No. 26-572

In the Supreme Court of the United States

FRANK PADULA, ACTING FIELD OFFICE DIRECTOR, CHICAGO FIELD OFFICE, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, AND SCOTT SMITH, JAIL ADMINISTRATOR, DODGE COUNTY JAIL, PETITIONERS

v.

JACIEL CIRRUS ROJAS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH 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 (respondents-appellees below) are Frank Padula, Acting Field Office Director, Chicago Field Office, U.S. Immigration and Customs Enforcement, and Scott Smith, Jail Administrator, Dodge County Jail.*

Respondent (petitioner-appellant below) is Jaciel Cirrus Rojas.

RELATED PROCEEDINGS

United States District Court (E.D. Wis.):

Cirrus Rojas v. *Olson*, No. 25-cv-1437 (Oct. 30, 2025)

United States Court of Appeals (7th Cir.):

Cirrus Rojas v. *Olson*, No. 25-3127 (July 30, 2026)

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* Acting Director Padula 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-47a) is reported at 183 F.4th 909. The decision and order of the district court (App., *infra*, 48a-81a) is available at 2025 WL 3033967.

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*, 84a-100a.

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 May 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 a native and citizen of Mexico who entered the United States illegally in 2018 and has remained in the country since then. App., *infra*, 5a. In June 2025, ICE officers arrested respondent for violations of the immigration laws. *Id.* at 49a. Immigration officers initiated removal proceedings against respondent, charging him with being inadmissible under 8 U.S.C. 1182(a)(6)(A)(i), for being present in the United States without being admitted or paroled. C.A. App. 45.

DHS determined that respondent must be detained for the duration of his removal proceedings. See App., *infra*, 49a. Respondent sought review of his detention in immigration court, and an immigration judge held a bond hearing and then ordered respondent released on bond. See *id.* at 49a-50a. The government appealed that decision to the BIA, arguing that Section 1225(b)(2)(A) mandates respondent's detention. See *id.* at 50a. That appeal automatically stayed the bond decision under 8 C.F.R. 1003.19(i)(2), which provides that "any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's [timely] filing of a notice of intent to appeal the custody redetermination." The BIA subsequently reversed the immigration judge's bond order in light of its decision in *Yajure Hurtado*, *supra*. See App., *infra*, 5a.

2. a. Before the BIA ruled on the government's appeal, respondent filed a habeas petition in the United States District Court for the Eastern District of Wisconsin. See App., *infra*, 5a, 48a. He argued that he is not subject to mandatory detention under Section 1225(b)(2)(A), and that his detention pursuant to the automatic stay authorized in 8 C.F.R. 1003.19(i)(2) vio-

lated the Fifth Amendment's Due Process Clause and was *ultra vires*. C.A. App. 25-28.

The district court denied respondent's habeas petition. App., *infra*, 49a. After finding jurisdiction, *id.* at 57a, the court rejected respondent's arguments on the merits. The court agreed with the government that as an "applicant for admission," respondent was subject to mandatory detention under Section 1225(b)(2)(A). *Id.* at 66a. The court further explained that the phrase "'seeking admission'" in that statute does not limit its application to only aliens "apprehended at the border," *id.* at 64a, but rather "is best read as simply another way of referring to aliens who are applicants for admission," *id.* at 66a-67a. The court then rejected respondent's argument that the automatic stay provision of 8 C.F.R. 1003.19(i)(2) is *ultra vires*. App., *infra*, 74a. Finally, it rejected respondent's due-process argument, concluding that respondent's liberty interest in his release from pre-removal detention is "limited," as "he has the key to his release in his own pocket; he can choose to accept removal" under Section 1229a. *Id.* at 79a.

b. Respondent appealed the district court's decision to the Seventh Circuit. App., *infra*, 6a. While his appeal was pending, a district court in California vacated the BIA's decision in *Yajure Hurtado*, *supra*. See *Bautista* v. *Santacruz*, 820 F. Supp. 3d 1016, 1030 (C.D. Cal. 2026). After *Bautista*, respondent again sought a bond hearing, and a different immigration judge ordered him released on bond. See App., *infra*, 5a. A few weeks later, the Ninth Circuit stayed the order in *Bautista* pending appeal. See *id.* at 6a. DHS appealed the immigration judge's decision to the BIA but did not seek an automatic stay. See *ibid.*

3. The court of appeals reversed the district court's denial of respondent's habeas petition. App., *infra*, 1a-38a. The court concluded that despite respondent's release from custody, his case was not moot because of the government's intention to re-detain him. *Id.* at 7a-8a. Turning to the merits, the court concluded that respondent is not "seeking admission" within the meaning of Section 1225(b)(2)(A), and thus the statute's detention mandate does not apply to him. *Id.* at 19a. The court interpreted the phrase "seeking admission" in Section 1225(b)(2)(A) to refer to aliens pursuing lawful entry at the border. *Id.* at 16a. The court relied on the fact that Congress had expressly "deemed" aliens present without admission to be "'applicants for admission'" in Section 1225(a)(1), but had not similarly deemed such aliens to be "'seeking admission.'" *Id.* at 14a-15a. And it found its interpretation of that phrase necessary to avoid surplusage. *Id.* at 27a. The court also rejected the government's arguments based on statutory context, structure, and history. *Id.* at 27a-35a.

The court of appeals further explained that even if it "thought the law ambiguous," constitutional-avoidance principles would support respondent given the court's "grave" concern that applying Section 1225(b)(2)(A) to aliens in respondent's shoes would violate due process. App., *infra*, 35a; see *id.* at 35a-38a.

Judge Sykes dissented. App., *infra*, 39a-47a. She explained that the majority's interpretation of Section 1225(b)(2)(A) failed to give effect to the deeming provision in Section 1225(a)(1), which "classifies [respondent] as *constructively* seeking or applying for admission." *Id.* at 43a. She also observed that the majority's reading "relegates [Section] 1225(b)(2)(A)'s detention mandate from 'a catchall provision that applies to all appli-

cants for admission not covered by [Section] 1225(b)(1),' to a far more limited provision that applies to only a subset of arriving aliens." *Id.* at 44a (quoting *Jennings* v. *Rodriguez*, 583 U.S. 281, 287 (2018)) (citation omitted). She expressed agreement with the courts of appeals and dissenting judges that have adopted the government's interpretation of Section 1225(b)(2)(A), but observed that only this "Court can bring uniformity and settle this question once and for all." *Id.* at 47a.

REASONS FOR GRANTING THE PETITION

This case presents the question whether 8 U.S.C. 1225(b)(2)(A) mandates the detention of aliens like respondent 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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OCTOBER 2026

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 25-3127

JACIEL CIRRUS ROJAS, PETITIONER-APPELLANT

v.

SAMUEL OLSON, FIELD OFFICE DIRECTOR, CHICAGO FIELD OFFICE, IMMIGRATION AND CUSTOMS ENFORCEMENT, AND SCOTT SMITH, JAIL ADMINISTRATOR, DODGE COUNTY JAIL, RESPONDENTS-APPELLEES

Appeal from the United States District Court
for the Eastern District of Wisconsin
No. 2:25-cv-01437—**Brett H. Ludwig**, *Judge*

Argued: June 15, 2026 — Decided: July 30, 2026

Before: SYKES, JACKSON-AKIWUMI, and KOLAR, *Circuit Judges.*

KOLAR, *Circuit Judge*. This case is about a change in the federal government's longstanding interpretation of its immigration-detention laws. After living in this country since 2018, Jaciel Cirrus Rojas was caught in the throes of that change last year. When the Department of Homeland Security ("DHS") arrested him for unlawfully entering the country without inspection, it cited Title 8 U.S.C. § 1226. An immigration judge found him neither a danger to the community nor a risk of flight

and ordered him released on bond pending his removal, also using Section 1226. It is no surprise this case started with Section 1226, the provision that the government has long used to detain "aliens" (the statutory term for any noncitizen) present in the country's interior without inspection.

But despite DHS's initial use of Section 1226 and the immigration judge's order, the agency reversed course. It refused to release Cirrus Rojas based on a neighboring provision, Section 1225(b)(2)(A), which was previously used to detain aliens without a bond determination only when they were apprehended at the nation's borders. DHS now contends that for decades everyone has read the relevant statutory provisions incorrectly and that Section 1225, not 1226, controls, requiring Cirrus Rojas's detention without so much as a hearing on bond. In response to this change in interpretation, Cirrus Rojas filed a petition for a writ of habeas corpus pursuant to Title 28 U.S.C. § 2241 to secure his release from detention.

This sets the stage for the question presented in this appeal: whether Section 1226 or Section 1225 governs Cirrus Rojas's detention. That narrow question determines whether millions of aliens living in the United States are subject to mandatory detention, or are eligible for bond hearings before an immigration judge. The issue has split the circuits, though a consensus is emerging.[1] We have yet to definitively rule upon the issue,

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[1] *Compare Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026) (rejecting DHS's interpretation), *petition for cert. filed*, No. 26-104 (U.S. July 24, 2026), *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, 175 F.4th 1258 (11th Cir. 2026) (same), *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026) (same), *pe-*

leaving our district courts without binding authority to help resolve the many similar habeas petitions flooding their dockets. We add but a few more drops of ink to the gallons already spilled, seeking to avoid simple repetition while answering the question before us.

DHS rests its new interpretation on changes Congress made to the Immigration and Nationality Act ("INA") almost thirty years ago. Before those changes, aliens who unlawfully entered the country were given greater procedural rights than those who presented for inspection at the border. Congress ended that disparity by creating a legal fiction in removal proceedings that "deemed" all aliens not properly admitted "applicants for admission" to the United States, as if they had never crossed the border. But before last year, no administration had ever suggested this legal fiction extended beyond the INA's removal procedures to its provisions governing detention pending removal.

The crux of the parties' disagreement is how far the legal fiction of "deeming" Cirrus Rojas an "applicant for admission" stretches. As we detail below, Section 1225(b)(2)(A) imposes mandatory detention on certain "applicants for admission," but only those who are also "*seeking* admission." And Cirrus Rojas is not seeking admission: the relief he now seeks, asylum and with-

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tition for cert. filed, No. 25-1415 (U.S. June 22, 2026), *and Santillan Quiroz v. Mullin*, 180 F.4th 1226 (10th Cir. 2026) (same), *with Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) (adopting DHS's interpretation), *petition for cert. filed*, No. 26-43 (U.S. July 14, 2026), *and Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026) (same); *see also Sosnava Rodriguez v. Ortega*, 180 F.4th 702 (5th Cir. 2026) (acknowledging *Buenrostro-Mendez*'s statutory holding but requiring bond hearings on constitutional grounds), *vacated and reh'g en banc granted*, __ F.4th __, 2026 WL 2014647 (5th Cir. July 10, 2026).

holding of removal, is not admission as the statute and Supreme Court case law use that term. Cirrus Rojas has never applied for anything that counts as "admission" to the United States. Nor can he successfully "seek" admission, as his unlawful entry renders him inadmissible. The government simply argues that because Cirrus Rojas is "deemed" an "applicant for admission," he must be "seeking admission."

We hold that Cirrus Rojas is not "seeking admission"—and thus not covered by Section 1225(b)(2)(A)—because that is his real-world status. We join the majority of the circuits that have confronted this question in rejecting the government's newfound statutory requirement for mandatory detention, which rests upon the illogical use of both legal fiction and ordinary meaning for the same term.

Congress may use legal fictions to place statutory terms in their desired context. But legal fictions are just that—fictions. One mixes fiction with fact at their peril. And the facts in this case are clear: Cirrus Rojas is not seeking admission to the United States. If Congress had meant to define individuals like Cirrus Rojas as "seeking admission," it could have done so. But that is not what our elected representatives decided to do, and we must apply the statute as it is written.

Our holding is limited. We deal only with whether *all* aliens present without admission in the interior and facing removal proceedings are subject to mandatory detention. Under the INA's plain text, context, and history, the answer is no. Aliens present in the country without admission and not "seeking admission" fall under Section 1226, not Section 1225(b)(2)(A), and are eligible for bond hearings subject to the INA's other re-

quirements. Because the government provides no reason other than its statutory analysis to deny Cirrus Rojas's petition for a writ of habeas corpus, we reverse the district court's denial and remand.

I. Background

Jaciel Cirrus Rojas, a Mexican national, has lived in the United States since 2018 when he entered without inspection. As discussed, DHS arrested him in June 2025 on a warrant that cited 8 U.S.C. § 1226 as the legal basis for his detention. He was placed in removal proceedings and sought release on bond pending his removal. An immigration judge found him neither a flight risk nor a danger to the community and ordered him released on bond.

DHS appealed to the Board of Immigration Appeals ("BIA"). It argued—based on new agency guidance issued days before the immigration judge's decision—that Cirrus Rojas did not fall under Section 1226 after all. Rather, DHS argued that Cirrus Rojas was covered by 8 U.S.C. § 1225(b)(2)(A), subjecting him to mandatory detention without bond. DHS also unilaterally stayed the immigration judge's bond order pending appeal, so Cirrus Rojas remained in custody. *See* 8 C.F.R. § 1003.19(i)(2).

Cirrus Rojas petitioned for a writ of habeas corpus in federal district court. And, back in his removal proceedings, he requested asylum, withholding of removal, and protection under the Convention Against Torture. While his habeas petition was pending, the BIA reversed the immigration judge's bond order. It did so based on its new precedent adopting DHS's interpretation of Section 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). The district court agreed with

DHS, too. It concluded that Cirrus Rojas must be detained pending his removal proceedings and denied his petition. Cirrus Rojas filed this appeal.

While Cirrus Rojas's appeal was pending, a California district court vacated the BIA's decision adopting the government's new interpretation of Section 1225 in a nationwide class action. *Bautista v. Santacruz*, 820 F. Supp. 3d 1016, 1030 (C.D. Cal. 2026). Cirrus Rojas sought another bond hearing in the wake of this class action, and a different immigration judge again ordered him released. This time DHS did not immediately appeal and automatically stay the bond order, and Cirrus Rojas was released from custody. A few weeks later, the Ninth Circuit stayed the California district court's order pending appeal, and DHS promptly issued a notice purporting to cancel Cirrus Rojas's bond. DHS also appealed to the BIA.

Before oral argument, we ordered the parties to brief whether Cirrus Rojas's habeas petition is now moot. And we ordered DHS to state if it intends to re-detain Cirrus Rojas. The government stated it would re-detain him "if, while this [appeal] is pending, the [BIA] reverses his grant of release on bond." And after we held oral argument, the BIA did just that and reversed and vacated the second bond order.

II. Discussion

We begin with whether Cirrus Rojas's release from custody has mooted his habeas petition and conclude it does not. We then turn to the statutory question and conclude that Cirrus Rojas is eligible for a hearing on bond under Section 1226.

A. Mootness

We have jurisdiction over "Cases" and "Controversies." U.S. Const. art. III, § 2. "That constitutional requirement ensures that the parties before us retain a 'personal stake' in the litigation." *Moore v. Harper*, 600 U.S. 1, 14 (2023) (citation omitted). The mootness doctrine "addresses whether an intervening circumstance has deprived the plaintiff of a personal stake in the outcome of the lawsuit," stripping a federal court's subject-matter jurisdiction. *Id.* (citation omitted).

A party loses a personal stake in an appeal when we can no longer grant "any effectual relief." *Calderon v. Moore*, 518 U.S. 149, 150 (1996) (citation omitted). This standard is "demanding." *Mission Product Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 377 (2019). So long as a court can provide even a "partial remedy," an appeal is not moot. *Calderon*, 518 U.S. at 150 (citation omitted).

Cirrus Rojas seeks relief through a writ of habeas corpus. Habeas petitioners typically seek a reduction in, or release from, custody. *See DHS v. Thuraissigiam*, 591 U.S. 103, 119 (2020) (habeas is "at its core a remedy for unlawful executive detention" (citation omitted)); *Graham v. Broglin*, 922 F.2d 379, 381 (7th Cir. 1991) (habeas may be used to obtain "a quantum change in the level of custody"). Ordering Cirrus Rojas released from physical custody now might not seem to provide meaningful relief because the record suggests the government has not yet re-detained him.

Nonetheless, we conclude on these unique facts that Cirrus Rojas's appeal is not moot. Nothing stops DHS from re-detaining him now, and that is precisely what it has vowed to do. Cirrus Rojas was only released on bond

because of a class-action order that is no longer in place. DHS purported to cancel the bond on which he was released. Then it promised to re-detain him, even while this appeal remains pending, once the BIA reversed the immigration judge's bond order. And now that the BIA has reversed, nothing, absent our intervention, stops the government from making good on its promise.

Cirrus Rojas's "release" is at most a temporary "reprieve from detention" that appears likely to end "at any time." *Rosales-Garcia v. Holland*, 322 F.3d 386, 395-96 (6th Cir. 2003). This burden is "an actual injury traceable to" the government that is "likely to be redressed by a favorable" habeas judgment. *Id.*; *see Haaland v. Brackeen*, 599 U.S. 255, 294 (2023) ("It is a federal court's judgment, not its opinion, that remedies an injury; thus it is the judgment, not the opinion, that demonstrates redressability."). We therefore hold that this appeal is not moot.[2]

B. Interpretation of the INA's Detention Provisions

With our jurisdiction secure, we turn to the merits. In reviewing the district court's statutory interpretation *de novo*, we consider the INA's "text, structure, and history." *See United States v. Liestman*, 97 F.4th 1054, 1060 (7th Cir. 2024) (*en banc*). Starting with the text and structure, we conclude that Cirrus Rojas has the better reading. Then, widening our lens, we look to the INA's amendments and historical interpretations to confirm its plain meaning. Finally, we consider in the

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[2] Article III mootness aside, Cirrus Rojas has satisfied the habeas statute's "in custody" requirement because he was in custody when he filed his petition. *See Spencer v. Kemna*, 523 U.S. 1, 7 (1998).

alternative whether DHS's interpretation invites constitutional concerns.

Two INA provisions are at issue. We take them in the order that the government used them in detaining Cirrus Rojas. Recall that DHS initially detained Cirrus Rojas pursuant to a warrant issued under Section 1226 ("Apprehension and detention of aliens"). We focus on Section 1226(a):

> 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[.]

(Emphasis added).

Though Section 1226(a) permits bond, bond is by no means guaranteed. An immigration officer makes the first detention decision. 8 C.F.R. § 236.1(c)(8). This officer must presume that detention is required, *see id.*, and has "extremely broad discretion in deciding" whether to grant bond, *In re Guerra*, 24 I. & N. Dec. 37, 39 (B.I.A. 2006). If the officer denies bond, an alien may petition for a bond hearing before an immigration judge. 8 C.F.R. § 236.1(d)(1). But the judge must also presume detention is necessary. *See Matter of Siniauskas*, 27 I. & N. Dec. 207, 207 (B.I.A. 2018). And the burden to

prove otherwise rests with the alien: the government need not present any evidence justifying detention. *See id.* at 207-08; *Guerra*, 24 I. & N. Dec. at 39-40. If the judge orders bond, the government may appeal to the BIA—where the same burden applies in its favor—and may unilaterally stay the judge's bond order pending appeal. *Guerra*, 24 I. & N. Dec. at 39-40 (burden on appeal rests on alien); 8 C.F.R. § 1003.19(i)(2) (unilateral stay).

The government has since decided, though, that Cirrus Rojas is not even entitled to these procedures. Instead it argues his detention is mandatory under Section 1225 ("Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"). Here, we focus on Section 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.

(Emphasis added).

Congress added Section 1225(b)(2)(A) and Section 1226(a) in their current forms to the INA in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, §§ 302, 303, 110 Stat. 3009-546, 3009-582, -585. For the nearly thirty years since IIRIRA, five presidential administrations—including the first administration of President Donald J. Trump—have applied Section 1225(b)(2)(A) to aliens "at the Nation's borders and ports of entry" and Section 1226(a) to aliens "inside the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 287-88 (2018); *see Barbosa*

da Cunha v. Freden, 175 F.4th 61, 91 (2d Cir. 2026), *petition for cert. filed*, No. 26-104 (U.S. July 24, 2026).

Now DHS has changed its view. So we must decide whether Section 1226 or Section 1225 governs Cirrus Rojas's detention. If Cirrus Rojas reads the statutes correctly, he and others like him are entitled to bond hearings under Section 1226(a). But if the government's reading is correct, they must be detained without bond hearings under Section 1225(b)(2)(A).

1. Statutory Text

The government's recent reinterpretation turns on the statutory term "applicant for admission." That term is explained in Section 1225(a)(1):

> 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.

Cirrus Rojas does not meaningfully contest that he is "deemed" an "applicant for admission" under Section 1225(a)(1)—that is, he is an "alien present in the United States who has not been admitted." Thus, the government argues, he falls under Section 1225(b)(2)(A)—which itself applies to "an alien who is an applicant for admission"—and so he must be detained without bond.

Cirrus Rojas disagrees. He argues Section 1225(b)(2)(A) applies only to those who are both "applicants for admission" and "seeking admission." The INA defines "admission" as "the lawful entry of the alien into the United States after inspection and authorization by

an immigration officer." 8 U.S.C. § 1101(a)(13)(A). It does not define what "seeking" admission means. But Cirrus Rojas observes that the ordinary meaning of "seeking" connotes "an affirmative step of search or pursuit."[3] *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, 175 F.4th 1258, 1268 (11th Cir. 2026) (citation omitted); *see Oxford Encyclopedic English Dictionary* 1311 (3d ed. 1996) (defining "seek" as, *inter alia*, to "try or want to find or get" or "ask for; request"). He says he is not "seeking" (as ordinarily understood) "admission" (as the INA defines the term). Indeed, his time to do so has passed: he unlawfully entered the country eight years ago without inspection. So even though he is "deemed" an "applicant for admission" as a legal fiction under Section 1225(a)(1), he relies on the fact that he is not presently "seeking" "admission" to argue he is not subject to Section 1225(b)(2)(A).

The government does not distinguish an "applicant for admission" from one "seeking admission." It claims all "applicant[s] for admission" must be "seeking admission" under Section 1225(b)(2)(A). In its view, these terms are a "doublet—'two ways of saying the same thing that reinforce its meaning.'" *Hernandez Alvarez*, 175 F.4th at 1295 (Lagoa, J., dissenting) (citation omitted); *see American Heritage Dictionary of the English*

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[3] By "ordinary meaning" here, we refer to "the content of what the statutory text would convey to a reasonable English user in the context of everyday communication," as opposed to "[p]lain meaning," which "refers to a judgment that whatever the statutory text conveys in context is clear from the text." Marco Basile, *Ordinary Meaning and Plain Meaning*, 110 Va. L. Rev. 135, 158 (2024). Plain meaning can arise not only from ordinary meaning, but also a statutorily imposed meaning that diverges from ordinary meaning.

Language 63 (1980) (defining "apply" as, *inter alia*, "[t]o request or seek employment, acceptance, or admission").

The government's argument does not get off the ground without a logical leap we see little reason to make. We agree that the *ordinary meaning* of "applicant for admission" could perhaps include "seeking admission." But the government goes a step too far. It argues that because Cirrus Rojas is "*deemed*" an "applicant for admission," he is also deemed to be all that flows from that term's ordinary meaning—including "seeking admission." This conclusion does not follow; it mixes an admitted legal fiction with fact. And the fact remains: Cirrus Rojas is not presently seeking a form of relief qualifying as admission.

When Congress "deems" something, we take it as a *departure* from the term's ordinary meaning in favor of a particularized one. *See Barbosa da Cunha*, 175 F.4th at 76 ("Where a statute deems a term to have a particularized meaning, an analogy to its use in everyday conversation is of limited help."); *see also Sturgeon v. Frost*, 587 U.S. 28, 47 (2019) (the word "deemed" "is used in legal materials to treat something as if it were really something else" (cleaned up)); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 225 (2012) ("Drafters often specify the meaning of the terms they use. Individual statutes often contain definition sections giving ordinary words a limited or artificial meaning.").

Section 1225(a)(1) explains "applicant for admission" as a term of art—relevant here, as "[a]n alien present in the United States who has not been admitted." This artificial "deeming" mandates that the ordinary meaning of "applicant for admission" must give way to Congress's

chosen definition. *See Digital Realty Trust, Inc. v. Somers*, 583 U.S. 149, 160 (2018). And Section 1225(a)(1) does *not* say applicants for admission are necessarily seeking admission. But Section 1225(b)(2)(A)'s mandatory-detention clause does use the unique phrase "seeking admission," and we cannot ignore that meaningful variation. *See Russello v. United States*, 464 U.S. 16, 23 (1983) (discussing canon of meaningful variation). The government attempts to read "seeking admission" into Section 1225(a)(1)'s definition of "applicant for admission" with little textual support.[4] Congress could have defined "seeking admission" consistent with the government's reading; it did not do so.

We apply the artificial meaning to "*applicant* for admission" because the statute requires it. But because the term "*seeking* admission" is undefined, we must apply its ordinary meaning. *Feliciano v. Department of Transportation*, 605 U.S. 38, 45 (2025); Scalia & Garner, *supra*, at 69, 226. While Section 1225(a)(1)'s "deeming" language may make Cirrus Rojas an applicant for admission "abracadabra-style," *Sturgeon*, 587 U.S. at 47, it does not conjure a fictional intent to seek admission. Congress holds the magic wand to "deem" that statutory

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[4] Indeed, IIRIRA struck a provision of the INA that never took legal effect, which would have "deemed" individuals like Cirrus Rojas as "seeking entry and admission." *See* Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 414, 110 Stat. 1214, 1270; IIRIRA § 308(d)(2)(D), 110 Stat. at 3009-617. IIRIRA thus ensured that "seeking admission" remained undefined in Section 1225(b)(2)(A). "When Congress amends legislation, courts must presume it intends the change to have real and substantial effect." *Van Buren v. United States*, 593 U.S. 374, 393 (2021) (citation omitted).

terms carry a specific meaning in this context; the Executive does not.

The dissent thoughtfully recognizes that the labyrinthine nature of the INA complicates the use of dictionary definitions and canons of construction, and we share the view that generations of overlapping legislation coupled with defined terms make our task a difficult one. But we trudge on, marching next to our dissenting colleague[5] even as we hear the drum beat a bit differently. At least to our ears, solving the riddle before us by mixing a legal fiction with ordinary meaning is less faithful to the statutory scheme and the words Congress chose.

With that in mind, we agree with Cirrus Rojas that he is not "seeking admission" as the term is ordinarily understood. Again, admission means "lawful entry … into the United States after inspection and authorization." *Sanchez v. Mayorkas*, 593 U.S. 409, 411 (2021) (citing 8 U.S.C. § 1101(a)(13)(A)). Cirrus Rojas entered the United States without admission or parole in 2018, making him "inadmissible" under the INA. *See* 8 U.S.C. § 1182(a)(6)(A)(i). "[O]nce a noncitizen has entered unlawfully, no amount of legal maneuvering allows him to go back in time and make his initial entry lawful." *Santillan Quiroz v. Mullin*, 180 F.4th 1226, 1239 (10th Cir. 2026).

Rather, those in Cirrus Rojas's shoes—though deemed "applicants for admission"—can only seek to remain in the United States through other forms of relief that are

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[5] Judge Kirsch and many colleagues from our sister circuits have likewise produced well-reasoned explanations supporting a broader reading of Section 1225. *See Castañon-Nava v. DHS*, 175 F.4th 828, 871-77 (7th Cir. 2026) (Kirsch, J., dissenting); *supra* note 1.

not admission. Cirrus Rojas's own case illustrates this point. He has petitioned for asylum, withholding of removal, and protection under the Convention Against Torture in his removal proceeding—all legal statuses different from "admission."[6] *Sanchez*, 593 U.S. at 415.

This highlights a fundamental issue with the government's reasoning. To read Section 1225(b)(2)(A)'s use of "seeking admission" as merely another way of saying "applicant for admission" ignores that while "applicants for admission" *may* literally "seek admission," they do not always do so. Indeed, they *cannot* (at least not successfully) "seek admission" after unlawfully entering. Cirrus Rojas is an "applicant for admission" because he is an alien present in the country and not admitted. But he wisely does not "seek" the "lawful entry" that he could never obtain. Compare that with an "applicant for admission" at the border. That applicant may affirmatively seek—and subject to the INA's other requirements, secure—admission. Both Cirrus Rojas and our example of an alien at the border are deemed "applicants for admission." But the applicant at the border actually seeks what Cirrus Rojas has not sought and cannot obtain: admission.

The dissent correctly notes that we look to real-world facts in attempting to answer a legal question of statutory analysis. But that approach follows from our textual reading of "seeking" and "applicant" as meaningfully distinct terms. We do not suggest that Cirrus Rojas could alter the plain meaning of the INA based on his factual circumstances. Nor do we suggest that,

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[6] For this same reason, the district court's alternative conclusion that Cirrus Rojas is "seeking admission" by seeking asylum misses the mark.

if that plain meaning *did* reach Cirrus Rojas's circumstances—if, for example, he were on a quixotic quest to seek the admission that he cannot obtain—he would escape the grasp of Section 1225(b)(2)(A)'s mandatory-detention provision. We simply apply the relevant statutory provision to the facts in the record before us based upon Cirrus Rojas's decision to seek forms of relief that do not qualify as admission.

As it has in other cases, the government likens Cirrus Rojas to a student who is an "applicant for admission" to a college, and who seeks admission to that college even after their initial application. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 502 (5th Cir. 2026), *petition for cert. filed*, No. 26-43 (U.S. July 14, 2026); *Avila v. Bondi*, 170 F.4th 1128, 1134 (8th Cir. 2026). But that only spotlights the error in mixing defined or deemed terms and ordinary meaning. The student is an applicant for admission precisely because they are seeking admission; Cirrus Rojas is an "applicant for admission" only because the statute deems him so. In the college example, Cirrus Rojas is a nonstudent who has never applied to college sitting in on a lecture long after the semester's registration deadline has passed.

The government also contended at oral argument that Section 1225(a)(1)'s "deeming" clause does not exclusively *define* the category "applicant for admission" by using the word "means," but merely "deems" as a legal fiction "present" and "arriving" aliens to fall within that undefined category. In the government's view, the term's outer boundary is instead set by the ordinary meaning of "applicant for admission." Our dissenting colleagues in the Sixth and Eleventh Circuits have reasoned similarly. *See Lopez-Campos v. Raycraft*, 175 F.4th

713, 743 (6th Cir. 2026) (Murphy, J., dissenting), *petition for cert. filed*, No. 25-1415 (U.S. June 22, 2026); *Hernandez Alvarez*, 175 F.4th at 1288 (Lagoa, J., dissenting).

But neither these dissents nor the government cite any authority stating that "deemed" as used in Section 1225(a)(1) is *not* definitional. Indeed, the Tenth Circuit recently collected other examples in the U.S. Code where "deem" functions as "quintessential definitional language." *Santillan Quiroz*, 180 F.4th at 1243 (citation omitted). That is how we see it being used here: the way Section 1225(a)(1) is set up strongly implies that it is definitional. "Applicant for admission," like "alien" or "immigrant," is a discrete label used throughout the INA—unlike, for instance, the "deeming" provision that the Supreme Court considered in *Sturgeon*, which "deemed" certain lands to fall outside real "geographic boundaries" for legal purposes. 587 U.S. at 47.

More to the point, whether Section 1225(a)(1)'s deeming clause defines "applicant for admission" exclusively or nonexclusively is irrelevant. A local code could deem bicycles, among other unspecified vehicles, to be "motorized vehicles" for purposes of a ban on such vehicles in public parks. It does not follow that bicycles are deemed to have motors for purposes of emissions-testing requirements. The question, in other words, is whether Section 1225(a)(1)'s acknowledged legal fiction "behave[s] in the way" DHS posits by imposing the real-world consequences of "applicant" on those who are "deemed" to fall within that category. *Santillan Quiroz*, 180 F.4th at 1243-44. And for the reasons already stated, we do not believe it does.

The government next turns to Section 1225's other provisions to justify equating "applicant for admission"

and "seeking admission." It points to another subsection in 1225 that says "[a]ll aliens . . . who are applicants for admission *or otherwise seeking admission* . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3) (emphasis added). This provision, the government contends, suggests that "applicant for admission" is a subset of those "seeking admission."

We are unpersuaded. True, "or otherwise" can be read "as a catchall: the specific items that precede it are . . . subsumed by what comes after [it]." *Kleber v. CareFusion Corp.*, 914 F.3d 480, 483 (7th Cir. 2019) (citation omitted). But "or otherwise" can also "refer to something that is different from something already mentioned." *Lopez-Campos*, 175 F.4th at 727 (quoting *Hernandez Alvarez*, 175 F.4th at 1273-74); *Castañon-Nava v. DHS*, 175 F.4th 828, 850-51 (7th Cir. 2026) (opinion of Lee, J.). And as we discuss below, a disjunctive reading of Section 1225(a)(3)—treating "applicant for admission" and "seeking admission" as distinct—better fits within Section 1225 and the INA as a whole.

In sum, Congress was clear about which terms it wanted to define and those it left to ordinary meaning. "Alien" is defined. 8 U.S.C. § 1101(a)(3). "Admission" is defined. *Id.* § 1101(a)(13)(A). "Applicant for admission" is defined. *Id.* § 1225(a)(1). "Seeking admission" is conspicuously *not* defined. The government cannot escape these choices. Just as Cirrus Rojas could not invoke ordinary meaning to argue he is not an "alien" or an "applicant for admission," the government cannot ignore ordinary meaning and "deem" him to be "seeking admission" when that runs contrary to fact. The statute's plain text therefore shows Cirrus Rojas is not covered by Section 1225(b)(2)(A).

2. Statutory Structure

We next consider the government's argument that Cirrus Rojas's reading creates structural problems within Section 1225. We reject that argument, then turn to the government's own structural problems within both Section 1225 and the INA overall.

a. Structural Fit of Cirrus Rojas's Reading

The government suggested at oral argument that distinguishing "seeking admission" from "applicant for admission" creates structural issues within Section 1225. Though not directly presented in the government's brief, we understand the argument like this. In Section 1225(a)(1), Congress deemed individuals "present in the United States who ha[ve] not been admitted" as applicants for admission. If those individuals are not "seeking admission" or "arriving in the United States," the government posits that it is not clear what work that category does in the section. They would not be subject to Section 1225(b)(2)(A)'s mandatory detention since they are not "seeking admission." Nor are they subject to expedited removal under Section 1225(b)(1)(A)(i) because they are not "arriving." And Section 1225(a)'s provisions for requiring "statements" and "withdrawal[s] of application[s]," which apply where aliens are "applying for admission" or have "intentions of . . . seeking admission," also seem inapplicable. *See id.* § 1225(a)(4), (5).

The government sees this as creating a surplusage problem within the section. As the government argues, Cirrus Rojas's reading would mean that Congress included those present in the interior without admission within "applicant[s] for admission" but then "excluded" them "from every operative consequence in the section where the phrase appears." *Hernandez Alvarez*, 175 F.4th

at 1297 (Lagoa, J., dissenting). If Congress went out of its way to counterintuitively deem individuals like Cirrus Rojas "applicants for admission," then why (the government asks) does no provision of Section 1225 seem to apply to him?

But there are indeed sections of the INA that apply to "applicants for admission" like Cirrus Rojas. True, many instances of "applicant for admission" do apply only to those who are "arriving" and "seeking" admission at the border. But others—both within Section 1225 and the INA writ large—also apply to those who are simply "present" without admission in the interior, like Cirrus Rojas.

For example, Section 1225(a)(1) "deem[s]" aliens in the interior like Cirrus Rojas applicants for admission "for purposes of this chapter," *i.e.*, the whole INA. And Section 1229a, which governs removal proceedings, specifies that applicants for admission have "the burden of establishing" they are "clearly and beyond doubt entitled to be admitted" with no mention of whether those persons are "seeking admission." 8 U.S.C. § 1229a(c)(2)(A). Applicants for admission carry this burden whether they are arriving at the border or present without admission in the interior. Section 1225(a)(1)'s definition of "applicant for admission" is naturally placed at the top of the section about the initial admission process. But one of its key functions—to hold unadmitted aliens in the interior to the same burden in removal as if they had never entered the country—kicks in several sections down.

Even within Section 1225 itself, the present-without-admission category of "applicant for admission" still does meaningful work under Cirrus Rojas's reading.

Consider those in the interior "designated" for expedited removal under Section 1225(b)(1)(A)(iii). They are applicants for admission. *See id.* § 1225(b)(1)(A)(iii)(II) (applying to aliens "who ha[ve] not been admitted or paroled into the United States"); *id.* § 1225(b) (describing procedures for the "[i]nspection of applicants for admission"). But they are not "arriving." *See id.* § 1225(b)(1)(a)(i) (distinguishing "arriving" aliens from those "described in clause (iii)"). Nor does the statute require that they be "seeking admission." Rather, so long as they have not "been physically present in the United States continuously for the 2-year period immediately prior" to a determination of inadmissibility, the Attorney General may "designate" them for expedited removal. *Id.* § 1225(b)(1)(A)(iii). This section alone solves the government's purported surplusage puzzle. It applies to present-without-admission "applicants for admission" who are neither "arriving" nor "seeking admission."

Conversely, Cirrus Rojas's reading avoids the opposite surplusage problem of reading "seeking admission" out of the statute. Section 1225(b)(2)(A)—the provision that the government has invoked to detain Cirrus Rojas—is a "catch-all" that applies to "all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Jennings*, 583 U.S. at 287. It applies only to those "applicants for admission" who are "*seeking* admission," a qualifier that does not appear in its neighbor (b)(1)(A)(iii). That variance suggests Congress meant Section 1225(b)(2)(A) to apply to the subcategory of "applicants for admission" who are also "seeking admission." *See* Scalia & Garner, *supra*, at 170 ("[A] material variation in terms suggests a variation in meaning."). Cirrus Rojas's reading accounts for that meaningful variation; the government's reading does not.

These examples show that "applicant for admission" and "seeking admission" are distinct—both do independent work in Section 1225 and the INA overall. Some "applicants for admission" are also "seeking admission," and some are not. "It is our duty to give effect, if possible, to every clause and word of a statute." *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (cleaned up); *see* Scalia & Garner, *supra*, at 174. Cirrus Rojas's reading best honors this duty.

b. Structural Fit of Government's Reading

On the other hand, the government's interpretation creates a host of other structural problems within Section 1225 and the broader INA. First, equating "applicant for admission" and "seeking admission" disrupts several provisions in Section 1225. These provisions make little sense if applied to "applicants for admission" who, like Cirrus Rojas, are not literally "seeking admission" or "applying for" lawful entry at the border.

For example, Section 1225(b)(2)(A) imposes mandatory detention if "the examining immigration officer" finds that "an alien seeking admission" is not "clearly and beyond a doubt" admissible. Unlike Section 1225(a)(3)'s general "inspection" mandate (which Cirrus Rojas concedes applies to "applicants for admission" like him), Section 1225(b)(2)(A)'s reference to "the examining immigration officer" evokes a specific interaction with a specific DHS official. This language suggests contact at the border, not the interior: DHS's own regulations outline a border-specific "examination" process applying to individuals presenting "in person to an immigration officer at a U.S. port-of-entry when the port is open for inspection." 8 C.F.R. § 235.1(a); *see Castañon-Nava*, 175 F.4th at 848 (opinion of Lee, J.).

How this language might apply to persons already in the country is unclear. It is, after all, unclear from this record who "the examining immigration officer" was in Cirrus Rojas's case, or how and when that officer "examined" him and found him inadmissible. And it is obvious that Cirrus Rojas is categorically inadmissible by statute so there is little work for the phantom "examining officer" to do under DHS's reading.

Next, Section 1225(a)(4) permits "[a]n alien *applying for* admission . . . to withdraw the application for admission and depart immediately from the United States" (emphasis added). The government says "applying" tracks "applicant" in Section 1225(a)(1). But consider that reading's practical implications. It is not clear how this "withdrawal" provision would work here: how can Cirrus Rojas "withdraw" an "application for admission" when "he never submitted anything in the first place"? *Barbosa da Cunha*, 175 F.4th at 80. Who decides if someone has "withdrawn" a fictional "application"? How would that decision be documented? Perhaps that is why DHS's "own regulations confirm that this voluntary withdrawal provision is available 'only [to] an *arriving* alien.'" *Id.* (quoting 8 C.F.R. § 1240.1(d)) (emphasis added). In other words, Section 1225(a)(4) only makes sense at the border, where an applicant for admission who is actively seeking—or "applying"—for admission has something to withdraw.

The government's reading also chafes against Section 1225(a)(5). The provision says:

> 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.

8 U.S.C. § 1225(a)(5) (emphasis added).

The government cites Section 1225(a)(5) to again argue that "applicant for admission" and a person "seeking admission" are the same. But the subsection itself suggests the opposite. If an applicant for admission is not in fact seeking lawful entry, Section 1225(a)(5)'s questions are pointless. They are, after all, "only relevant to those who have not yet entered the country." *Hernandez Alvarez*, 175 F.4th at 1273. "It would be absurd for an immigration officer to ask someone like [Cirrus Rojas]—who entered unlawfully and has been living here for [eight] years— to attest to his 'intended length of stay.'" *Barbosa da Cunha*, 175 F.4th at 81.

Instead, the subsection's reference to "purposes and intentions of the applicant . . . in seeking admission" suggest that "seeking admission" must be given its ordinary meaning—it cannot apply to those "deemed" applicants who do not *in fact* have any such purposes or intentions. *See* Scalia & Garner, *supra*, at 228 ("[W]here the artificial or limited meaning would cause a provision to contradict another provision, whereas the normal meaning of the word would harmonize the two, the normal meaning should be applied.").

The government's reading is not only hard to square with the rest of Section 1225; it is also a poor fit for the INA writ large. Most broadly, the government misapprehends the INA's entire scheme by "shift[ing] the center of gravity for detention authority" from Section 1226 to the "ancillary catchall provision" of Section

1225(b)(2)(A). *Hernandez Alvarez*, 175 F.4th at 1276. Recall that Section 1226(a) has long been viewed as the "default rule" for the detention of "aliens . . . inside the United States." *Jennings*, 583 U.S. at 288. Its provisions squarely apply to Cirrus Rojas, who was first arrested on a Section 1226 warrant. The government now reimagines Section 1226 as limited to those who entered lawfully but lost lawful status, making them "deportable" under Section 1227 rather than "inadmissible" under Section 1182.

But the statute's plain language draws no such distinction: it applies equally to all "aliens"—both "inadmissible" and "deportable"—who may be "removed." 8 U.S.C. § 1226(a), (c); *see id.* § 1229a(1) (distinguishing between grounds of "inadmissibility" and "deportability" in removal proceedings). If Congress had wanted to limit Section 1226 to "deportable" aliens, it could have carved out "inadmissible" aliens from that section directly—not by negative implication through Section 1225, as the government suggests. *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.").

What is more, the government's reading also clashes with Section 1226's own mandatory-detention provisions, which deny bond to anyone who is inadmissible for having committed certain crimes or terrorist acts. 8 U.S.C. § 1226(c)(1)(A), (D), (c)(4). Just last year, in the Laken Riley Act, Congress expanded Section 1226(c) by adding additional offenses triggering its detention mandate. Pub. L. No. 119-1, 139 Stat. 3 (adding 8 U.S.C. § 1226(c)(1)(E)). There was "no need" for Congress to amend Section 1226(c) in this way if Section 1225(b)(2)(A)

"had always covered" all inadmissible aliens present in the United States and required detention without bond. *Kleber*, 914 F.3d at 486.

Reading Section 1226(c) as redundant collides with the canon against surplusage, which "is strongest when an interpretation would render superfluous another part of the same statutory scheme." *City of Chicago v. Fulton*, 592 U.S. 154, 159 (2021) (citation omitted); Scalia & Garner, *supra*, at 176-77. To be sure, Congress sometimes legislates in belt-and-suspenders fashion. But the government's reading does not suggest belt-and-suspenders drafting: it invites "serious statutory redundancy" that undermines multiple statutory layers. *Hernandez Alvarez*, 175 F.4th at 1280.

The government argues Section 1226(c)'s mandatory-detention provisions are not surplusage under its reading by pointing to a very limited set of circumstances where they would still apply. In the government's view, they would still cover (1) aliens admitted erroneously who then commit enumerated crimes, and (2) aliens who enter unlawfully, commit such crimes, and would otherwise receive humanitarian parole. But the provisions—applying to "any alien" who is inadmissible after committing certain offenses—contain no such limitations. It is unlikely that "Congress wrote § 1226(c) so broadly" yet only intended it to apply so narrowly. *Barbosa da Cunha*, 175 F.4th at 87.

Thus, even if we accept that both of the competing readings of Section 1225 and Section 1226 create some friction within the INA, Cirrus Rojas's reading better fits the act's intricacies. The statutory structure confirms that Cirrus Rojas falls under Section 1226(a), not Section 1225(b)(2)(A).

3. Statutory History, Purpose, and Practice

We could stop here. But the history of the INA's detention provisions—how they have been amended and interpreted—supports our conclusion that Section 1225(b)(2)(A) does not apply to Cirrus Rojas.

Other circuits, most notably the Eleventh, have already laid out the complete statutory history of the INA's detention provisions; we need not recite it in full here. The Eleventh Circuit surveyed over a century of immigration law and concluded that Section 1225(b)(2)(A)'s predecessors have long applied detention without bond to aliens at the border, not those already in the country. *Hernandez Alvarez*, 175 F.4th at 1281 (citing Immigration Act of 1893, § 5, 27 Stat. 569, 570); *see also Castañon-Nava*, 175 F.4th at 851-52 (opinion of Lee, J.) (same). Section 1225(b)(2)(A)'s reference to those "seeking admission" tracks the same border focus. In contrast, Section 1226 "stems from newer interior-detention laws" aimed at preserving the Executive's discretion "to release noncitizens" arrested within the United States "pending final removal decisions." *Buenrostro-Mendez*, 166 F.4th at 513-14 (Douglas, J., dissenting) (citation omitted). Again, this backdrop confirms what the plain text and structure show: Section 1226(a), not Section 1225(b)(2)(A), fits Cirrus Rojas.

The upshot of the government's case is that IIRIRA ended this longstanding distinction. Before 1996, the immigration laws "primarily distinguished individuals on the basis of 'entry' and not 'admission.'" *Hing Sum v. Holder*, 602 F.3d 1092, 1099 (9th Cir. 2010) (citation omitted). Those who had entered the United States—lawfully or not—enjoyed "greater procedural and substantive rights" in "deportation" proceedings, while

those "who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings." *Id.* at 1100.

The government cites legislative history to suggest that Congress sought to erase this disparity through IIRIRA by treating aliens unlawfully within the United States just like those arriving at the border. *See* Gov't's Br. at 41-42 (quoting H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (discussing "equities and privileges in immigration proceedings" available to those who enter without inspection)). And, says the government, IIRIRA met that goal in part by extending Section 1225(b)(2)(A)'s mandatory-detention requirement from the border to the interior.

As an initial matter, legislative "purpose" cannot displace the INA's text. "Congress's purpose matters far less than what it wrote." *Buenrostro-Mendez*, 166 F.4th at 508. As explained above, what Congress wrote in Section 1225(b)(2)(A) and enacted in IIRIRA does not apply to Cirrus Rojas. That is the end of the line in interpreting statutes. Regardless, we do not find the government's appeal to legislative purpose persuasive on its merits.

Whatever IIRIRA's various "purposes" may have been, they were far more nuanced than what the government asserts. Its amendments to the INA show that Congress focused on eliminating disparities between lawful and unlawful entrants in removal procedures, not pre-removal detention. The act heavily revised the INA to combine "deportation" and "exclusion" proceedings into one "removal" procedure, and replaced "entry" with "admission"—*i.e.*, *lawful* entry—as the touchstone for

procedural rights in these proceedings. IIRIRA §§ 301(a), 304(a), 110 Stat. at 3009-575, -587 to -597.

IIRIRA did so by maintaining a distinction between "deportability" and "inadmissibility" in removal proceedings. Those who unlawfully entered without inspection remained "inadmissible" and shouldered a greater burden during the newly created removal proceedings. Those who lawfully entered the country with inspection and became "deportable" had greater protections during removal proceedings. This was accomplished in part by defining "applicant for admission" in Section 1225(a)(1) to include those "present in the United States" without admission. *Id.* § 302(a), 110 Stat. at 3009-579. Congress built that definition into Section 1229a(c)(2)(A) to require applicants for admission defending against removal—both at the border and in the interior—to show they are clearly and beyond doubt entitled to be admitted and not "inadmissible." *Id.* § 304(a), 110 Stat. at 3009-591.

On the other hand, Congress's changes to Section 1226(a)'s discretionary-bond regime maintained the statute's applicability to those present without admission like Cirrus Rojas. Before IIRIRA, Section 1226(a)'s predecessor applied to "deportab[le]" aliens, which—under the pre-IIRIRA framework—would have included those in Cirrus Rojas's shoes. 8 U.S.C. § 1252(a)(1) (1996). After IIRIRA, those like Cirrus Rojas were subject to removal based on grounds of "inadmissibility," not "deportability." But as amended, Section 1226(a) applies to aliens pending their "remov[al]," without limitation. IIRIRA § 303(a), 110 Stat. at 3009-585 to -586 (emphasis added). Had Congress intended Section 1226(a) to exclude "inadmissible" aliens like Cirrus Rojas who en-

tered without inspection, it could have simply kept the prior "deportability" language.

The same goes for Section 1225's inspection and detention provisions. Congress's biggest change to that section was the new expedited-removal procedure added in Section 1225(b)(1). *Id.* § 302(a), 110 Stat. at 3009-580. By contrast, Congress "retained the exact language used in [Section 1225(b)(2)(A)'s] predecessor statute," *Helsinn Healthcare S.A. v. Teva Pharmaceuticals USA, Inc.*, 586 U.S. 123, 131 (2019), by keeping the verb "seeking" in that subsection. And given the other textual and contextual clues on the table, its mere "addition of ['applicant for admission']" to Section 1225(b)(2)(A) "is simply not enough of a change for us to conclude that Congress intended to alter the meaning of the reenacted term ['seeking']." *Id.*

Indeed, where Congress *did* expand the INA's mandatory-detention provisions, it did so carefully. When Congress expanded mandatory detention under Section 1226(c) to include "criminal aliens," it confronted the possibility that the Executive could not detain all aliens subject to mandatory detention at once. *See* H.R. Rep. No. 104-469, pt. 1, at 118, 120, 123 (estimating that there were 8,500 beds available in detention facilities in 1996, versus roughly 100,000 "criminal aliens incarcerated in Federal and State prisons" and 45,000 "criminal aliens . . . placed in deportation proceedings each year"). This in mind, it let the Executive forgo enforcing Section 1226(c) as amended for up to two years based on a lack of "detention space and . . . personnel." IIRIRA § 303(b)(2), 110 Stat. at 3009-586 to -587. And the Executive twice used this authority to put off mandatory de-

tention after IIRIRA passed. *See* 74 Interpreter Releases 1552-53 (Oct. 10, 1997).

That Congress did not enact a similar provision for Section 1225(b)(2)(A)—which would have mandated detention for at least two *million* people in 1996—is telling. H.R. Rep. No. 104-469, pt. 1, at 111. To be sure, "a Congressional omission" cannot override "clear text." *Buenrostro-Mendez*, 166 F.4th at 507-08; *Avila*, 170 F.4th at 1137-38. And the clear text shows Section 1225(b)(2)(A) does not apply to Cirrus Rojas. But to the extent we look to historical context to confirm our textual analysis, this omission is hard to ignore. Plus, similar context clues point to the same result. IIRIRA, though part of an appropriations bill, did not fund a mass-detention mandate, let alone one as vast as the government insists Congress intended. *See* H.R. Rep. No. 104-469, pt. 1, at 123; IIRIRA § 386, 110 Stat. at 3009-653 to -654 (contemplating an expansion of only five hundred beds). Congress in 1996 did not implement what the government claims IIRIRA enacted.

"It is easy to imagine why Congress might not have wanted to extend mandatory detention into the country's interior even as it equalized in other ways the treatment between noncitizens stopped at the border and those who entered unlawfully." *Santillan Quiroz*, 180 F.4th at 1248. If Congress had indeed demanded—but not funded—no-bond detention for all unlawful entrants, that may well have thrown the nation's immigration system into chaos and prevented the Executive from effectuating the act's goals. Immigration authorities might have found themselves quickly overwhelmed by a colossal unfunded mandate to arrest and detain millions like Cirrus Rojas who posed no flight risk or dan-

ger to the community. All this is to say that "[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 "no legislation pursues its purposes at all costs." *Rodriguez v. United States*, 480 U.S. 522, 525-26 (1987). Given the conflicting tradeoffs at stake in a statute like IIRIRA, we are not persuaded that Congress meant to end bond hearings for those like Cirrus Rojas.

Nor does post-enactment history suggest otherwise. Until last year, all three branches of our government agreed that Section 1225(b)(2)(A) applied only at the border. Five successive presidential administrations followed this interpretation. And the Executive's sudden about-face presents its own reason to doubt the government's new reading. We may "consider the consistency of an agency's views," and its "track record" over time, to assess "the persuasiveness of any interpretation it proffers in court." *Biden v. Nebraska*, 600 U.S. 477, 519 (2023) (Barrett, J., concurring) (citation omitted). We accept that when past practice clashes with a statutory mandate, it must change. After all, the courts interpret the law and often order the government to depart from the executive's prior understanding of the law. But here the government's about-face stems from anything but a clear statutory mandate. Instead, the government tries to mix legal fiction with real-world facts contrary to the statute's language. We hesitate to accept such a change after three decades of consistent contrary interpretation. *Cf. FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 156-57 (2000).

The Supreme Court has also associated Section 1225 with "aliens *seeking admission* into the country" and

Section 1226 with aliens "*already in* the country." *Jennings*, 583 U.S. at 289 (emphasis added). To be clear, *Jennings*'s statements on this front—made in recounting the general statutory framework governing immigration detention—are nonbinding *dicta*; Section 1225(b)(2)(A)'s applicability was not before the Court in that case. But at minimum, the Supreme Court's unquestioning recitation of the border-interior distinction between Sections 1225 and 1226 is another data point suggesting that Cirrus Rojas's reading is correct.

And Congress has never repudiated the other two branches' interpretations since passing IIRIRA—either by clarifying Section 1225(b)(2)(A)'s text or funding its supposed mass-detention mandate. Indeed, DHS has historically "never had 'sufficient detention capacity to maintain in custody every single person described in Section 1225'" even under the Executive's old reading of the statute due to "consistent and significant funding shortfalls." *Texas*, 597 U.S. at 792 (citation omitted). Congressional failure to intervene and correct the Executive's prior interpretation—despite passing the Laken Riley Act last year—"is persuasive evidence that the interpretation is the one intended." *FDIC v. Philadelphia Gear Corp.*, 476 U.S. 426, 437 (1986).

The government's textual interpretation further unravels when read in this context. We read statutes with a "common sense" understanding of their impacts. *West Virginia v. EPA*, 597 U.S. 697, 722 (2022) (citation omitted). Put simply, Congress does not hide "elephants in mouseholes." *Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457, 468 (2001). The government asks us to accept that Congress in 1996 tucked "the broadest mass-detention-without-bond mandate in our

Nation's history" into an obscure corner of its new law and has never bothered to fund it for three decades since. *Barbosa da Cunha*, 175 F.4th at 69-70. That is more than an "elephant in a mousehole": it "cram[s] a veritable legislative zoo into one clause of one subparagraph of one subsection of our Nation's vast immigration laws." *Patel v. Garland*, 596 U.S. 328, 365 (2022) (Gorsuch, J., dissenting). We cannot believe Congress intended such a result.

Historical context thus confirms what the INA's text shows: Congress in 1996 left the essential border-interior distinction in the INA's detention provisions alone. Perhaps applying Section 1225(b)(2)(A) to the interior superficially matches other changes Congress made to the INA through IIRIRA. But the statutory history reveals that Congress did not pursue this project at all costs. It worked the INA with a scalpel, not a sword. And it preserved Section 1226's application to aliens already in the country.

4. Constitutional Concerns

Finally, a word about this case's constitutional dimensions. As discussed, the plain meaning of the INA shows that Cirrus Rojas falls under Section 1226 and is thus not subject to mandatory detention. But even if we thought the law ambiguous, we would still confront a strong argument for reversal. The government's interpretation poses grave due-process concerns. Cirrus Rojas's case illustrates this point. And when faced with an ambiguous statute subject to multiple readings, we "may shun an interpretation that raises serious constitutional doubts." *Jennings*, 583 U.S. at 286.

The Fifth Amendment's Due Process Clause protects all persons in the United States—even those unlawfully

present—from unjustified deprivations of liberty.[7] *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention without sufficient purpose, or indefinitely prolonged detention, threatens due process. *Id.*

The government has never justified detaining Cirrus Rojas pending his removal proceeding beyond its view that § 1225(b)(2)(A) requires it. In general, the government detains aliens pending removal for two reasons: to (1) ensure that they appear at future immigration proceedings, and (2) protect the community if the person is dangerous. *Lopez-Campos*, 175 F.4th at 732; *see also Zadvydas*, 533 U.S. at 690. The government need not always make an individualized showing that the person might flee or endanger the community. It may detain "criminal aliens" without bond under Section 1226(c) "by reference to the legislative scheme" categorizing them as a danger to society. *Demore v. Kim*, 538 U.S. 510, 523-24 (2003) (citation omitted). But it still must have a reason to detain an alien pending removal.

Cirrus Rojas's case highlights the constitutional infirmities of the government's approach. Not one but two separate immigration judges have now said he is neither a flight risk nor a danger to the community. The government has not challenged those findings in its most

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[7] The government invokes the "entry-fiction" doctrine to argue Cirrus Rojas remains "at the border" for constitutional purposes because he illegally entered the United States. Thus, it concludes, his due-process rights are only what Congress has authorized. *Thuraissigiam*, 591 U.S. at 138. We need not dwell on this argument. The petitioner in *Thuraissigiam* was arrested only twenty-five yards from the border. *Id.* at 140. And the Supreme Court expressly limited its holding to those persons "in [his] position." *Id.* Cirrus Rojas is not in that position; he has lived in the United States for years and was arrested nowhere near the border.

recent BIA appeal. Nor has it sought to detain Cirrus Rojas by reference to a statutory scheme classifying him as posing a specific danger.[8] Yet under the government's interpretation of Section 1225(b)(2)(A) it must detain him anyway, with no further adjudication of risk.

The government's interpretation of Section 1225(b)(2)(A) could thus permit it to detain aliens with no apparent purpose. And at minimum, there is a very real risk that the government's reading will sweep in others like Cirrus Rojas who have already been found not to be dangers or flight risks. The Due Process Clause forbids such arbitrary detention. This alone makes us doubt the government's interpretation as a matter of constitutional avoidance. *Zadvydas*, 533 U.S. at 690.

That aside, "[i]t is not hyperbolic to project" that the government's interpretation might subject those like Cirrus Rojas to unconstitutionally prolonged detention pending their removal proceedings. *Barbosa da Cunha*, 175 F.4th at 95. While "criminal aliens" detained under Section 1226(c) are removed on a fast track, *Demore*, 538 U.S. at 529, aliens detained under Section 1225 are not. In practice, ordinary removal proceedings can take years. *Barbosa da Cunha*, 175 F.4th at 94; *Lopez-Campos*, 175 F.4th at 733 n.3. These factors raise the

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[8] The government has never argued that we may categorize everyone present without admission as flight risks or dangers to the community "by reference to the legislative scheme." *Demore*, 538 U.S. at 524. Such an argument would be difficult to reconcile with *Demore*, which upheld mandatory detention under Section 1226(c) by reference to a narrower, "justifiabl[e] concern[] that deportable *criminal* aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers." *Id.* at 513 (emphasis added).

specter of "indefinite" detention that the Court in *Zadvydas* found unacceptable. 533 U.S. at 690.

But again, these concerns do not drive our holding. Instead, we conclude based on the INA's text, structure, and history that Section 1225(b)(2)(A) unambiguously does not apply to Cirrus Rojas.

III. Conclusion

We end where we started. The government has moved from relying upon Section 1226(a)'s discretionary-bond provision to a new interpretation that Section 1225(b)(2)(A)'s mandatory-detention clause controls. This presents a stark choice between two competing readings of the INA, with the circuits split over the correct interpretation. We share the dissent's hope that the Supreme Court will settle this matter and bring uniformity.

We hold Cirrus Rojas is present in the United States without admission and is not "seeking admission." He is therefore not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and is eligible for a bond hearing under 8 U.S.C. § 1226(a). Accordingly, we REVERSE the district court's denial of Cirrus Rojas's habeas petition and REMAND with instructions to issue the writ "and dispose of the matter as law and justice require." 28 U.S.C. § 2243.

SYKES, *Circuit Judge*, dissenting. For the last year, federal courts across the country have disagreed about the proper interpretation of the immigrant-detention statute at issue here. The contending positions have been exhaustively explored, and there is now a well-developed circuit split. I therefore share my colleagues' inclination to avoid spilling more ink than is necessary to resolve this appeal. "'It has all been said before, but not by us'" is hardly an excuse for "burdening the reader" with exegesis. *United States v. Prince*, 171 F.4th 1009, 1011 (7th Cir. 2026). So rather than engage with each of the grammatical, structural, and historical points in my colleagues' thoughtful opinion, I instead direct the reader to Judge Murphy's comprehensive and well-reasoned dissent in *Lopez-Campos v. Raycraft*, 175 F.4th 713, 735 (6th Cir. 2026) (Murphy, J., dissenting), with which I fully agree, and offer only a brief explanation of the key reasons why I find the government's interpretation of the statute more persuasive than Cirrus Rojas's.

In my view, it's most helpful to start with the statutory section actually at issue here—namely, 8 U.S.C. § 1225. As the majority notes, this statute begins by deeming all aliens present in the United States without admission as "applicants for admission" for purposes of the Immigration and Nationality Act ("INA"):

> **(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 . . .) shall be deemed for purposes of this chapter an applicant for admission.

§ 1225(a)(1). This designation applies to Jaciel Cirrus Rojas. He is a native and citizen of Mexico who unlawfully entered the United States without admission in 2018; he was arrested in Wisconsin in June 2025.

Section 1225 then establishes a comprehensive inspection regime that applies to all applicants for admission: "All aliens . . . who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers." § 1225(a)(3). At that point the applicant faces a choice: He may seek permission "to withdraw [his] application for admission and depart immediately from the United States." § 1225(a)(4). Or he may proceed with the inspection process, "stat[ing] under oath any information sought by an immigration officer regarding [his] purposes and intentions . . . in seeking admission to the United States." § 1225(a)(5).

The applicant's choice to proceed through inspection (rather than leave the country) triggers the statutory detention and removal process set forth in § 1225(b). That process follows one of two tracks. The first is an expedited removal procedure, which applies to arriving aliens who lack valid entry documents or who attempt to procure their admission by fraud. § 1225(b)(1)(A)(i); *see* 8 U.S.C. § 1182(a)(6)(C), (a)(7). The expedited process also applies, at the discretion of the Executive Branch, to unadmitted aliens present in the country who have lived here less than two years. § 1225(b)(1)(A)(iii). Cirrus Rojas has lived in the United States for at least eight years, so this provision doesn't apply to him. No more needs to be said about it.

Section 1225(b)(2), titled "Inspection of other aliens," functions as a catchall for everyone else:

> [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.

§ 1225(b)(2)(A). Cirrus Rojas doesn't claim he is entitled to admission. So if this provision applies to him, as the government contends, then he must be detained during removal proceedings; if it does not, then the alternative detention scheme in 8 U.S.C. § 1226(a) applies and authorizes his release on bond.

My colleagues have much to say about the real-life, on-the-ground facts that in their view make § 1225 seem like a strange fit as applied to Cirrus Rojas. In some senses, it is. It would indeed be odd to ask Cirrus Rojas, who has been living in the United States for eight years and who was arrested without warning, whether he "intends to remain permanently" in the country. § 1225(a)(5). And he is not *in fact* "seeking admission" into the United States. § 1225(b)(2). Understandably so. As the majority notes, even if Cirrus Rojas formally applied for admission, his application would go nowhere because he is inadmissible. § 1182(a)(6)(A)(i) ("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 inadmissible.").

But it's the majority's zeroed-in focus on the facts particular to Cirrus Rojas that leads it astray. Section 1225's application is fixed primarily by *law*, not (as the majority sees things) by *facts*. Because Cirrus Rojas is "present in the United States" and "has not been admit-

ted," § 1225(a)(1) deems him an "applicant for admission" for purposes of the INA—and that's so *regardless* of whether he is *actually* pursuing admission into the United States. So while the facts suggest that Cirrus Rojas is not "seeking" or "applying for" admission, the law nonetheless treats him as though he is.

This "legal fiction," as the majority puts it, is the product of a statutory classification embedded into the modern immigration code. Historically, the INA differentiated between aliens at the border and those who had already entered the country (whether lawfully or not). Aliens at the border were entitled to few procedural protections; most notably, these noncitizens were subject to mandatory detention during their exclusion proceedings unless they were "clearly and beyond a doubt entitled to land." 8 U.S.C. § 1225(b) (1994). Aliens taken into custody in the country's interior, by contrast, could apply for "release[] under bond" while they awaited deportation. *Id.* § 1252(a)(1).

This distinction, as the Ninth Circuit pointed out, "resulted in an anomaly." *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010). Aliens who evaded inspection and sneaked across the border could seek release on bond; those who sought to enter the country lawfully could not.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") remedied this anomaly by instituting a new statutory touchstone: admission. No longer did an alien's substantive and procedural entitlements hinge on the mere fact that he had crossed the border. Instead, his entitlements hinged on his "admission" by immigration authorities—that is, his "*lawful* entry" into the United States "after inspection

and authorization." 8 U.S.C. § 1101(a)(13) (emphasis added).

Under IIRIRA, an alien who enters the country illegally (and thus has not been "admitted") is presumptively subject to removal; he bears the "burden of establishing" that he is "clearly and beyond doubt entitled to be admitted" into the United States. *Id.* § 1229a(c)(2). An admitted alien, by contrast, is entitled to greater procedural protections: The burden lies with the government to establish "by clear and convincing evidence" that for one of the reasons listed in § 1227, he is "deportable." § 1229a(c)(3)(A). (These reasons include, for example, failing to maintain nonimmigrant status or being convicted of a serious crime. *Id.* § 1227(a)(1)(C), (a)(2).)

By reorienting removal procedures around an alien's admission by immigration authorities rather than his physical entry into the country, Congress eliminated the procedural windfall that had long accrued to aliens who evaded inspection at the border. And in so doing, it put all aliens who have not lawfully entered the country on equal footing: Today, any alien who "arrives" or is "present" in the United States without admission is deemed an "applicant for admission" and is treated as though he never entered the country at all. § 1225(a)(1). That unquestionably includes Cirrus Rojas. By operation of law, he is an "applicant for admission" and must be treated as if he is applying for or seeking admission into the United States *regardless* of whether he is in fact doing so. The law classifies him as *constructively* seeking or applying for admission.

My colleagues acknowledge, as they must, that Cirrus Rojas is an "applicant for admission" under § 1225(a)(1). Majority Op. at 11-12. They also appear to acknowledge

that he is at least nominally subject to inspection by immigration officers under § 1225(a)(3). *Id.* at 23. But from there they conclude that § 1225 has no further application to him. He need not answer the inspecting officers' questions (as the statute requires) because he is not *actually* "seeking admission to the United States." § 1225(a)(5). And he is not subject to mandatory detention under § 1225(b)(2)(A)—again, because he is not *actually* "seeking admission" to the United States.

But that interpretation ignores the legal effect of the constructive application for admission that arises by operation of law under § 1225(a)(1). And it relegates § 1225(b)(2)(A)'s detention mandate from "a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)," *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018), to a far more limited provision that applies to only a subset of arriving aliens—undoing IIRIRA's key shift to lawful *admission* (rather than *entry*) as the criterion for determining which removal procedures apply. And that, in turn, saps an important part of IIRIRA of its full effect. *See Stone v. I.N.S.*, 514 U.S. 386, 397 (1995) ("When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect."); *see also Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, 175 F.4th 1258, 1298-99 (11th Cir. 2026) (Lagoa, J., dissenting).

That is not the only reason to question the majority's reading. As Judge Murphy explains, the INA repeatedly uses the phrases "seeking" or "applying for" admission "in ways that include those who are present in this country after an illegal entry." *Lopez-Campos*, 175 F.4th at 746 (Murphy, J. dissenting). One prominent example is § 1182(d)(5), the provision governing humanitarian parole;

if the terms "seeking" and "applying for" admission mean *actually* seeking or applying for admission, then Cirrus Rojas and aliens like him would not be eligible for parole. *Id.* at 751-52. I doubt that unadmitted immigrants would prefer this interpretation of the parole provision. And elsewhere in the immigration code the phrase "seeking admission" simply *can't* mean what the majority says it does. An example: Section 1182(a)(9)(B)(i) deems as "inadmissible" any alien who was "unlawfully present in the United States" and who, after departure or removal, "*again* seeks admission" into the country. (Emphasis added.) If "seeking admission" means *in fact* "seeking admission," then the presence of "again" makes no sense. If, by contrast, that phrase means "being treated as an applicant for admission by virtue of an unlawful entry," then the use of "again" is perfectly coherent. *Id.* at 752-53.

My aim here is not to try to counter each of the majority's points. Rather, it's to show that statutory incongruities are not unique to the government's interpretation; Cirrus Rojas's reading produces them too. Indeed, when an old and complex statute like the INA has been repeatedly amended and is riddled with legal fictions, terms of art, and redundancies, incongruities are sure to exist. As Judge Learned Hand said a century ago, our immigration laws are "so confused, contradictory, minute[,] and manifold" that they "inevitably produce such caprices." *United States ex rel. Georgas v. Day*, 43 F.2d 917, 919 (2d Cir. 1930).

It's for this reason that I find dictionary definitions and canons of construction largely unhelpful here. My colleagues and I could debate until we're blue in the face about whether "an applicant for admission" is neces-

sarily "seeking admission" (the answer is yes, unless the applicant chooses to depart the country) or whether (and to what extent) the rule against superfluity or any other interpretive canon helps answer that question. Thoughtful judges across the country have been engaging in precisely these debates. My takeaway from their conflicting opinions is this: For every grammatical thrust, there is a parry; for every canon of construction, there is an exception that calls for the canon to give way. *See Mullin v. Al Otro Lado*, 146 S. Ct. 2079, 2092 (2026) ("The anti-surplusage canon is not an iron rule.").

Accordingly, dictionary definitions, analogies to real-world uses of the word "admission," and the various meanings of the word "otherwise" do not—cannot—resolve this case. *See* Majority Op. at 12-13, 17-19. Rather, the interpretive question presented here is best answered by reference to the statutory classification that pervades the INA. Section 1225(a)(1) deems both arriving and unlawfully present aliens as "applicants for admission." And by design, *all* applicants for admission are subject to the same inspection and removal procedures. *See* §§ 1225(a), 1229a(c)(2). In my view, they are also subject to the same mandatory-detention requirement. Nothing in the statute—and certainly not the use of the verb "seeking" in lieu of the noun "applicant"—suggests that Congress intended otherwise. Indeed, had Congress wanted to differentiate between arriving and present aliens, it easily could have done so; many provisions in the INA apply only to aliens "arriving" in the United States. *E.g.*, § 1225(a)(2), (b)(1)(A)(i), (c)(1); 8 U.S.C. § 1231(b)(1).

I thus am persuaded by the majority opinions of the Fifth and Eighth Circuits, as well as the dissenting opin-

ions authored by Judges Kirsch, Lagoa, and Murphy. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026); *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 175 F.4th 828, 863 (7th Cir. 2026) (Kirsch, J., dissenting); *Hernandez Alvarez*, 175 F.4th at 1285 (Lagoa, J., dissenting); *Lopez-Campos*, 175 F.4th at 735 (Murphy, J., dissenting). These opinions cover the waterfront, comprehensively rebutting each of the grammatical, structural, and historical points on the other side. I see no reason to say more.

At this point, only the Supreme Court can bring uniformity and settle this question once and for all. I anticipate that it will do so soon. The Solicitor General has filed two petitions for certiorari asking the Supreme Court to review the decisions of the Second and Sixth Circuits addressing this very question. Petition for Writ of Certiorari, *Rhoney v. Barbosa da Cunha* (No. 26-104); Petition for Writ of Certiorari, *Raycraft v. Lopez-Campos* (No. 25-1415).[1] I hope the Court accepts the Solicitor General's invitation. The arguments on both sides have been fully ventilated, the circuits are deeply split, and our court has joined the wrong side. Cirrus Rojas is an "applicant for admission" who is subject to § 1225(b)(2)'s mandatory-detention regime. Because the majority concludes otherwise, I respectfully dissent.

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[1] The immigrants who lost in the Fifth Circuit have likewise petitioned for a writ of certiorari. Petition for Writ of Certiorari, *Buenrostro-Mendez v. Blanche* (No. 26-43).

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Case No. 25-cv-1437-bhl

JACIEL CIRRUS ROJAS, PETITIONER

v.

SAMUEL OLSON, FIELD OFFICE DIRECTOR, CHICAGO FIELD OFFICE, IMMIGRATION AND CUSTOMS ENFORCEMENT; AND SCOTT SMITH, JAIL ADMINISTRATOR, DODGE COUNTY JAIL, RESPONDENTS

Filed: Oct. 30, 2025

ORDER ON PETITION FOR HABEAS CORPUS

Jaciel Cirrus Rojas is an unregistered alien and citizen of Mexico who has lived in the United States without authorization for seven years. On June 3, 2025, he was arrested by U.S. Immigration and Customs Enforcement (ICE) agents and is now being detained at the Dodge County Jail in Juneau, Wisconsin. An immigration judge ruled that Cirrus Rojas should be released on bond, but ICE has appealed that ruling and, by regulation, Cirrus Rojas's release has been stayed pending appeal. On September 17, 2025, Cirrus Rojas filed a petition for writ of habeas corpus and complaint for emergency injunctive relief, asking this Court to order his immediate release pursuant to 28 U.S.C. § 2241. (ECF

No. 1.) Eight days later, he filed a motion for temporary restraining order and preliminary injunction, requesting the same relief. (ECF No. 4.) The Court has screened Cirrus Rojas's habeas petition under Rule 4 of the Rules Governing Section 2254 Cases,[1] (ECF No. 5), Respondents have answered, (ECF No. 11), and the Court heard argument at an October 14, 2025 telephonic hearing, (ECF No. 18). The parties agree that the issues presented are legal and the Court should proceed directly to the merits of Cirrus Rojas's petition. *See* Fed. R. Civ. P. 65(a)(2). Because Cirrus Rojas has not shown that his detention is contrary to federal law, his petition and motion for injunctive relief will be denied.

BACKGROUND

Cirrus Rojas is a native and citizen of Mexico. He was never formally admitted to the United States but, without authorization, has been present here since 2018. (ECF No. 1 ¶ 2.) While here illegally, Cirrus Rojas has avoided criminal arrest or conviction. (*Id.* ¶ 4.) On June 3, 2025, however, he was arrested for immigration violations pursuant to an ICE warrant. (*Id.* ¶ 23; ECF No. 1-2.) ICE immediately placed him in removal proceedings and determined that he should be detained without bond pending completion of those proceedings. (ECF No. 1-4.)

Cirrus Rojas sought review of ICE's detention decision in the immigration court, which held a "bond redetermination" hearing on July 15, 2025. (ECF No. 1 ¶ 24; ECF No. 1-1.) ICE officials argued that aliens like Cir-

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[1] The Rules can also apply to § 2241 petitions. *See* Rule 1(b) of the Rules Governing § 2254 Cases in the United States District Courts; *see also* Civ. L. R. 9(a)(2) (E.D. Wis.).

rus Rojas, who are present and living in the United States without permission, are "applicants for admission" under 8 U.S.C. § 1225 and therefore ineligible for release on bond. This represents a change from longstanding immigration practice and is based upon recent (non-public)[2] interim guidance announced to ICE employees on July 8, 2025. The immigration judge rejected ICE's argument and ordered Cirrus Rojas released on a $1,500.00 bond. (*Id.*; ECF No. 1-1.)

ICE filed a form Notice of ICE Intent to Appeal Custody Redetermination on that same day. (ECF No. 1 ¶ 26; ECF No. 1-6.) Under regulations promulgated by the Attorney General, this filing automatically stayed Cirrus Rojas's release for 10 days to allow the government time to file a notice of appeal. *See* 8 C.F.R. § 1003.6(c)(1) & 1003.19(i)(2). ICE perfected its appeal by filing a formal notice of appeal on July 24, 2025. (ECF No. 1-7.) Proceedings concerning Cirrus Rojas's status and ability to remain in the United States continue. ICE's appeal of the bond ruling remains pending before the Board of Immigration Appeals, and removal proceedings in which Cirrus Rojas is now requesting asylum are pending in the immigration court, which has set another hearing set for October 29, 2025. (ECF No. 1 ¶ 31.)

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[2] Cirrus Rojas supplied the Court with screenshots of this guidance. (ECF No. 1-5.) The Court asked Respondents to supply a formal copy, but counsel indicates the guidance has not been "officially or publicly released" and thus he is unable to produce one. (ECF No. 19.) The Court does not doubt counsel's report and, without casting aspersions on his conduct in this case, notes that ICE could aid its credibility by being more forthright.

ANALYSIS

Cirrus Rojas's habeas petition asserts three interrelated claims. First, he alleges he is being held in violation of his Fifth Amendment due process rights. (ECF No. 1 at 25-26.) Cirrus Rojas admits he was initially afforded due process when he received a bond hearing before an immigration judge. But he contends that having been granted bond by that immigration judge, he is entitled to be released immediately, and his continued detention violates due process under the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). (ECF No. 4-1 at 8, 11-13.) Cirrus Rojas's second claim is that his continued detention violates the Immigration and Nationality Act (INA). (ECF No. 1 at 26-27.) Cirrus Rojas argues that his arrest and detention are governed by 8 U.S.C. § 1226, pursuant to which the immigration judge granted him release on bond. (*Id.*; ECF No. 4-1 at 8.) He insists that ICE's invocation of 8 U.S.C. § 1225 to argue for his detention is incorrect and a deviation from decades of established practice in the immigration courts. (*See* ECF No. 1 ¶¶ 25, 41.) Cirrus Rojas's third claim challenges the automatic stay of his release pursuant to 8 C.F.R. § 1003.19(i)(2), a regulation he contends is *ultra vires*. (*Id.* at 27-28.) Under this regulation, ICE's filing of a notice of appeal halted Cirrus Rojas's release while his appeal proceeds. Cirrus Rojas contends the regulation exceeds the statutory authority granted to the Attorney General, rendering his continued detention unlawful. (ECF No. 4-1 at 14.)

Respondents dispute these claims. They argue that Cirrus Rojas is receiving the process he is due under U.S. immigration law. Respondents point out they have promptly initiated formal removal proceedings and Cir-

rus Rojas's ongoing detention is authorized under 8 C.F.R. § 1003.19(i)(2), which permits his detention pending appeal, subject to specific time limitations. (ECF No. 11 at 22-23.) With respect to the INA, Respondents argue that Cirrus Rojas is present in the United States without admission or parole and is therefore an "applicant for admission" who must be detained under Section 1225(b)(2)(A) while his removal proceedings are adjudicated. (*See* ECF No. 1-7 at 4.) They acknowledge a change from the agency's prior handling of similar unauthorized aliens but insist that the plain text of the statute trumps earlier agency practice. They further observe that their interpretation provides equal treatment to unadmitted aliens apprehended at the border and those who were initially able to evade border agents but were then later arrested. Finally, Respondents argue the automatic stay provision in 8 C.F.R. § 1003.19(i)(2) is a valid rule enacted by the Attorney General that serves the legitimate purpose of maintaining the status quo while DHS appeals the immigration judge's custody order. (ECF No. 11 at 19–20.)

I. Despite Multiple Statutory Hurdles, the Court Concludes it Has Jurisdiction to Resolve Cirrus Rojas's Petition and Motion.

The Court's first order of business is to confirm that it has jurisdiction. "Federal courts are courts of limited jurisdiction [and] possess only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). The limits of the Court's jurisdiction are "not to be expanded by judicial decree." *Id.*

Congress has given Article III courts, and district courts in particular, a narrow role in immigration pro-

ceedings. In the normal course, immigration matters rarely come before the district court. By statute and regulation, immigration proceedings are entrusted to Article I courts—the Immigration Court and the Board of Immigration Appeals—established within the Department of Justice. Challenges to final orders from those administrative courts are heard directly by the courts of appeal and bypass the district courts entirely. 8 U.S.C. § 1252(a)(5); *See Parra v. Perryman*, 172 F.3d 954, 956 (7th Cir. 1999) (citing *LaGuerre v. Reno*, 164 F.3d 1035 (7th Cir. 1998). But the fact that these matters do not come to this court in the ordinary course does not mean they can never properly be brought here.

As noted in the screening order, several statutory limitations might apply to Cirrus Rojas's claims. Section 1252 of Title 8 is entitled "Judicial review of orders of removal" and at least two of its subsections are facially implicated by Cirrus Rojas's petition. Under Section 1252(b)(9):

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

Section 1252(g) places more limits on judicial review of certain immigration matters:

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

Congress has also enacted a jurisdiction-limiting provision for detention rulings in particular. Section 1226(e) provides that:

> 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.

The Supreme Court has offered limiting constructions of all three provisions. In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 477 (1999), the Supreme Court adopted a narrow reading of Section 1252(g) in the context of claims by a group of resident aliens who alleged they were being selectively targeted for deportation in violation of their First and Fifth Amendment rights. The Court emphasized that Section 1252 applied "only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" 525 U.S. at 482 (emphasis in original). Because the case involved a challenge to the Attorney General's decision to "commence" proceedings, it fell

squarely within Section 1252 and the Court vacated lower court rulings in the resident aliens' favor for lack of jurisdiction. *Id.* at 492.

Four years later, in *Demore v. Kim*, 538 U.S. 510, 517 (2003), the Supreme Court offered a narrow construction of Section 1226(e) in connection with a lawful permanent resident alien's habeas challenge to his detention without a bail while he awaited removal after being convicted on burglary charges. The district court had granted the alien's Section 2241 petition, concluding that detaining him without a finding that he posed a danger to society or was a flight risk violated due process. *Id.* at 514. The Ninth Circuit affirmed. *Id.* at 515. Before reversing the lower court rulings, the Supreme Court questioned whether Section 1226(e) deprived the federal courts of jurisdiction to consider the habeas petition. *Id.* at 516. The Court held that Section 1226(e) was limited to challenges to the Attorney General's "discretionary judgment" regarding the detention or release of an alien. *Id.* Because the petitioner challenged the statutory framework under which he was being detained, not any discretionary judgment, the Court concluded that Section 1226(e) did not deprive the federal courts of habeas jurisdiction. *Id.* at 517-18.

Most recently, in *Jennings v. Rodriquez*, 583 U.S. 281, 294-95 (2018), a plurality of the Supreme Court concluded that neither Section 1252(b)(9) nor Section 1226(e) precluded judicial review of a lawful permanent resident's habeas challenge to his ongoing detention after being adjudicated removable and while awaiting removal. The district court and Ninth Circuit had ruled that the petitioner and a class of similarly situated aliens were entitled to periodic bond hearings, concluding that

the right to such bond hearings was "implicit" in the immigration statutes, a construction necessary to avoid due process issues. *Id.* at 292. Before rejecting the lower courts' interpretation on the merits, the Court addressed its jurisdiction. *Id.* at 292-94. The Court first acknowledged that the petition could be said to raise questions of law and fact "arising from" proceedings to remove petitioners but, citing *American-Arab Anti-Discrimination Committee*, rejected an "expansive" interpretation of Section 1252(b)(9). *Id.* at 294. The Court declined to provide a "comprehensive interpretation" of the statute but held that because the case did not involve review of a removal order or a challenge to a detention or removal decision or to any part of the removal process, Section 1252(b)(9) was not a "jurisdictional bar." *Id.* at 294-95. The Court then turned to Section 1226(e) and reaffirmed its prior interpretation from *Demore*. *Id.* at 295. The Court explained that because the claimants challenged the statutory framework mandating their detention without a bond hearing as a whole, they were not challenging a "discretionary decision," and Section 1226(e) was not a jurisdictional barrier. *Id.*

Given these Supreme Court rulings, the Court concludes there is no jurisdictional bar to its consideration of Cirrus Rojas's petition. Unlike the plaintiffs in *American-Arab Anti-Discrimination Committee*, Cirrus Rojas is not challenging the Attorney General's decision to *commence* proceedings against him, to *adjudicate* his immigration case, or to *execute* a removal order. Accordingly, Section 1252(g) is not an issue. And, while Cirrus Rojas is in a different position than the habeas petitioners in *Demore* and *Jennings*—he is not a permanent resident alien and his removal proceeding remains ongoing—his challenge, like theirs, does not implicate a "discretion-

ary judgment" of the Attorney General regarding his detention, but rather attacks her regulations and her interpretation of the statutory framework relating to his detention. While Cirrus Rojas's petition could be said to "arise from" actions taken to remove him, the Court will not adopt an expansive reading of that language. *See Jennings*, 583 U.S. at 294-95. The Court therefore concludes that neither Section 1252(b)(9) nor Section 1226(e) preclude jurisdiction either. *See Parra*, 172 F.3d at 957.

II. Jurisdictional Issues Aside, Cirrus Rojas Has Not Shown That His Detention Violates the Constitution or Federal Law.

Cirrus Rojas seeks habeas relief under Section 2241, which confers jurisdiction on district courts to order the release of a detainee who is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *see INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (historically "the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest."). A habeas petition under Section 2241 allows persons in custody to challenge the fact or duration of their confinement. *Preiser v. Rodriguez*, 411 U.S. 475, 490 (1973); *Waletzki v. Keohane*, 13 F.3d 1079, 1080 (7th Cir. 1994). The Supreme Court has recognized Section 2241 as a forum for statutory and constitutional challenges to detention orders in immigration proceedings. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). Cirrus Rojas's request for injunctive relief is governed by Federal Rule of Civil Procedure 65.

Cirrus Rojas asserts that his continued detention, after being granted bond by an immigration judge, violates the U.S. Constitution's Due Process Clause, the

Immigration and Nationality Act, and is *ultra vires*. (ECF No. 1 ¶¶ 5, 90-106.) He asks this Court to provide affirmative injunctive relief by ordering his release pursuant to the immigration court's bond ruling and enjoining Respondents from continuing his detention contrary to that ruling and in violation of his due process rights. (*Id.* ¶ 10.) Central to his petition is Cirrus Rojas's contention that ICE cannot rely upon Section 1225(b) to detain him. He contends that he is statutorily entitled to a bond hearing under Section 1226(a) and, based on past agency practice, Section 1225(b) does not even apply to him. Having been granted bond by an immigration judge, Cirrus Rojas insists his continued detention violates due process. He also contends that 8 C.F.R. § 1003.19(i)(2), the regulation that has stayed his release pending appeal, is *ultra vires* and beyond the Attorney General's statutory authority. Finally, he contends that ICE's use of this regulation to block his release while it appeals the bond ruling violates his due process rights.

These issues are complex and interrelated. The Court will first address the text of Sections 1225 and 1226. It will then turn to the parties' competing interpretations of those provisions. It will next address the challenged regulation and the stay of Cirrus Rojas's release pending the conclusion of his appeal. Because the Court concludes that Respondents have the better of the statutory argument, it does not find that Cirrus Rojas is being detained in violation of the INA. While a majority of district courts have agreed with Cirrus Rojas's construction, no appellate court has yet reached the issue, and the statutory text is more consistent with Respondents' position. Even if the Court were to conclude otherwise, however, the record confirms that the stay of his release pending appeal, under 8 C.F.R. § 1003.19(i)(2), serves a

legitimate function, is properly limited, and does not violate Cirrus Rojas's due process rights.

A. Cirrus Rojas's Detention Does Not Violate the INA.

Cirrus Rojas challenges ICE's interpretation of two provisions of the INA, codified at 8 U.S.C. §§ 1225 and 1226. The INA is a complicated statute that has been amended multiple times since being enacted in 1952. The relevant language in the two provisions at issue was added by Congress in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Both sections authorize the government to detain individuals pending resolution of removal proceedings. Determining how these sections interrelate, how they apply to various categories of aliens facing removal, and how they fit into federal immigration law as a whole is a challenge.[3]

1. Section 1225 Addresses "Applicants for Admission" and Provides for Expedited Removal of Certain Undesirable or Dangerous Aliens.

Section 1225 is entitled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." Subsection (a) concerns the "inspection" of aliens by immigration officers. Central to the parties' dispute is a definitional section, 1225(a)(1), which identifies those aliens who are to be "treated as applicants for admission." The text provides:

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[3] The parties and caselaw do not make things easier by alternately referring to these provisions with citations to the INA and its amendments as enacted and to the codified form of the statute in Title 8. In an attempt to keep things simpler, this Court will stick to the Title 8 citations.

> 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). Moving through the statute, Section 1225(a)(2) clarifies that stowaways are not eligible for admission and are to be ordered removed immediately after being inspected by immigration officials. Section 1225(a)(3) then provides that all applicants for admission or readmission must be inspected by immigration officers, and Section 1225(a)(4) allows aliens who are applying for admission to withdraw their applications and depart immediately from the country. Section 1225(a)(5) authorizes immigration officials to take statements from applicants under oath concerning their intentions in seeking admission.

Section 1225(b) is entitled "Inspection of applicants for admission." It mandates expedited removal proceedings for certain types of applicants for admission. Generally, if an immigration officer finds that an alien is inadmissible because of fraud or due to documentation issues, the official must order the alien removed without further hearing unless the alien indicates an intention to apply for asylum or expresses a fear of persecution. *See* 8 U.S.C. § 1225(b)(1)(A)(i) & (ii). The statute also authorizes the Attorney General to designate certain other aliens for similar expedited removal so long as those aliens have not been previously admitted and have not shown they were continuously physically present in the United States for the preceding two years. *See* Section

1225(b)(1)(A)(iii). In Section 1225(b)(1)(F), Congress carved out an exception to this expedited removal process for citizens 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."

Section 1225(b)(2) is central to Respondent's position. It addresses the "Inspection of other aliens" and 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 8 U.S.C. § 1229a. The statute also allows the Attorney General to return aliens who arrive on land from a contiguous foreign territory to that foreign territory pending removal proceedings. 1225(b)(2)(C). The balance of Section 1225 is largely procedural, describing the process for expedited removal, review by the Attorney General, the alien's right to submit information, and the authority of immigration agents to search, detain, subpoena, and administer oaths.

2. Section 1226 Authorizes the Arrest and Detention of Aliens.

Section 1226 is entitled "Apprehension and detention of aliens." Subsection (a) provides general authority to the Attorney General to issue warrants for the arrest and detention of aliens pending a decision on their removability. It also allows the Attorney General to continue the detention of the arrested alien or, with the exception of certain criminal aliens who are ineligible for admission, release them on bond or parole. *Id.* Section

1226(b) provides for the revocation of bond or parole granted under subsection (a).

Section 1226(c) mandates that the Attorney General take into custody aliens who are inadmissible or subject to removal for a variety of criminal offenses, many of which are outlined in other sections of the INA. This part of the statute was amended within the last year by the Laken Riley Act to specifically require the detention of aliens arrested for certain crimes: burglary, theft, larceny, shoplifting, assault of a law enforcement officer, or any crime that results in death or serious bodily injury.[4] *See* 8 U.S.C. § 1226(c)(1)(E)(ii). Finally, under Section 1226(c)(4), aliens who are subject to mandatory detention may only be paroled or released for witness protection purposes.

3. The Parties' Competing Constructions of DHS's Detention Authority under Sections 1225 and 1226.

Cirrus Rojas contends he is governed by Section 1226(a), not Section 1225(b)(2), and his detention is therefore discretionary, not mandatory. Having been given a bond hearing and granted bond, he argues he is statutorily entitled to be released consistent with the immigration judge's bond ruling. Cirrus Rojas defends this interpretation by invoking past immigration practice and the statutory text.

Cirrus Rojas first emphasizes that immigration officers have historically treated unadmitted aliens like him, who have been arrested within the United States (not at the border), as eligible for release on bond. (ECF No. 1

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[4] The Laken Riley Act also amended Section 1225(b) to authorize State Attorney General enforcement powers. *See* 8 U.S.C. § 1225(b)(3).

¶¶ 38-39.) He represents that the government has consistently taken this approach from the time the IIRIRA was enacted in 1996 until this summer. (*Id.* ¶ 39.) He cites two House reports related to the IIRIRA's passage that indicate Congress's intention to continue detention practices from the pre-IIRIRA time period. (*Id.* ¶ 40.) He further notes that pre-IIRIRA, the Attorney General was authorized to release unadmitted aliens on bond or parole. (*Id.*) Finally, he calls ICE's change in approach under the July 8, 2025 interim guidance a dramatic shift adopted "without warning and without any publicly stated rationale." (*Id.* ¶ 41.) He contends that treating unadmitted aliens apprehended inside the country differently than new arrivals detained at the border is consistent with the "core logic" behind the immigration system. (*Id.* ¶ 43.)

Turning to the statutory text, Cirrus Rojas highlights the plain language of Section 1226(a), which authorizes the Attorney General to release aliens on bond pending resolution of removal proceedings. He then points to his arrest warrant, which cites INA "Section 236," codified at 8 U.S.C. § 1226, *not* INA Section 235, codified at 8 U.S.C. § 1225. He provides a long list of district courts that have adopted his and rejected ICE's interpretation of these two sections. Substantively, he argues that Section 1225 should be read to apply only to aliens who are "seeking admission" and apprehended at the border. He contends that because he was already living in the United States, he was not seeking admission and is not covered by Section 1225. (*See Id.* ¶ 48.) Next, he insists the INA needs to be interpreted as a whole to give a consistent and sensible reading to all sections in their entirety. (*Id.* ¶ 50.) Finally, he contends Respondents' in-

terpretation renders the recently enacted Laken Riley Act superfluous. (*Id.* ¶ 51.)

Respondents' arguments are largely textual. They acknowledge that both Section 1225 and 1226 address the detention of aliens awaiting removal. Respondents emphasize the plain terms of Section 1225(a) and its definition of "applicants for admission." (ECF No. 11 at 3.) They also cite the INA's express definition of "admission" and "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." (*Id.* citing 8 U.S.C. § 1101(a)(13)(A).) Because Cirrus Rojas was arrested while present in the United States and not lawfully admitted, Respondents argue, he falls within Section 1225(a)'s definition and is subject to Section 1225's treatment of applicants for admission. (*Id.* at 13-16.)

Respondents then explain that Section 1225(b)(1) provides for the *expedited* removal of two categories of applicants for admission and concede that Cirrus Rojas does not fall into either group. As to the first statutory category, Respondents contend that expedited removal and mandatory detention are required for aliens arriving in the United States who are inadmissible for fraud or documentation issues under 8 U.S.C. § 1182(a)(6)(C) and 1182(a)(7). As to the second group, Respondents state that the Attorney General is also authorized to apply the same expedited removal approach to certain other aliens who have not been admitted or paroled into the country, have not affirmatively shown they have been physically present for the preceding two years, and are not otherwise inadmissible. Respondents argue that Cirrus Rojas does not fall into either of these categories but instead falls within the coverage of Section 1225(b)(2),

which they call a "catchall" provision. (ECF No. 11 at 4.) In Respondents' view, Section 1225(b)(2) requires the detention of all other "applicants for admission," pending removal proceedings, if an immigration officer determines they are not "clearly and beyond a doubt entitled to be admitted." (*Id.* at 13-14.) Under this reading, Section 1225(b)(2) mandates Cirrus Rojas's detention.

According to Respondents, Section 1226(a) does not apply to Cirrus Rojas. They maintain that Section 1226(a) applies to foreign nationals who are *not* "applicants for admission." This means that Section 1226(a) applies to lawfully admitted aliens, like lawful permanent residents, and allows for their arrest and discretionary detention or release on bond pending resolution of their removal proceedings. Applicants for admission, like Cirrus Rojas, on the other hand, are subject to the mandatory detention provisions in Section 1225. They further contend that their interpretation sensibly treats unadmitted aliens facing removal the same, regardless of whether the alien is apprehended at the border or within the country.

Based on the text, the Court concludes that Respondents' interpretation is the better one, although the statutory language and interplay between these sections could certainly be more clear. Cirrus Rojas meets the definition of "applicant for admission" in Section 1225(a)(1). He is an alien "present" in the United States and he has not been "admitted." Under the plain terms of Section 1225(a)(1), he is "deemed" an applicant for admission for purposes of Chapter 12 of Title 8, which governs Immigration and Nationality. Of all the statutory terms at issue, this is perhaps the most straightforward. Indeed, Cirrus Rojas's counsel admitted at oral argu-

ment that he fell within the plain terms of the definition in Section 1225(a)(1) but urged the Court to interpret the "applicant for admission" as not applying to Cirrus Rojas based on the INA as a whole.

The Court has attempted to review the statute as a whole, including all parts of the INA to which the parties refer, and it cannot find a statutory basis to exclude Cirrus Rojas from the definition of "applicant for admission" in Section 1225(a)(1). Cirrus Rojas directs the Court to additional language in Section 1225(b)(2) that refers to aliens who are "seeking admission" and argues the use of present tense means that it was intended to apply only to those aliens who arrive and are being detained at the border. The Court finds this argument unpersuasive. Section 1225(b)(2) also uses the term "applicant for admission" and, while it then refers to aliens "seeking admission," nothing in the provision suggests the intention Cirrus Rojas proposes. In the Court's view, this language is best read as simply another way of referring to aliens who are applicants for admission. Cirrus Rojas would pack a lot of meaning into what appears to be an alternate phrasing. Moreover, and in any event, Cirrus Rojas's argument fails on the facts. The record confirms that Cirrus Rojas is now in fact seeking admission to the United States. His petition acknowledges that he has an application for asylum pending in the immigration court and he is thus presently seeking authorization to remain in this country. (ECF No. 1 ¶ 9.) Indeed, one suspects that upon apprehension most unadmitted aliens promptly seek admission and permission to stay; their alternative is to elect to remove themselves voluntarily. This undercuts the logic of Cirrus Rojas's argument.

The Court is also unpersuaded that Congress's passage of the Laken Riley Act defeats Respondents' construction of Section 1225(b)(2). As Respondents note, legislation passed in 2025 has little bearing on the meaning of legislation enacted in 1996. Indeed, nothing in the Laken Riley Act suggests any Congressional thoughts concerning the issues presented in this case. This recent legislation was aimed at making sure that certain aliens, whom Congress deemed dangerous, were necessarily detained pending their removal, lest they commit further crimes while released. These newly added provisions do not indicate anything with respect to either party's proposed interpretation of Sections 1225 or 1226.

Cirrus Rojas's most persuasive efforts are his references to immigration officials' history of treating unadmitted aliens like Cirrus Rojas as eligible for bond under Section 1226(a). While the Supreme Court has largely ended judicial deference to agency interpretations of acts of Congress, *see Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 432-33 (2024), nearly three decades of a particular interpretation ought to inform the Court's approach. This history of performance gives the Court particular pause given the complexity of the INA and its amendments. Beyond citing *Loper Bright*, the parties provide little legal guidance on the appropriate weight the Court should give past agency practice. Cirrus Rojas has not given the Court any historical materials explaining or justifying immigration officials' prior approach or interpretation of Sections 1225 or 1226. If there was a documented prior rationale, the Court has not seen it. In the end, the Court concludes that it must follow the most natural reading of the statutory text. Prior administrations' generous interpretations of these laws, while relevant to understanding that text, do not

and cannot rewrite it. As explained above, Respondents' reading is more consistent with the plain terms of Section 1225(b). Cirrus Rojas's argument is akin to estoppel. He wants to preclude ICE from adopting a new, different interpretation based on its past practice. But there is no estoppel against the federal government. *Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 420 (1990) ("From our earliest cases, we have recognized that equitable estoppel will not lie against the Government as it lies against private litigants."); *Gutierrez v. Gonzales*, 458 F.3d 688, 691 (7th Cir. 2006) ("The Supreme Court has *never* affirmed a finding of estoppel against the government.") (emphasis in original). The Court must apply the statute as it is written.

The Court also does not agree with Cirrus Rojas that language in his arrest warrant citing Section 1226 entitles him to discretionary detention under Section 1226. The top of the DHS warrant form directs the warrant to the attention of "[a]ny immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act [codified at 8 U.S.C. §§ 1226 and 1357] and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations." (ECF No. 1-2.) This language is best read not as an invocation of Section 1226 or an admission that that provision applies to Cirrus Rojas. Rather, it describes the agents to whom the warrant is directed and identifies two sources for their arrest authority. This language does not state that Cirrus Rojas is subject to the discretionary detention provisions of Section 1226 or excepted from the provisions of Section 1225.

Cirrus Rojas repeatedly emphasizes the number of other district courts that have adopted his position. His

petition and briefing bullet point more than 45 cases from other district courts rejecting Respondents' textual analysis and adopting his own. For their part, Respondents cite a handful of cases reaching the opposite conclusion. Beyond numbers, neither party directs the Court to compelling analyses from any of these decisions. While these rulings give the Court pause, they are not precedential. And only one of the cited cases is from the Seventh Circuit, *Campos Leon v. Forestal*, No. 1:25-cv-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025). Its analysis is limited and typical of the decisions adopting Cirrus Rojas's interpretation.

In *Campos Leon*, the Court analyzed the text and interplay between Sections 1225 and 1226 in just five short paragraphs. 2025 WL 2694763 at *3. It concluded that the habeas petitioner's position found "greater support from the facts and plain language of the statute." But that conclusion was based predominantly on the Court's assertion that because the petitioner was arrested and detained pursuant to a warrant, he was necessarily subject to the bond provisions of Section 1226. *Id.* The Court acknowledged for the sake of argument that the petitioner fell within Section 1225(a)(1)'s definition of an "applicant for admission" but offered little analysis of the implications of that determination. *Id.* Instead, the Court simply concluded that because the petitioner in that case was arrested pursuant to a warrant, Section 1226's bond provisions necessarily applied to him without addressing Section 1225 or how its terms might apply.[5] The case was also decided on an expedited basis

[5] Since this case was filed, the Southern District of Indiana has decided a second case involving these issues: *B.D.V.S. v. Forestal*, No. 1:25-cv-01968-SEB-TAB, 2025 WL 2855743 (S.D. Ind. Oct. 8,

and in a short time frame. The Court find its analysis unpersuasive.

The parties also refer to a Board of Immigration Appeals decision adopting Respondents' interpretation. (*See* ECF No. 1 ¶ 78 citing *Matter of Hurtado,* 29 I. & N. Dec. 216 (B.I.A. 2025).) In *Hurtado*, the Board of Immigration Appeals affirmed an immigration judge's decision to deny bond to a citizen of Venezuela who had crossed into the United States in November 2022 without authorization. *Hurtado,* 29 I. & N. at 220, 229. The alien was granted temporary protected status briefly, but when that status expired, he was arrested by ICE agents. He requested a bond hearing but, at the hearing, the immigration judge concluded the alien was an "applicant for admission" and ineligible for bond under Section 1225(b)(2). *Id.* at 220. That ruling was affirmed by the Board of Immigration Appeals after a detailed analysis of the statutory backdrop. *Id.* at 218-28. At the hearing, both parties agreed that *Hurtado* has no precedential value and counsel for Cirrus Rojas contended it is merely an agency interpretation to which the Court should give no deference. The Court's analysis is independent of *Hurtado*, but the Court finds its thorough analysis persuasive.

B. The Stay of Cirrus Rojas's Detention under 8 C.F.R. § 1003.19(i)(2) Is Not Unlawful or Unconstitutional.

Cirrus Rojas also argues that he is entitled to habeas relief because his continued detention after being granted bond by an immigration judge violates the INA

2025). *B.D.V.S.* was decided by the same judge and incorporated a similar, abbreviated analysis of the issues. *Id.* at *2.

and the Constitution. He first contends that the regulation that permits his continued detention, 8 C.F.R. § 1003.19(i)(2), is *ultra vires*. He further claims that ICE's invocation of that regulation to automatically stay his release pending appeal violates his due process rights. The Court's conclusion that ICE has the better argument in the parties' interpretative battle over Sections 1225 and 1226 largely undercuts Cirrus Rojas's remaining arguments. There is no dispute that the government is following the required procedures in addressing the appeal of Cirrus Rojas's bond ruling and his overall removal proceeding. The Court will nevertheless address Cirrus Rojas's *ultra vires* and due process claims in turn.

1. Cirrus Rojas Has Not Established that the Regulation Permitting the Stay of his Release Pending Appeal is *Ultra Vires*.

Cirrus Rojas complains that he remains detained, even after an immigration judge ruled that he should be released on $1,500 bond, solely because ICE has filed a Notice of Appeal. He argues that 8 C.F.R. § 1003.19(i)(2), the regulation that expressly provides for a stay of his release pending resolution of ICE's bond appeal, is *ultra vires* because it exceeds the authority conferred by Congress to the Attorney General and unlawfully overrides an immigration judge's discretionary authority to make custody determinations. (ECF No. 4-1 at 14.)

Department of Justice regulations provide for a potential stay of custody orders when the government files an appeal of the custody order. *See* 8 C.F.R. § 1003.19(i). The first part of the regulation gives the Board of Immigration Appeals discretionary authority to grant a stay:

> The Board of Immigration Appeals (Board) has the authority to stay the order of an immigration judge redetermining the conditions of custody of an alien when the Department of Homeland Security appeals the custody decision or on its own motion. DHS is entitled to seek a discretionary stay (whether or not on an emergency basis) from the Board in connection with such an appeal at any time.

8 C.F.R. § 1003.19(i)(1). The second part of the regulation provides for an "[a]utomatic stay in certain cases." More specifically:

> In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR-43 is subject to the discretion of the Secretary.

Id. at (2).

Cirrus Rojas argues that there is no congressional authority for any regulation that would allow anyone within the Department of Homeland Security, including within ICE, to unilaterally stay the immigration judge's bond decision. He insists the opposite is true: Section 1226(a) gives the discretion over bond decisions to an immigration judge. (ECF No. 1 ¶¶ 57-58.)

But Congress has entrusted the handling of immigration proceedings, including appeals over bond rulings, to the Attorney General and Department of Justice. 8 U.S.C. § 1103(g). Exercising this authority, the Department of Justice promulgated 8 CFR § 1003.19 to allow a stay of a bond ruling when the Department of Homeland Security/ICE decides to appeal. The automatic stay provision in 8 CFR § 1003.19(i)(2) serves the legitimate purpose of maintaining the status quo in those cases where ICE decides to seek an expedited review of an immigration judge's custody order in the Board of Immigration Appeals. *See Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1031 (E.D. Wis. 2007).

Cirrus Rojas's focus on ICE's role in initiating the automatic stay, by filing a notice of appeal, disregards that the Department of Justice, which is responsible for enacting procedures in immigration proceedings, has itself made the decision to provide for this automatic stay. The Department of Justice has decided to make the trigger point for the automatic stay the decision by ICE to pursue an expedited appeal of a bond ruling. Nothing in the regulation exceeds the Department of Justice's authority or reflects an improper delegation of that authority to ICE.

Moreover, while Cirrus Rojas complains about ICE's "unilateral" authority to halt his release on bond, the regulations accompanying 8 CFR § 1003.19(i)(2) guard against misuse. The Attorney General has required that a "senior legal official" certify that ICE's "contentions justifying the continued detention of the alien have evidentiary support" and that its legal arguments are nonfrivolous in order to preserve the automatic stay. *See* 8 C.F.R. § 1003.6(c)(1)(ii). Pursuant to 8 C.F.R.

§ 1003.6(c)(4), the automatic stay "shall lapse 90 days after the filing of the notice of appeal." Pursuant to 8 C.F.R. § 1003.6(c)(5), any extension of the detention is limited to 30 days and requires that DHS provide some justification for the extension. As discussed below, these procedural limitations and protections undermine any potential due process complaints. The Court rejects Cirrus Rojas's argument that 8 CFR § 1003.19(i)(2) is *ultra vires*.

2. Cirrus Rojas's Detention Pending Appeal Does Not Violate Due Process.

Cirrus Rojas's final claim is that his continued detention after being awarded bond violates the Due Process Clause under the balancing test set forth in *Mathews*, 424 U.S. at 335. Under *Mathews*, the Court must evaluate three factors in resolving due process challenges to procedures that would deprive an individual of his life, liberty or property. *Id.* The Court must consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.*

Cirrus Rojas invokes his significant interest in being free from improper detention. He notes that he has been detained since June 2025, preventing him from seeing his family, working, and participating in his community. (ECF No. 1 ¶ 83.) He also contends that the current procedures do not simply risk an erroneous depri-

vation of his liberty but are in fact already causing one. He complains that the automatic stay provision has allowed for his continued detention without any individualized showing that he might be a flight risk or a danger to the community. (*Id.* at ¶ 84.) As to the third *Mathews* factor, Cirrus Rojas argues that the government's interest in maintaining the "current" procedure is minimal. He contends that the Supreme Court has recognized only two purposes for civil detention: preventing flight and mitigating the risks of danger to the community, and that both purposes are no longer in play given the immigration judge's bond ruling. And he argues that the procedures governing the appeal of the bond ruling insufficiently protect his rights and could result in lengthy and unfair delays, extending his detention. (*Id.* ¶ 84.)

Cirrus Rojas's due process challenge faces a steep climb. He correctly observes that the Supreme Court in *Zadvydas* recognized that an alien being detained pending removal has due process rights. 533 U.S. at 693. But *Zadvydas* concerned the detention of aliens for a potentially unlimited time after the conclusion of their removal proceedings. The Court explained that the INA generally gives the government 90 days to remove or deport aliens found to be removable and, while this was usually sufficient, the government was not always able to achieve removal within this "removal period." *Id.* at 683. In those circumstances, 8 U.S.C. § 1231(a)(6) authorizes the government to continue detention but it contains no time limitation or other constraint. *Id.* Invoking the constitutional avoidance canon, a majority of the Supreme Court held that Section 1231(a)(6) should be interpreted to include an implied time limitation, al-

lowing detention only for the period "reasonably necessary to bring about the alien's removal." *Id.* at 689.

Since avoiding the due process issues in *Zadvydas*, the Supreme Court and Seventh Circuit have affirmatively rejected due process challenges to the detention of unadmitted aliens in other settings. In *Demore*, decided just two years after *Zadvydas*, the Court rejected a due process challenge by a lawful permanent resident alien who was detained without bail while awaiting removal. 538 U.S. at 514. A district court had granted his habeas petition, concluding that the Due Process Clause entitled him a bond hearing and precluded his detention unless it was found that he posed a danger to society or was a flight risk. *Id.* The Ninth Circuit affirmed. *Id.* The Supreme Court reversed, concluding that the mandatory detention of unadmitted aliens awaiting removal without a bond hearing did not offend due process. *Id.* at 516. The Court distinguished *Zadvydas* because the aliens in *Zadvydas* were stuck in limbo; their individual circumstances were such that their removal was "no longer practically attainable." Accordingly, the governmental interest in detaining them *until* they could be removed was not present; they were likely never going to be removed. The government's detention of the aliens in *Demore*, however, served the legitimate purpose of detaining them to ensure their removability. The Court also noted that while the detention at issue in *Zadvydas* was "indefinite" and "potentially permanent," any detention of the alien in the case before it was limited and of "a much shorter duration." *Id.* at 528. Because detention was for a defined and limited period, it did not violate the Due Process Clause. *Id.* at 531

In *Jennings*, a plurality of the Supreme Court reaffirmed the reasoning in *Demore* in rejecting a habeas challenge by a lawful permanent resident who argued that his ongoing detention while he appealed his removability violated due process. 538 U.S. at 290-91. Relying on *Zadvydas*, a district court and the Ninth Circuit held the petitioner and a class of similarly situated aliens were entitled to periodic bond hearings, concluding that the right to such bond hearings was "implicit" in the immigration statutes, a construction necessary to avoid due process issues. *Id.* at 291-92. After rejecting the Ninth Circuit's use of the constitutional avoidance canon, the Court highlighted the differences between the limitless period of detention at issue in *Zadvydas* and the limited duration of detention authorized by the statute in *Demore*. *Id.* at 296, 298-301, 304. While the former implicated due process, the latter did not. *Id.* at 304.

In *Parra*, the Seventh Circuit rejected an alien's due process challenge to his mandatory detention while awaiting the conclusion of removal proceedings after his conviction on aggravated sexual assault charges. 172 F.3d at 955. Like Cirrus Rojas, the alien in *Parra*, had been granted bond by an immigration judge, but his release was automatically stayed by the government's appeal of that ruling under 8 CFR § 1003.19(i)(2). *Id.* at 956. After reversing the district court's determination that federal jurisdiction was lacking, the Court of Appeals concluded that a remand was unnecessary because the record confirmed the alien's due process challenge failed. *Id.* at 958. The Court noted that the alien's criminal conviction made detention mandatory under Section 1226(c), and, barring a change to immigration law or policy, he had forfeited any *legal* entitlement to remain in

the United States. *Id.* It also noted that he could withdraw his defense to the removal proceedings and return to his homeland, ending his detention immediately. *Id.* ("He has the keys in his pocket."). Applying the *Mathews* factors, the Court of Appeals emphasized that the alien's interest was not liberty in the abstract but the more-limited "liberty in the United States by someone no longer entitled to remain" in the country. *Id.* It noted that the probability of error was low given the alien's concession that he was subject to removal. *Id.* The Court then emphasized the government's substantial interest in detention given the high flight rate of those released on bail. *Id.* It finally noted that it had upheld the constitutionality of detaining an alien pending removal proceedings even before passage of the IIRIRA made detention of certain criminal aliens mandatory. *Id.* If detention did not violate due process when it was discretionary, the Court concluded, it could not be unconstitutional when detention was mandatory. *Id.*

Given the caselaw and the well-defined procedures governing (and limiting) Cirrus Rojas's detention, the Court rejects his due process challenge. Consistent with *Zadvydas* and *Demore*, Cirrus Rojas has a recognizable liberty interest in connection with his pre-removal detention. But as *Demore* held, and *Parra* explains, that liberty interest is limited. Cirrus Rojas is an alien who was found in the United States without authorization and is subject to removal proceedings. Consistent with federal law, he is being provided with the opportunity to oppose removal and using that opportunity to pursue an asylum claim. (ECF No. 1 ¶ 9.) As explained in *Parra*, Cirrus Rojas's liberty interest is limited, and he has the key to his release in his own

pocket; he can choose to accept removal to his homeland under Section 1229a. 172 F.3d at 958.

While Cirrus Rojas complains there is a risk that current procedures will cause an erroneous deprivation of his limited liberty interest, this is undercut by the Court's ruling on the statutory interpretation question. Moreover, the record confirms that he is receiving ample procedural safeguards. While Cirrus Rojas complains that 8 C.F.R. § 1003.19(i)(2) allows ICE to forestall his release unilaterally by filing a notice of appeal, Cirrus Rojas's rights are protected in multiple ways. As an initial matter, 8 C.F.R. § 1003.6(c)(1)(ii) requires that a "senior legal official" certify that DHS's "contentions justifying the continued detention of the alien have evidentiary support" and that its legal arguments are nonfrivolous in order to preserve the automatic stay. These are not trivial requirements. And any stay is not indefinite. As Cirrus Rojas himself admits, the automatic stay will "lapse 90 days after the filing of the notice of appeal," under 8 C.F.R. § 1003.6(c)(4), and any extensions of the detention are limited to 30 days under 8 C.F.R. § 1003.6(c)(5) and require ICE to provide a justification for the extension. (ECF No. 1 ¶¶ 62-63.)

Cirrus Rojas nevertheless calls these procedures inadequate. He complains that ICE is merely required to "submit a motion" and criticizes the procedures for allowing ICE to incorporate by reference the arguments in its brief. (*Id.* ¶ 63.) He further protests that the procedures then allow for a further five-day stay if the Board of Immigration Appeals rules in a noncitizen's favor, authorizing release on bond, or denying DHS's motion for a discretionary stay, to provide ICE time for further appeals. (*Id.* ¶ 65 (citing 8 C.F.R. § 1003.6(d).)

He also does not like further procedures allowing referral of custody cases to the Attorney General, who has ultimate statutory authority over detention and removal proceedings, for a limited 15-day time period. (*Id.* ¶ 66.)

Just describing these many procedural protections highlights the substantial process that Cirrus Rojas is being provided. That Cirrus Rojas wants different procedures or thinks there should be no right to stay the bond ruling pending appeal, does not mean the existing framework violates due process. His argument that the automatic stay provision detains individuals indefinitely, without a "discernible termination point" is refuted by the very regulations he complains about. (*Id.* ¶ 72.)

Finally, the government's interest in maintaining the current procedures is significant. As the Seventh Circuit recognized in *Parra*, the United States has a "powerful interest in maintaining the detention in order to ensure that removal actually occurs." 172 F.3d at 958. Cirrus Rojas has not established that his detention exceeds that interest.

In the end, the record confirms that Cirrus Rojas's detention is being adjudicated consistent with a detailed set of procedural protections. Those procedures allow for the stay of his release on bond pending resolution of any appeals, a common practice in our legal system. Cirrus Rojas has now been detained since June 3, 2025, and the stay of his release on bond began on July 15, 2025. Under the regulations, the adjudication of the appeal of his bond ruling must be resolved quickly or the automatic stay will expire. *See* 8 C.F.R. § 1003.6(c)(3). While procedures exist to continue the stay even after that time, those procedures have time limits. And, at most,

if ICE prevails on appeal, Cirrus Rojas's detention will be limited to the conclusion of his removal proceedings. And those proceedings are also moving forward, with a hearing scheduled for late October. Cirrus Rojas's detention has an end point, whether he prevails or loses. Given the Court's ruling on the underlying statutory construction issue, there can be little question that Cirrus Rojas's ongoing detention pending completion of the appeal on his bond and completion of any removal proceedings is consistent with due process.

CONCLUSION

Accordingly,

IT IS HEREBY ORDERED that Petitioner's Petition for Writ of Habeas Corpus, ECF No. 1, is **DENIED** and this case is **DISMISSED with prejudice**. The Clerk is directed to enter judgment accordingly.

IT IS FURTHER ORDERED that Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction, ECF No. 4, is **DENIED**.

Dated at Milwaukee, Wisconsin on October 30, 2025.

/s/ BRETT H. LUDWIG
BRETT H. LUDWIG
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Case No. 25-cv-1437-bhl

JACIEL CIRRUS ROJAS, PETITIONER

v.

SAMUEL OLSON, ET AL., RESPONDENTS

[Filed: Sept. 25, 2026]

ORDER

On July 30, 2026, the United States Court of Appeals for the Seventh Circuit issued a decision in *Cirrus Rojas v. Olson*, 183 F.4th 909 (7th Cir. 2026), reversing this Court's denial of Cirrus Rojas's habeas petition in *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl (E.D. Wis.) (ECF No. 20), and remanding in accordance with the Seventh Circuit's decision. In reversing this Court's decision, the Seventh Circuit held that Cirrus Rojas is an "applicant for admission" who is not "seeking admission" to the United States. *See Cirrus-Rojas,* 183 F.4th at 919-20. Cirrus Rojas's detention, therefore, falls under 8 U.S.C. § 1226, not 8 U.S.C. § 1225(b)(2)(A), and Cirrus Rojas may seek a bond hearing in immigration court. *See id.* at 931. The Seventh Circuit remanded with instructions to "issue the writ 'and dispose of the matter as law and justice require.'" *Id.* (citing 28 U.S.C.

§ 2243). On September 21, 2026, the Seventh Circuit issued its Notice of Issuance of Mandate. *See Cirrus Rojas*, No. 25-cv-1437-bhl (ECF No. 33 at 49.) Cirrus Rojas, however, is no longer in custody and was released from custody as of the Seventh Circuit's decision. *See Cirrus Rojas*, 183 F.4th at 916.

Accordingly,

IT IS HEREBY ORDERED that Cirrus Rojas's petition for writ of habeas corpus, ECF No. 1, is **GRANTED** and Respondents are **ORDERED** to provide Cirrus Rojas with a bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226, to the extent the government has not already provided him such a hearing.

Dated at Milwaukee, Wisconsin on September 25, 2026.

/s/ BRETT H. LUDWIG
BRETT H. LUDWIG
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 sentence[1] 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

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[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.

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.