.* at 16 (emphasis in original). This argument is unavailing.

As Rodriguez points out in reply, even if the IJ made alternative findings that someone is a flight risk or too dangerous for bond, that individual would still have to overcome both holdings to prevail on an appeal to the BIA. Dkt. 24 at 5 (“Those individuals must still overcome the unlawful policy in order to address flight or danger findings.”). The Tacoma IJs first find such persons ineligible for bond under the INA, and then offer alternative findings to support the bond denial. *See, e.g.*, Dkt. 5-1 at 2; Dkt. 5-2 at 4-5; Dkt. 5-3 at 2. These individuals are thus still injured by the IJ’s finding that they are subject to mandatory detention. And a decision by this Court could redress that injury for all class members. *See, e.g., Gonzalez*, 975 F.3d at 808 (“[C]ommonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members.”) (citations omitted); *Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1041 (9th Cir. 2012) (“All questions of fact and law need not be common to satisfy the [commonality requirement]. The existence of shared legal issues with divergent factual predicates is sufficient[.]”).

Even if one could characterize alternative findings in support of detention as a lack of injury (as opposed to a separate injury), “the fact that some class members may have suffered no injury or different injuries from the challenged practice does not prevent the class from” being certified. *Rodriguez*, 591 F.3d at 1125. Courts in this circuit have consistently held that the presence of some uninjured, or differently injured, parties will not

destroy commonality. *See, e.g., Parsons v. Ryan*, 754 F.3d 657, 678 (9th Cir. 2014) (“[A]lthough a presently existing risk may ultimately result in different future harm for different inmates—ranging from no harm at all to death—every inmate suffers exactly the same constitutional injury when he is exposed to a single statewide ADC policy or practice that creates a substantial risk of serious harm[.]”); *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998) (“Even if some class members have not been injured by the challenged practice, a class may nevertheless be appropriate.”) (citation omitted); *Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1136 (9th Cir. 2016) (“[E]ven a well-defined class may inevitably contain some individuals who have suffered no harm as a result of a defendant’s unlawful conduct.”). Rather, “[i]t is sufficient if class members complain of a pattern or practice that is generally applicable to the class as a whole.” *Walters*, 145 F.3d at 1047.

Defendants also argue that “Plaintiff’s proposed Bond Denial Class lacks typicality and commonality because it is overbroad.” Dkt. 23 at 14. They maintain that the Bond Denial Class is “overbroad because it sweeps in individuals who have not suffered the same injury that Plaintiff has pleaded, i.e., an allegation of being detained by ICE under § 1226(a), but determined by an IJ to be ineligible for a custody redetermination hearing as an applicant for admission, citing § 1225(b)(2).” *Id.* at 14–15. They explain, “Plaintiff’s proposed class is defined by carving out those detained under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231. . . . The proposed class, however, includes [noncitizens] who are *not* applicants for admission, and therefore will not experience the same injury that Plaintiff alleges.” *Id.* at 15.

But this challenge is easily resolved by Rodriguez’s proposed revision to the class definition.⁶ Dkt. 24 at 4-5. In reply, Rodriguez addresses this concern by adjusting the class definition as follows:

Bond Denial Class: All noncitizens *without lawful status* detained at the Northwest ICE Processing Center who (1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the noncitizen is scheduled for or requests a bond hearing.

Id. at 5. By adding the italicized language, Rodriguez limits the class definition to those whom the IJs would consider “applicants for admission.” *Id.*

The Court finds that the revised definition will close the class to certain individuals who do not suffer any potential injury from the allegedly harmful policy. Even if a *de minimis* number of uninjured individuals are still swept into the class, this does not destroy commonality. *See Ruiz Torres*, 835 F.3d at 1136; *Walters*, 145 F.3d at

⁶ At oral argument, Defendants requested that the Court allow supplemental briefing prior to adopting the revised language. But Defendants never offered any reason why the Court should do so. And the Court retains authority to *sua sponte* amend the class definition to address concerns of overbreadth. *Vietnam Veterans of Am. v. C.I.A.*, 288 F.R.D. 192, 211-12 (N.D. Cal. 2012) (“Where the class definition proposed is overly broad or unascertainable, the court has the discretion to narrow it.”); *Mansor*, 345 F.R.D. at 201 (adopting proposed revised definition that narrows an “otherwise impermissibly broad class definition”); *Victorino v. FCA US LLC*, 326 F.R.D. 282, 301-02 (S.D. Cal. 2018) (“[D]istrict courts have the inherent power to modify overbroad class definitions.”).

1047. Adopting the revised definition, the Court finds that commonality is satisfied for the Bond Denial Class.

b) The Bond Appeal Class

For the Bond Appeal Class, Defendants also argue that the proposed class “is far too vast” to “generate common answers apt to” resolve Plaintiff’s allegations of the BIA’s alleged “systematic failure to issue timely decisions.” Dkt. 23 at 17. The “question” here is whether the BIA systematically fails to timely adjudicate bond appeals. *Id.* Defendants claim that “no such ‘common answer’ can be distilled from Plaintiff’s immense class of individuals whose circumstances and procedural statuses wildly differ, and where determination of whether a bond appeal is timely adjudicated is best analyzed on a case-by-case basis.” *Id.*

Defendants also argue that commonality “cannot be met because the proposed class members do not suffer from the same injury.” *Id.* at 20. Because “the time elapsed following the filing of an appeal differs from individual to individual” the injury arising from “detention will change from person to person.” *Id.* at 20-21; *see id.* at 21 (“An individual who is detained for 29 days cannot be said to suffer the same injury as an individual detained for seven months. Similarly, an individual who is released from detention while DHS appeals an IJ’s order to grant bond cannot be said to suffer the same injury as an individual who remains in custody while appealing an IJ’s order to deny bond. Plaintiff admits as much when he alleges that a delay only becomes unreasonably prolonged after 60 days.”). Thus, Defendants conclude, “the Bond Appeal class is fatally overbroad because it ‘sweeps within it persons who could not have been injured by the defendant’s conduct.’” *Id.* at 21 (cit-

ing *Ross v. Lockheed Martin Corp.*, 267 F. Supp. 3d 174, 191 (D.D.C. 2017)).

The Ninth Circuit has expressly foreclosed such an argument. For example, in *Rodriguez v. Hayes*, the court explained that members of a proposed class need “not share every fact in common[.]” 591 F.3d at 1122; *see also* *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013) (Commonality “does not . . . mean that *every* question of law or fact must be common to the class.”). “This is not required by Rule 23(a)(1).” *Id.* Rather, “the commonality requirements ask[] us to look only for some shared legal issue or a common core of facts.” *Id.*; *see Jane Doe 1 v. Nielsen*, 357 F. Supp. 3d 972, 989 (N.D. Cal. 2018) (“The Ninth Circuit has found ‘[t]he existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class.’”) (quoting *Hanlon*, 150 F.3d at 1019). And courts “regularly resolve procedural due process claims”—like those raised by Rodriguez here—“on a class-wide basis when addressing the constitutionality of immigration agencies’ policies and practices.” *Padilla v. United States Immigr. & Customs Enft.*, No. C18-928 MJP, 2019 WL 1056466, at *4 (W.D. Wash. Mar. 6, 2019) (citing cases).

The proposed Bond Appeal class brings two claims—one under the Due Process Clause and the other under the APA. Dkt. 1 ¶¶ 107-15. First, the Due Process claim raises a common question with a common answer: whether the Due Process clause imposes an outer limit on the time for deciding a bond appeal. *Id.* ¶¶ 56-60, 65, 96. And the answer to that question should be the same for everyone, even if the question of whether the agency

has acted reasonably under the statutory framework differs based on individual circumstances. It thus comes as no surprise that the Ninth Circuit, and courts throughout the circuit, have repeatedly certified classes of detainees challenging ICE practices under the Due Process Clause. *See, e.g., Roman v. Wolf*, 977 F.3d 935, 344 (9th Cir. 2020) (“We further hold that the district court did not err by provisionally certifying a class of all Adelanto detainees. The alleged due process violations exposed *all* Adelanto detainees to an unnecessary risk of harm, not just those who are release-eligible or uniquely vulnerable to COVID-19.”) (emphasis in original); *Walters*, 145 F.3d at 1036 (affirming 23(b)(2) class certification when the plaintiffs sought “declaratory and injunctive relief on the ground that the administrative procedures used by the INS . . . violated their rights to procedural due process”); *Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 257 (C.D. Cal. 2008) (“[C]laims of due process violations and unreasonable delay also are common legal claims directed at Defendants’ specific consent policy. Where Plaintiffs raise a common question of law, Defendants’ concerns about multiple legal issues and factual variation do not defeat commonality.”); *Mansor*, 345 F.R.D. at 207 (certifying class alleging that defendants’ “failure to implement a process to afford Plaintiffs evidence of employment authorization while their TPS applications are pending violates their due process rights”).

Though “numerous individual administrative proceedings may flow” from a declaration that the delays in BIA processing of bond denial appeals violates due process, the Court’s decision would still “eliminate[] need for individual litigation regarding the constitutionality of” the delays. *See Walters*, 145 F.3d at 1047. “Absent

a class action decision, individual” detainees would be forced to file complaints against the BIA “in federal court, each of them raising precisely the same legal challenge to the constitutionality” of the appeals delays. *Id.* Thus, “class certification in this case is entirely proper in light of the general purposes of Rule 23, avoiding duplicative litigation.” *Id.*

The same is not true, however, of the proposed class’s APA claims. Defendants argue that “[t]o the extent that Plaintiff argues the Bond Appeal class ‘presents the same question of whether . . . the APA entitles them to timely adjudication of their bond hearing appeals,’ such inquiry is properly analyzed on a case-by-case basis under the six-factor test set forth in *Telecomm. Research & Action Ctr. v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984) (*TRAC*).” Dkt. 23 at 17. In *TRAC*, the District of Columbia Circuit Court of Appeals established a six-factor test, known as the *TRAC* test, for evaluating if an agency’s delay in processing a matter is unreasonable. 750 F.2d at 80. These factors include:

(1) the time agencies take to make decisions must be governed by a “rule of reason,” . . . ; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason, . . . ; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; . . . ; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority, (5) the court should also take into account the nature and extent of the interests prejudiced by de-

lay, . . . ; and (6) the court need not “find any impropriety lurking behind agency lassitude in order to hold that agency action is ‘unreasonably delayed.’

Id. (cleaned up). The Ninth Circuit has since adopted the *TRAC* test. *Indep. Mining Co. v. Babbitt*, 105 F.3d 502, 507 (9th Cir. 1997).

Rodriguez’s reply focuses largely on the alleged due process violation. *See* Dkt. 24 at 8-9 (“Defendants’ unworkable proposal ignores that the Due Process Clause provides a single, uniform answer to this question. The Supreme Court and Ninth Circuit have previously and repeatedly recognized that due process often demands specific timeframes for action to protect the rights of persons seized by the government.”) (citing cases). But most of the cases that Rodriguez cites do not actually grapple with an APA claim and the workability of a *TRAC* analysis for a class. *See id.*; *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 58-59 (1991) (plaintiffs sought injunctive and declaratory relief only under 28 U.S.C. § 1983); *Zadvydas v. Davis*, 533 U.S. 678, 700-01 (2001) (resident noncitizens ordered removed but held in custody past a statutory deadline for removal challenged policy, but did not bring an APA claim); *United States v. Fernandez-Alfonso*, 813 F.2d 1571, 1572-73 (9th Cir. 1987) (class challenged delay in district court’s review of a magistrate judge’s detention order, arguing the delay violated the requirement under the Bail Reform Act of 1984 that the district court determine the motion “promptly”); *Doe v. Gallinot*, 657 F.2d 1017, 1025 (9th Cir. 1981) (finding that certain provisions of the Lanterman-Petris-Short Act allowing state to commit individuals with mental health conditions involuntarily violated due process).

Cases that Rodriguez cites that do confront the applicability of *TRAC*—and which found certification appropriate—found a “rule of reason” in an applicable statute. For example, in *Gonzalez Rosario v. United States Citizenship and Immigrations Services*, the plaintiffs sought to compel USCIS to abide by regulatory deadlines for adjudicating applications for employment authorization documents filed by noncitizens. 365 F. Supp. 3d 1156, 1161 (W.D. Wash. 2018). Though a statute did not mandate a timeline for adjudicating applications, INS had issued a regulation that required adjudication within 30 days of receipt. *Id.* at 1160. Defendants argued that *TRAC* would require individualized determinations for each plaintiff, thus destroying commonality. *Rosario v. United States Citizenship & Immigr. Servs.*, No. C15-0813JLR, 2017 WL 3034447, at *9 (W.D. Wash. July 18, 2017). But the Court relied on the regulation to determine that individualized *TRAC* inquiries were not required. *Id.* at *10 (“Here, agency regulations rather than a congressional statute provided a deadline for performance, but the court has already concluded that those regulatory deadlines are mandatory. . . . Accordingly, the court rejects Defendants’ argument that the individualized *TRAC* inquiry undermines commonality.”).

The same is true of *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1172 (W.D. Wash. 2020). There, applicants for special immigrant juvenile status sued USCIS, alleging that the agency had failed to process their applications in timely manner. *Id.* The court did not consider the *TRAC* factors. Rather, it focused solely on the INA’s provisions, which unambiguously required that all applications be adjudicated no later than 180 days af-

ter the date on which the application was filed. *Id.* at 1179.

“Indeed, Ninth Circuit authority suggests that where a firm deadline exists, the Court need not undertake [*TRAC*’s] six-factor balancing inquiry.” *Garcia v. Johnson*, No. 14-CV-01775-YGR, 2014 WL 6657591, at *12 (N.D. Cal. Nov. 21, 2014) (first citing *Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1177 n.11 (9th Cir. 2002); and then citing *Brower v. Evans*, 257 F.3d 1058, 1068-69 (9th Cir. 2001)). But there is no such statute or regulation that provides a firm deadline in this case. At oral argument, Plaintiff’s counsel could not point to any controlling authority dictating a deadline.

Without that authority, “Plaintiffs’ missed deadline claim does not raise common issues for the purpose of class certification.” *See Casa Libre/Freedom House v. Mayorkas*, No. 222CV01510ODWJPRX, 2023 WL 3649589, at *13 (C.D. Cal. May 25, 2023). “This is so because (1) several of the individual *TRAC* factors require individualized inquiries, and (2) the task of balancing the *TRAC* factors requires an individualized inquiry for each class member.” *Id.*; *see also Tony N. v. U.S. Citizenship & Immigr. Servs.*, No. 21-CV-08742-MMC, 2021 WL 6064004, at *7 (N.D. Cal. Dec. 22, 2021) (“In the instant case, the Court, to determine the merits of plaintiffs’ claims, as well as those of putative class members, must, as discussed above, balance the *TRAC* factors. Of those factors, the third and fifth factors, namely, harm and prejudice, are subject to determination on an individual basis, and the first factor is, in part, namely, the length of delay, likewise subject to determination on such basis.”). Several of the individual *TRAC* factors “require individualized inquiries and cannot be treated

on a classwide basis.” *Casa Libre/Freedom House*, 2023 WL 3649589, at *13.

Rodriguez argues that the Bond Appeal Class meets the commonality requirement because “[a]ll class members present the same question of whether the . . . APA entitles them to timely adjudication of their bond hearing appeals.” Dkt. 1 ¶ 96. But the APA does not alone create any deadlines for compliance, and individual consideration of the *TRAC* factors “create[s] unmanageable rifts in the class.” *Casa Libre/Freedom House*, 2023 WL 3649589, at *13. Given that these factors must be balanced in each individual case, the Court concludes that the proposed class’s APA delayed adjudication claim does not “raise a question that ‘generate[s] common *answers* apt to drive the resolution of the litigation.’” *Id.* (quoting *Dukes*, 564 U.S. at 350) (emphasis in original).

Thus, the Court finds commonality met for the Bond Appeal Class for the Due Process claim only. The remaining Rule 23(a) and 23(b)(2) factors considered below for the Bond Appeal Class apply only to the Due Process claim.

3. *Typicality*

The third requirement of Rule 23(a) is typicality. “The claims of the representative party must be typical of the class claims.” *Gonzalez*, 975 F.3d at 809 (citing Fed. R. Civ. P. 23(a)(3)). “[R]epresentative claims are ‘typical’ if they are reasonably co-extensive with those of absent class members; they need not be substantially identical.” *Rosario*, 2017 WL 3034447, at *10 (quoting *Hanlon*, 150 F.3d at 1020). “The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class

members have been injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (cleaned up).

“Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought.” *Rosario*, 2017 WL 3034447, at *10 (quoting *Hanon*, 976 F.2d at 508). Typicality is a “permissive standard,” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003), but class certification is inappropriate “if there is a danger that absent class members will suffer if their representative is preoccupied with defenses unique to it[.]” *Hanon*, 976 F.2d at 508 (cleaned up).

Unsurprisingly, the “commonality and typicality requirements of Rule 23(a) tend to merge.” *Rosario*, 2017 WL 3034447, at *10 (quoting *Falcon*, 457 U.S. at 157 n.13). “Both serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff’s claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.” *Id.* (quoting *Falcon*, 457 U.S. at 157 n.13).

Defendants do not contest that Rodriguez’s claims are typical of the Bond Denial Class. And the Court finds typicality satisfied. Rodriguez arrived in the United States without inspection. Dkt. 9 ¶ 6 (“ICE has charged me as removable because I entered the United States without inspection.”). He was later arrested and detained at NWIPC. *Id.* ¶¶ 3, 5. An IJ refused Rodriguez bond because the IJ claimed that they lacked jurisdiction. *Id.* ¶¶ 11. And Rodriguez remains in custody at NWIPC. *Id.* ¶¶ 2, 15. His claims are typical of the Bond

Denial Class. Any minor factual differences do not change this analysis. *See, e.g., Mansor*, 345 F.R.D. at 205-06 (similar).

Defendants do, however, argue that Rodriguez has not suffered the same injury as the proposed Bond Appeal Class. Dkt. 23 at 21. As explained above in the standing analysis, *supra* Section IV.A, Defendants argue that “Plaintiff does not share the same or similar injury as the proposed class members he seeks to represent. Indeed, as of the time of this filing, Plaintiff’s bond denial appeal will have been pending for about one month. . . . This falls short of Plaintiff’s assertion that the BIA ought to render an appeal decision within 60 days.” *Id.*

Defendants are correct that Rodriguez filed his appeal less than two months ago. Dkt. 23 at 21; Dkt. 9 ¶ 12 (“I filed an appeal of the immigration judge’s decision denying me a bond hearing on March 13, 2025. The appeal is pending.”). But, as Rodriguez explains, “Defendants conflate the remedy sought with the fact that [he], like all proposed class members, faces a custody appeals system that fails to implement timelines or safeguards to ensure a timely decision.” Dkt. 25 at 10. Accordingly, Rodriguez argues that, because he faces the same imminent injury as the other class members, he may challenge the same practice that harms the others. *Id.*

As explained above, *supra* Section IV.A, Rodriguez has standing to lead the class because he faces immediate threat of direct injury: the alleged due process violation caused by the delay in BIA review. For similar reasons, his claims are typical of the class. Though Rodriguez has not yet been detained for sixty days, he faces the immediate threat of ongoing detention because

of delayed review. See Dkt. 5 ¶¶ 2-3; *Parsons*, 754 F.3d at 685 (finding typicality where the named plaintiff alleged “the same or [a] similar injury’ as the rest of the putative class”) (alteration in original) (citation omitted). Rodriguez, like the rest of the proposed Bond Appeal Class, “has allegedly suffered, or will suffer, the same harm as a result of Defendants’ common practice.” *Mansor*, 345 F.R.D. at 205 (citation omitted); see also *Parsons*, 754 F.3d at 685 (finding typicality where the injury is the “result of a course of conduct that is not unique to [the plaintiff]; and [the plaintiff] allege[s] that the injury follows from the course of conduct at the center of the class claims”).

Any minor differences in Rodriguez’s circumstances are a nonissue. Here, the Ninth Circuit’s decision in *Gonzalez v. United States Immigration & Customs Enforcement* is instructive. 975 F.3d at 810. There, the plaintiffs challenged a policy for issuing immigration detainers. *Id.* at 799. They challenged “ICE’s use of biometric information to confirm an individual’s identity and a search of electronic databases to determine whether the individual lacks lawful immigration status or has such status but is removable.” *Id.* The government argued that several aspects of the named plaintiff’s case defeated typicality. *Id.* at 810-11. For example, the government claimed that Gonzalez was “atypical of noncitizen class members because evidence of foreign birth—even with citizen-class members—gives rise to a rebuttable presumption of alienage on which an immigration officer may rely as part of a probable cause determination, which does not apply to someone who is or who the government should have known is a citizen.” *Id.* at 811 (cleaned up). But, because the challenge “concern[ed]

the legality of a policy that applie[d] equally to all class members,” the Ninth Circuit rejected the argument.⁷

The government also argued that because “an LAPD officer incorrectly wrote on Gonzalez’s booking record that he was born in Mexico . . . [he had] ‘unique’ circumstances that make him atypical.” *Id.* But these errors—factual differences the government argued made the claim “unique”—did not destroy typicality. *Id.* at 811-12. Rather, the court concluded, “Gonzalez’s claim is [] no different than any other class member who challenges the Government’s issuance of an immigration detainer based solely on a search of electronic databases.” *Id.* at 812.

Rodriguez, like Gonzalez, is subject to the same injury as the other class members. *See, e.g., id.*; *see also Rivera*, 307 F.R.D. at 550 (“Plaintiff’s claim is typical of her class members’, given that the class faces the same injury from the same policy.”); *Unknown Parties v. Johnson*, 163 F. Supp. 3d 630, 641 (D. Ariz. 2016) (holding that where plaintiffs had all been subject to the same conditions at a border patrol facility, even if for different spans of time, typicality was satisfied). And any minor factual differences—such as how long he has been detained, the circumstances of his detention, or his time in the United States—do not make his claims atypical.

Finally, and critically, a named plaintiff is not typical if “there is a danger that absent class members will suffer if their representative is preoccupied with defenses unique to it.” *DZ Rsr. v. Meta Platforms, Inc.*, 96 F.4th

⁷ The Ninth Circuit also considered that the government had waived the argument for failure to raise it in the district court and relied on this in dismissing the argument as well. *Id.* at 811.

1223, 1238 (9th Cir. 2024), *cert. denied*, 220 L. Ed. 2d 381 (Jan. 13, 2025) (quoting *Hanon*, 976 F.2d at 508). Defendant has not argued that any such defenses exist here. And the record does not suggest any.

The Court thus finds that Rodriguez has satisfied the typicality requirement for both proposed classes.

4. *Adequacy*

The final requirement of Rule 23(a) is adequacy. “The final hurdle interposed by Rule 23(a) is that ‘the representative parties will fairly and adequately protect the interests of the class.’” *Hanlon*, 150 F.3d at 1020 (quoting Fed. R. Civ. P. 23(a)(4)). “Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Id.* (citing *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978)). The named plaintiffs and their counsel must have “sufficient ‘zeal and competence’ to protect the interests of the rest of the class.” *Doe v. Wolf*, 424 F. Supp. 3d 1028, 1043 (S.D. Cal. 2020) (quoting *Fendler v. Westgate-Cal. Corp.*, 527 F.2d 1168, 1170 (9th Cir. 1975)).

a) *Named Plaintiff’s Adequacy*

The Court turns first to the adequacy of the named plaintiff, Ramon Rodriguez Vazquez. He is detained at NWIPC. Dkt 9 ¶ 1. Rodriguez entered the United States years ago, and much of his family lives here. *Id.* ¶ 4. On February 5, 2025, Rodriguez was arrested at his home in Grandview, Washington. *Id.* ¶ 5. He was transferred to NWIPC for removal proceedings. *Id.* ¶ 6. ICE charged Rodriguez as “removable because [he]

entered the United States without inspection.” *Id.* He has never been arrested by the police, charged with a crime, or convicted of a crime in the United States or elsewhere. *Id.* ¶ 8. On March 12, 2025, Rodriguez had a bond hearing before the immigration court, where he was represented by his attorney. *Id.* ¶ 11. “At that hearing, the immigration judge said that he could not consider my case.” *Id.* It is Rodriguez’s understanding that he “was denied a bond because the immigration judge concluded that [he] had entered the United States without inspection and therefore [he is] subject to mandatory detention,” ineligible for bond. *Id.* On March 13, 2025, Rodriguez filed an appeal, which remains pending before the BIA. *Id.* ¶ 12.

Rodriguez has expressed his interest in representing the class and his understanding of the responsibilities of doing so. In a declaration submitted to the Court, Rodriguez explains:

I want to be a named plaintiff in this case and I understand that if the Court grants the motion for class certification, I would represent a large number of people who: (a) have entered the United States without inspection; and (b) who have been denied a bond hearing for that reason. In addition, I also understand that I will represent a class of persons who have filed an appeal of their immigration judge decision denying bond.

I also understand that I would represent people who are currently in detention and who have been denied a bond hearing for the same reason as me, as well as people that will be in detention in the future and denied a bond hearing on this basis. In addition, I understand that I will represent people who have a

pending appeal at the BIA of a bond decision, as well as people who file such appeals in the future.

I understand that, as a class representative, I represent the interests of all class members in this lawsuit and that it is my responsibility to represent the interests of the whole class and not just my own personal interests.

Id. ¶¶ 16-18.

Rodriguez thus asserts that he is an adequate representative of the class—seeking the same relief and, as of the filing of the complaint, sharing the same interests as absent class members. *See Mansor*, 345 F.R.D. at 206. Rodriguez does not have any conflicts of interest because he has a “mutual goal” with the other class members to challenge the allegedly unlawful practices and to “obtain declaratory . . . relief that would not only cure this illegality but remedy the injury suffered by all current and future class member.” *Nightingale v. U.S. Citizenship & Immigr. Servs.*, 333 F.R.D. 449, 462 (N.D. Cal. 2019). The Court finds he is an adequate representative of the Bond Denial Class.

Though Defendants do not dispute that Rodriguez is an adequate representative for the Bond Denial Class, Defendants do contest his adequacy to represent the Bond Appeal Class. Dkt. 23 at 22. Defendants argue that “Plaintiff is unable to fairly and adequately protect the proposed class’s interests because, like the discussion in the commonality and typicality requirements, the proposed Bond Appeal class encompasses a broad range of individuals who have differing reasons for detention, and most importantly, whose appeals have been pending with the BIA for different lengths of time.” *Id.*

Defendants' claim echoes the standing and typicality arguments discussed—and dismissed—above. Their adequacy argument is unpersuasive for the same reasons. Accordingly, the Court finds that Rodriguez is an adequate class representative of the Bond Appeals Class as well.

b) Class Counsel's Adequacy

Counsel for the proposed class have shown that they have experience litigating class actions on immigration matters. Many of the attorneys have a decade or more of experience working in immigration law. Dkt. 11 ¶ 2 (explaining that Boyd has twenty-four years' experience); *Id.* ¶ 6 (explaining that Madrid has worked for NWIRP since 2013); *Id.* ¶ 7 (explaining that Kang has worked for NWIRP since 2014); *Id.* ¶ 8 (explaining that Korthius has worked for NWIRP since 2018); Dkt. 5 (explaining that Stanislawski has worked at NWIRP for eleven years). One attorney has litigated “hundreds of cases and personally argued on behalf of immigrants before immigration judges, the Board of Immigration Appeals, federal district courts, the Ninth Circuit Court of Appeals, and the United States Supreme Court.” Dkt. 11 ¶ 3. And he has “successfully moved for class certification and been approved by federal courts as class counsel in sixteen different class actions on behalf of immigrants[.]” *Id.* ¶ 4. Another serves as or has served as class counsel in six different cases, Dkt. 11 ¶ 8, and NWIRP has represented classes of immigrants multiple times in this district. *See Mansor*, 345 F.R.D. at 206; *Nw. Immigrant Rts. Project v. United States Citizenship & Immigr. Servs.*, 325 F.R.D. 671 (W.D. Wash. 2016). The combined experience of class counsel is more than adequate.

The court finds nothing in the record to suggest that the attorneys have any conflicts of interest with other class members. Accordingly, the Court concludes that counsel meet Rule 23(a)(4)'s adequacy requirement. *See Mansor*, 345 F.R.D. at 206 (similar).

C. Rodriguez has satisfied the requirements of Rule 23(b)(2).

Because the proposed class has met the requirements of Rule 23(a), the court turns to Rule 23(b). Plaintiffs move for class certification under Rule 23(b)(2), “which permits the Court to certify a class if ‘the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.’” *Jane Doe 1*, 357 F. Supp. 3d at 991 (quoting Fed. R. Civ. P. 23(b)(2)).

“Class certification under Rule 23(b)(2)” requires that “the primary relief sought is declaratory or injunctive.” *Rodriguez*, 591 F.3d at 1125 (quoting *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1195 (9th Cir. 2001)). “The rule does not require [courts] to examine the viability or bases of class members’ claims for declaratory and injunctive relief, but only to look at whether class members seek uniform relief from a practice applicable to all of them.” *Id.*; *see also Parsons*, 754 F.3d at 688 (This inquiry “does not require an examination of the viability or bases of the class members’ claims for relief, does not require that the issues common to the class satisfy a Rule 23(b)(3)—like predominance test, and does not require a finding that all members of the class have suffered identical injuries.”). Thus, “‘it is sufficient’ to meet the requirements of Rule 23(b)(2) that ‘class members complain of a pattern or practice that is

generally applicable to the class as a whole.’” *Id.* (citations omitted); *see also Mansor*, 345 F.R.D. at 206 (“In a 23(b)(2) class, the court treats predominance and superiority as self-evident, . . . and requires only a showing of cohesiveness of class claims.”) (cleaned up).

Rodriguez explains that both proposed classes seek declaratory relief generally applicable to the class. He argues, “Defendants’ bond denial policy applies to the members of the proposed Bond Denial Class, rendering them all subject to mandatory detention under § 1225(b)(2) and thus depriving [them] of the bond hearing that they are entitled under § 1226(a).” Dkt. 2 at 19. Thus, the declaratory relief requested—a ruling that the policy violates the INA—would provide the entire class with relief. *Id.*; *see also* Dkt. 1 at 22. Rodriguez claims the same for the Bond Appeal Class and “the BIA’s systematic failure to timely adjudicate bond appeals[.]” Dkt. 2 at 20. He explains that “a single declaratory judgment requiring the BIA to issue timely bond appeal decisions would apply to the class as a whole.” *Id.*

Courts in this circuit have found the requirements of Rule 23(b)(2) met in similar cases. For example, in *Mansor*, the plaintiffs sought a declaration that (1) the TPS statute required the defendants to provide employment authorization documentation while the plaintiffs’ TPS applications were pending, and that (2) Defendants’ “alleged failure to implement a process to afford Plaintiffs evidence of employment authorization while their TPS applications are pending violates their due process rights.” 345 F.R.D. at 207. The court concluded that the claims were “sufficiently cohesive for treatment in a Rule 23(b)(2) class.” *Id.* And in *Rivera*, individuals detained pending payment of bond or final removal deter-

mination filed a putative class action, alleging that the immigration courts' policy of denying noncitizens' requests for conditional parole without bond violated the INA. 307 F.R.D. at 551. The court there found that the action "concern[ed] a single policy applicable to the entire class that (if unlawful) subjects class members to unnecessary detention." *Id.* Thus, 23(b)(2) was satisfied. *See also Wagafe*, 2017 WL 2671254, at *16 ("Plaintiffs allege that CARRP is unlawful and ask the Court to enjoin the Government from submitting putative class members' immigration applications to CARRP. A single ruling would therefore provide relief to each member of the class. Accordingly, Rule 23(b)(2) is satisfied.").

Nonetheless, Defendant argues that "Plaintiff's request for declaratory relief cannot satisfy Rule 23(b)(2) because the text of Rule 23 allows class certification only where a court can grant "*corresponding* declaratory relief." Dkt. 23 at 23 (quoting Fed. R. Civ. P. 23(b)(2)) (emphasis added by Defendants). Relying primarily on advisory committee notes to the 1996 amendments to Rule 23, Defendants argue that "[b]ecause Plaintiff does not request injunctive relief, he is unable to seek 'corresponding' declaratory relief under Rule 23(b)." *Id.*

Defendant's argument is foreclosed by existing caselaw. As noted above, Rule 23(b)(2) permits class actions for declaratory *or* injunctive relief where "the party opposing the class has acted or refused to act on grounds generally applicable to the class." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). The rule uses the word "or," not "and," indicating that a request for declaratory relief alone is adequate to satisfy the rule's requirements. *See, e.g., Encino Motorcars*,

LLC v. Navarro, 584 U.S. 79, 87 (2018) (the “word ‘or’ . . . is almost always disjunctive.”) (citation omitted). And the Supreme Court has repeatedly described the rule as allowing class actions for both types of relief. *See Amchem*, 521 U.S. at 614 (“Rule 23(b)(2) permits class actions for declaratory or injunctive relief”); *Dukes*, 564 U.S. at 360 (“[t]he key to the (b)(2) class is ‘the indivisible nature of the injunctive *or* declaratory remedy warranted—the notion that the conduct is such that it can be enjoined *or* declared unlawful only as to all of the class members or as to none of them.’”) (emphasis added) (citation omitted). As recently as 2024, the Ninth Circuit has analyzed the availability of classwide declaratory and injunctive relief separately in cases challenging immigration enforcement policies. *See, e.g., Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 120 F.4th 606, 625-26 (9th Cir. 2024).

Notably, in *Garland v. Aleman Gonzalez*, the Supreme Court held that 8 U.S.C. § 1252(f)(1) prevents federal courts from “entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions.” 596 U.S. 543, 550 (2022). Pre-*Aleman Gonzalez*, the Ninth Circuit in *Rodriguez v. Hayes* analyzed a similar question. There, the defendants asserted that 8 U.S.C. § 1252(f)(1), Section 306(a) of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), barred class certification. 591 F.3d at 1118. Defendants claimed that Section 1252(f) barred “the proposed class from receiving any injunctive relief, thereby requiring denial of class certification.” *Id.* at 1119. The Ninth Circuit held that they were “doubly mistaken.” *Id.* Though the Ninth Circuit’s holding on injunctive relief has since been abro-

gated by *Aleman Gonzalez*, the Supreme Court “declined to reach the question whether [Section] 1252(f)(1) prohibits classwide declaratory relief.” *Al Otro Lado*, 120 F.4th at 625 n.14. “Because the Supreme Court’s reservation of a question is not clearly irreconcilable with a precedent of [the Ninth Circuit] that resolves the same question, we follow [the Ninth Circuit’s] binding precedent.” *Id.* (citing *Mont. Consumer Couns. v. FERC*, 659 F.3d 910, 920 (9th Cir. 2011)).

And the Ninth Circuit did discuss the difference between injunctive and declaratory relief in this context in *Rodriguez v. Hayes*:

But it is the text of the IIRIRA itself that most clearly shows that Section 1252(f) was not meant to bar classwide declaratory relief. Congress knew how to say “declaratory relief” in enacting the IIRIRA, but it chose not to use it in Section 1252(f). Cf. 8 U.S.C. § 1252(e)(1)(A) (prohibiting courts from entering “declaratory, injunctive, or other equitable relief” in any action to exclude under 8 U.S.C. § 1225(b)(1)). “[E]njoin or restrain” should not be read to include declaratory relief when Congress could easily have included “declaratory relief” explicitly had it chosen to do so. Cf. *Hor v. Gonzales*, 400 F.3d 482, 484 (7th Cir.2005) (“Our legal vocabulary contains distinct words for distinctive judicial actions. Keeping them separate makes it easy to address one, both, or neither, in a statute such as the IIRIRA.”).

591 F.3d at 1119.

Still, Defendants there argued “that declaratory relief is as a practical matter equivalent to injunctive relief, and that allowing classwide declaratory relief allows

an ‘end run’ around the scheme Congress designed.” *Id.* at 1120. Again, the Ninth Circuit disagreed. First, the court noted that “declaratory relief has long been recognized as distinct in purpose from and ‘milder’ in remedy than injunctions.” *Id.* (quoting *Steffel v. Thompson*, 415 U.S. 452, 466-67 (1974)). Second, the court explained, “the issue is not whether declaratory relief might make possible an end run around Section 1252(f), but whether classwide declaratory relief is a congressionally contemplated part of the statutory scheme. As we have explained, we believe that it is.” *Id.* This holding makes clear that classwide declaratory relief is available separately from injunctive relief and therefore is a basis for certification under Rule 23(b)(2). The requirements of 23(b)(2) are thus satisfied.

V. CONCLUSION

For these reasons, Plaintiff’s motion for class certification (Dkt. 2) is GRANTED IN PART and DENIED IN PART. The Court ORDERS that the following classes be certified:

Bond Denial Class: All noncitizens without lawful status detained at the Northwest ICE Processing Center who (1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the noncitizen is scheduled for or requests a bond hearing.

Bond Appeal Class: All detained noncitizens who have a pending appeal, or will file an appeal, of an immigration judge’s bond hearing ruling to the Board of Immigration Appeals.

The Bond Appeal Class is certified only as to Plaintiff's Due Process claims. The motion for class certification is DENIED as to the Bond Appeal Class for claims of unreasonable delay under the APA.

The Court appoints Ramon Rodriguez Vazquez as the representative for both classes. The Court appoints attorneys Matt Adams, Glenda M. Aldana Madrid, Leila Kang, and Aaron Korthuis of the Northwest Immigrant Rights Project as class counsel.

Dated this 2nd day of May, 2025.

/s/ TIFFANY M. CARTWRIGHT
TIFFANY M. CARTWRIGHT
United States District Judge

APPENDIX D

1. 8 U.S.C. 1225 provides:

Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing

(a) Inspection

(1) Aliens treated as applicants for admission

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

(2) Stowaways

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

(3) Inspection

All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission

or readmission to or transit through the United States shall be inspected by immigration officers.

(4) Withdrawal of application for admission

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

(5) Statements

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

(b) Inspection of applicants for admission

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

(A) Screening

(i) In general

If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an

intention to apply for asylum under section 1158 of this title or a fear of persecution.

(ii) Claims for asylum

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

(iii) Application to certain other aliens

(I) In general

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

(II) Aliens described

An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately

prior to the date of the determination of inadmissibility under this subparagraph.

(B) Asylum interviews

(i) Conduct by asylum officers

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

(ii) Referral of certain aliens

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

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

(I) In general

Subject to subclause (III), if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.

(II) Record of determination

The officer shall prepare a written record of a determination under subclause (I). Such record shall include a summary of the material facts as stated by the applicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in the light of such facts, the alien has not

established a credible fear of persecution. A copy of the officer's interview notes shall be attached to the written summary.

(III) Review of determination

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

(IV) Mandatory detention

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

(iv) Information about interviews

The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations

prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process.

(v) “Credible fear of persecution” defined

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

(C) Limitation on administrative review

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

(D) Limit on collateral attacks

In any action brought against an alien under section 1325(a) of this title or section 1326 of this title, the court shall not have jurisdiction to

hear any claim attacking the validity of an order of removal entered under subparagraph (A)(i) or (B)(iii).

(E) “Asylum officer” defined

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

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

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

(F) Exception

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

(G) Commonwealth of the Northern Mariana Islands

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

(2) Inspection of other aliens**(A) In general**

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

(B) Exception

Subparagraph (A) shall not apply to an alien—

- (i) who is a crewman,
- (ii) to whom paragraph (1) applies, or
- (iii) who is a stowaway.

(C) Treatment of aliens arriving from contiguous territory

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

(3) Enforcement by attorney general of a state

The attorney general of a State, or other authorized State officer, alleging a violation of the detention and removal requirements under paragraph (1) or (2) that harms such State or its residents shall have standing to bring an action against the Secretary of Homeland Security on behalf of such State or the res-

idents of such State in an appropriate district court of the United States to obtain appropriate injunctive relief. The court shall advance on the docket and expedite the disposition of a civil action filed under this paragraph to the greatest extent practicable. For purposes of this paragraph, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of \$100.

(4) Challenge of decision

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

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

(1) Removal without further hearing

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

(A) order the alien removed, subject to review under paragraph (2);

(B) report the order of removal to the Attorney General; and

(C) not conduct any further inquiry or hearing until ordered by the Attorney General.

(2) Review of order

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

(B) If the Attorney General—

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

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

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

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

(3) Submission of statement and information

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

(d) Authority relating to inspections**(1) Authority to search conveyances**

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

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

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

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

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

(3) Administration of oath and consideration of evidence

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

(4) Subpoena authority

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

the administration of the Service, and to that end may invoke the aid of any court of the United States.

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

2. 8 U.S.C. 1226, as amended by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3, provides:

Apprehension and detention of aliens

(a) Arrest, detention, and release

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—

- (1) may continue to detain the arrested alien; and
- (2) may release the alien on—
 - (A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
 - (B) conditional parole; but

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

(b) Revocation of bond or parole

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

(c) Detention of criminal aliens

(1) Custody

The Attorney General shall take into custody any alien who—

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

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

(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence¹ to a term of imprisonment of at least 1 year,

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

¹ So in original. Probably should be “sentenced”.

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

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

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

(2) Definition

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

(3) Detainer

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

(4) Release

The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to pro-

vide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

(d) Identification of criminal aliens

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

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

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

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

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

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

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

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

(e) Judicial review

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

(f) Enforcement by attorney general of a State

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

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For purposes of this subsection, a State or its residents shall be considered to have been harmed if the State or its residents experience harm, including financial harm in excess of \$100.