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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

VICTOR KALID JACOBO RAMIREZ,
MICHEL GUEVARA ALCANTAR, *on
behalf of themselves and others similarly
situated,*

Plaintiffs-Petitioners,

v.

MARKWAYNE MULLIN, *et al.*,¹

Defendants-Respondents.

Case No. 2:25-cv-02136-RFB-MDC

**ORDER GRANTING
PARTIAL SUMMARY
JUDGMENT**

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Secretary of Homeland Security Markwayne Mullin is substituted for currently named Kristi Noem; Daren K. Margolin, Director of the Executive Office for Immigration Review, is substituted for Sirce Owen; Ruben Leyva, Acting Field Office Director of the Salt Lake City Field Office of Immigration and Customs Enforcement, Enforcement and Removal Operations, is substituted for Jason Knight.

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 4

II. PROCEDURAL HISTORY..... 9

III. STANDARD OF REVIEW 10

IV. STATUTORY FRAMEWORK UNDER THE INA..... 11

 A. Section 1226 – “Apprehension and detention of aliens” 12

 B. Section 1225 – “Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing” 15

V. FACTUAL BACKGRUOND..... 16

 A. The Challenged Policies 16

 B. Named Plaintiffs 18

VI. DISCUSSION..... 18

 A. Jurisdiction..... 18

 B. Review of Agency Action as “Not in Accordance with Law” APA § 706(2)(A) 19

 C. The Lawfulness of Defendants’ Policies Under the INA 20

 1. Statutory Text and Structure 20

 i. Section 1225 Governs Inspection at the Border 22

 ii. Class Members are not ‘Seeking Admission’ Under § 1225(b)(2)(A)..... 29

 iii. Section 1226 Applies to Class Members 36

 iv. Defendants Create Unnecessary Conflict Between §§ 1225 and 1226..... 39

 2. Legislative History and Purpose 41

 3. Constitutional Avoidance..... 46

 i. Due Process..... 46

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ii. Fourth Amendment 47

4. Agency Practice and Major Questions..... 52

D. Scope of Relief..... 55

E. Final Judgment Pursuant to Rule 54(b) 57

F. Notice to Class Members 57

VII. CONCLUSION 58

1 Before the Court is Plaintiffs-Petitioners' (ECF No. 74) Motion for Partial Summary
 2 Judgment. For the following reasons, the Court grants the Motion, issues a classwide declaratory
 3 judgment, and sets aside the challenged agency policies pursuant to § 706(2)(A) of the
 4 Administrative Procedure Act. See 5 U.S.C. § 706(2)(A).

5 6 I. INTRODUCTION

7 Plaintiffs-Petitioners ("Plaintiffs" or "Class Members") are a certified class² of
 8 noncitizens³ living in the United States without lawful status, whose arrest by Immigration and
 9 Customs Enforcement ("ICE") occurred or will occur in the interior of the country, not while they
 10 were arriving at its borders. They are or will be in removal proceedings before an immigration
 11 court in the District of Nevada based on a charge by the Department of Homeland Security
 12 ("DHS") that they entered the U.S. without inspection at the border. Plaintiffs contend they are
 13 being systemically misclassified by Defendants-Respondents ("Defendants" or "the government")
 14 as subject to a provision of the Immigration and Nationality Act ("INA"), 8 U.S.C. §
 15 1225(b)(2)(A), that mandates detention during the pendency of removal proceedings without the
 16 opportunity for release on bond. This misclassification is based on nationwide policies by
 17 Defendants DHS and the Department of Justice ("DOJ"), adopted in July 2025, based on a
 18 reinterpretation of § 1225(b)(2)(A) that upends the longstanding, settled understanding of the INA
 19 by all three branches of government.⁴

20 ² The Certified Class is defined as follows:

21 All noncitizens in the U.S. without lawful status (1) who are or will be arrested or
 22 detained by ICE; (2) who are or will be in removal proceedings before an
 23 Immigration Court within the District of Nevada; (3) whom DHS alleges or will
 24 allege to have entered the United States without inspection or parole; (4) who are
 25 not or will not be subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or
 1231 at the time they are scheduled for or request a bond hearing; and (5) whose
 most recent arrest by ICE occurred inside the United States and not while arriving
 in the United States.

26 ³ In this Order, the Court uses the term "noncitizen" as equivalent to the statutory term
 27 "alien," as defined by the INA, 8 U.S.C. § 1101(a)(3). See Torres v. Barr, 976 F.3d 918, 922 n.6
 (9th Cir. 2020)

28 ⁴ Notably, this includes the first Trump Administration and the current Trump

1 Plaintiffs seek partial summary judgment and corresponding classwide relief on their
2 claims that the government’s new detention policies are unlawful under the INA and its
3 implementing regulations. Through the instant Motion, they seek a final determination of a
4 question of statutory interpretation: whether the challenged policies are unlawful as applied to
5 them because: (1) they are properly detained under 8 U.S.C. § 1226(a) (Ground I); (2) they are
6 thus entitled to consideration for release on bond and/or supervisory conditions under § 1226(a)’s
7 implementing regulations—*i.e.*, 8 C.F.R. §§ 236.1, 1236.1 & 1003.19 (Ground II); and (3)
8 Defendants’ policies of denying them consideration for release on bond under
9 8 U.S.C. § 1225(b)(2)(A) are not “in accordance with law” (*i.e.*, the INA and its regulations) and
10 must therefore be “set aside” under § 706(2)(A) of the Administrative Procedures Act (“APA”)
11 (Ground III). See Plaintiffs’ Petition for Writ of Habeas Corpus and Class Action Complaint 17–
12 20, ECF No. 1 [hereinafter “Pls.’ Compl.”]. Plaintiffs also claim that the policies are “arbitrary
13 and capricious” under the APA (Ground III) and violate their due process rights under the Fifth
14 Amendment (Ground IV), but they do not currently seek summary judgment on those claims. See
15 id.; Plaintiffs’ Motion for Partial Summary Judgment 4, ECF No. 74 [hereinafter “Pls.’ Mot.”]
16 (“Plaintiffs request that the Court grant class-wide partial summary judgment on Counts I, II, and
17 III as they relate to claims that Defendants’ policies violate the INA and its regulations.”).

18 At bottom, the government’s new statutory interpretation avows that, in amending the INA
19 through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”),
20 Congress fundamentally altered a core, more than century-old, distinction that “runs throughout
21 immigration law”: a noncitizen who has entered and established their presence within our country,
22 even if unlawfully, is entitled to protections under the Constitution that do not extend to those
23 seeking entry at its borders. Zadvydas v. Davis, 533 U.S. 678, 693 (2001); cf. Yamataya v. Fisher,
24 189 U.S. 86, 100–101 (1903); Leng May Ma v. Barber, 357 U.S. 185, 187 (1958). In essence, the
25 Executive Branch now asserts that in 1996, Congress ended this bedrock principle of U.S.
26 immigration law with regards to the liberty of millions of noncitizens living in the U.S. who entered

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Administration, at least as of January 20, 2025. See Exec. Order No. 14161, 90 Fed. Reg. 8451
(Jan. 20, 2025) (distinguishing between “all aliens seeking admission to the United States” and
those “who are already in the United States.”).

1 without being inspected and admitted or paroled into the country. Through a long extant statute—
2 which has never been interpreted this way—the government contends that Congress gave the
3 Executive unprecedented power to arrest and detain anyone in the country who cannot demonstrate
4 they are “clearly and beyond a doubt entitled to be admitted” to the satisfaction of an ICE officer.
5 8 U.S.C. § 1225(b)(2)(A). It must be emphasized that Defendants’ claim this authority to detain
6 people for months, or even years, based on civil, not criminal, violations of the law. In fact, the
7 government claims Congress has *required* the Executive Branch to detain millions of people, many
8 of whom have lived here for decades as neighbors, spouses, mothers, fathers, and grandparents of
9 American citizens.

10 Defendants assert this unprecedented detention authority arises from the clear text of
11 § 1225(b)(2)(A); specifically, they allege that a noncitizen living in the U.S. who entered
12 unlawfully—even if decades ago—is perpetually “an alien seeking admission” to the country.
13 8 U.S.C. § 1225(b)(2)(A). Through this novel interpretation, which comes thirty years after
14 IIRIRA was enacted, the Trump Administration has suddenly discovered that Congress enacted
15 “the largest detention initiative in American history” without a whisper as to its scale and
16 implications in the INA’s legislative history, including in statutory amendments enacted as
17 recently as January of last year. Buenrostro-Mendez v. Bondi, 166 F.4th 494, 520 (5th Cir. 2026)
18 (Douglas, J., dissenting). But, throughout the history of U.S. immigration enforcement, such
19 extraordinary arrest and detention authority has been limited to inspection and apprehension at the
20 border—of noncitizens *seeking to enter* the country. Nonetheless, Defendants claim that Congress
21 secretly enacted a seismic shift in our laws, such that, “for purposes of immigration detention, the
22 border is now everywhere,” and for decades, five presidential administrations have violated that
23 supposed mandate, but no one noticed. See id. Unsurprisingly, Defendants’ policies enforcing this
24 newly claimed mass detention authority—authority that is unrestrained by any procedural
25 protections to ensure the government has a legitimate justification for depriving individuals of
26 their liberty—have led to a flood of habeas petitions before this Court⁵ and other federal courts

27 ⁵ The Court’s Order certifying the class in this case cataloged over sixty cases in which the
28 Court granted individualized habeas relief to Class Members. See Order Granting Class

1 across the country.⁶ But only a fraction of detainees have accessed the resources necessary to file
2 federal habeas petitions, necessitating class actions like this one.⁷

3 This Court has already exhaustively considered the relevant statutory provisions and found
4 that the government’s interpretation of § 1225(b)(2)(A) is unlawful. See generally Escobar Salgado
5 v. Mattos, 809 F. Supp. 3d. 1123 (D. Nev. 2025). As of March 24, 2026, 410 district judges have
6 similarly rejected the government’s statutory reading while 41 have found in the government’s
7 favor.⁸ Among the higher courts, a circuit split appears to be emerging. A divided Seventh Circuit
8 panel considered the statutory question on an interim basis and found the government “was not
9 likely to succeed” on the merits “[b]ased upon the text and structure of [§§ 1225 and 1226].”
10 Castañon-Nava v. U.S. Dep’t of Homeland Sec., 161 F.4th 1048, 1061 (7th Cir. 2025).
11 Subsequently, a divided Fifth Circuit panel adopted the government’s interpretation. See
12 Buenrostro-Mendez, 166 F.4th at 498–508. Most recently, a divided Eighth Circuit panel followed
13 the Fifth Circuit’s lead. Avila v. Bondi, --- F.4th ---, No. 25-3248, 2026 WL 819258 (8th Cir. Mar.
14 25, 2026). The statutory question has been argued and submitted before the Ninth Circuit and is
15 set for expedited resolution. See Rodriguez Vazquez v. Bostock, No. 25-6842 (9th Cir. Mar. 4,

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20 Certification 2 n.1, ECF No. 71. Since that February 5, 2026 Order, the Court has granted habeas
21 relief in more than fifty additional cases by Class Members. See Appendix A (collecting cases).

22 ⁶ See Kyle Cheney, Our running list of judges who have ruled on ICE’s mass detention
23 policy, POLITICO (Feb. 18, 2026, 5:00 AM EST) (last updated Mar. 24, 2025, 4:45 PM EST),
24 [https://www.politico.com/news/2026/02/18/trump-judges-immigration-detention-](https://www.politico.com/news/2026/02/18/trump-judges-immigration-detention-00784614?_sp_pass_consent=true)
25 [00784614?_sp_pass_consent=true](https://www.politico.com/news/2026/02/18/trump-judges-immigration-detention-00784614?_sp_pass_consent=true) (last visited March 26, 2026) (collecting rulings from 410
26 federal district judges in thousands of cases across the country that have rejected the government’s
27 new detention policy, while 41 federal judges have found in favor of the government’s position).

28 ⁷ At a March 17, 2026, Status Conference, the parties indicated there are hundreds of
potential class members currently detained in Nevada. A supervisory ICE officer for Enforcement
and Removal Operations testified that approximately 65 additional individuals are arrested and
detained in Nevada detention centers each week. See ECF No. 93. But since Defendants’ policies
were enacted in July 2025, only a fraction of Class Members have managed to file federal habeas
petitions in the District of Nevada. See supra note 3.

⁸ See supra, n. 6.

1 2026), Dkt. No. 60. Appeals are pending in nearly every circuit.⁹

2 In its Opposition, the government offers no dispute of fact or binding authority to support
3 its position that this Court should depart from its previous ruling in Escobar Salgado and in this
4 case, where the Court granted preliminary relief based on Named Plaintiffs' likelihood of success
5 on their statutory claim. See Order Granting Preliminary Injunction 11–13, ECF No. 35 (“As it
6 did in Escobar Salgado, the Court rejects [Defendants'] statutory interpretation here and finds
7 Plaintiffs . . . are detained under § 1226(a) and its implementing regulations.”) (citing Escobar
8 Salgado, 809 F. Supp. 3d at 1143–58). Instead, the government incorporates the reasoning of the
9 Fifth Circuit majority and insists this Court should reverse course and follow that nonbinding
10 decision. As discussed below, the Court is not persuaded by Buenrostro-Mendez for many of the
11 reasons adroitly identified by the Honorable Dana Douglas in dissent, and by a growing number
12 of district courts who have since carefully considered and rejected the majority's interpretation.
13 See Buenrostro-Mendez 166 F.4th at 508–521 (Douglas, J., dissenting); see also, e.g., Carbajal v.
14 Wimmer, No. 2:26-CV-00093, 2026 WL 353510 (D. Utah Feb. 9, 2026); Singh v. Baltazar, No.
15 1:26-CV-00336-CNS, 2026 WL 352870 (D. Colo. Feb. 9, 2026). Likewise, the Court finds the
16 dissent of the Honorable Ralph R. Erickson, see Avila, 2026 WL 8919258 at *6–8, more
17 persuasive, and more consistent with principled statutory construction, than the reasoning of the
18 Eighth Circuit majority, which largely mirrors that of the Fifth Circuit. See id. at *2–6 (citing
19 Buenrostro-Mendez, 166 F.4th at 502–508).

20 Thus, for the reasons discussed in detail below, the Court continues to find that the
21 government's reading of § 1225(b)(2)(A), and its unprecedented mass detention policies flowing
22 from that interpretation, violate the INA. Plaintiffs are therefore entitled to classwide relief that
23

24 ⁹ The Court is aware of pending appeals regarding this statutory issue in every circuit but
25 the D.C. Circuit, with arguments held or calendared in the Second, Sixth, Seventh and Eleventh
26 Circuits, and more forthcoming. See Guerrero Orellana v. Moniz, No. 25-2152 (1st Cir.); Barbosa
27 Da Cunha v. Lyons, No. 25-3141 (2d Cir.); Buele Morocho v. Warden Phila. FDC, Nos. 26-1150
28 & 26-1454 (3d Cir.); Lopez Garcia v. Guadian, Nos. 25-7044 & 25-7050 (4th Cir.); Pizarro Reyes
v. Raycraft, No. 25-1982 (6th Cir.); Cirrus Rojas v. Olson, No. 25-3127 (7th Cir.); Santillan Quiroz
v. Noem, No. 26-6019 (10th Cir.); Hernandez Alvarez v. Warden, Fed. Det. Ctr., Miami, Nos. 25-
14065 & 14075 (11th Cir.).

1 returns them to the position they were in before Defendants adopted these policies in July of
2 2025—*i.e.*, subject to detention under § 1226(a) and entitled to that provision’s substantial
3 procedural protections, including eligibility for release on bond.

4 5 **II. PROCEDURAL HISTORY**

6 The Court assumes the parties’ familiarity with the record and proceedings in this case and
7 recites only the procedural history most relevant to the instant Motion. On October 30, 2025, class
8 representatives Victor Kalid Jacobo-Ramirez and Edgar Michel Guevara-Alcantar (“Named
9 Plaintiffs”) filed their Verified Petition for a Writ of Habeas Corpus and Class Action Complaint.
10 ECF No. 1. On November 6, 2025, Named Plaintiffs concurrently filed a Motion for Preliminary
11 Injunction and Motion for Class Certification. ECF Nos. 15, 18. After full briefing and a hearing,
12 see ECF Nos. 22, 23, 26, on November 24, 2025, the Court granted Named Plaintiffs’ Motion for
13 Preliminary Injunction and ordered Defendants to (1) immediately release Plaintiff Jacobo-
14 Ramirez on the bond conditions previously ordered by an immigration judge and (2) provide a
15 bond hearing pursuant to 8 U.S.C. § 1226(a) to Plaintiff Guevara-Alcantar by December 1, 2025.
16 See ECF No. 35. The Court also preliminarily enjoined Defendants from continuing to deny
17 Named Plaintiffs release on bond on the asserted basis that they are subject to mandatory detention
18 pursuant to 8 U.S.C. § 1225(b)(2). See id. Plaintiff Jacobo-Ramirez was released on bond on
19 November 24, 2025, and, after a Court-ordered bond hearing, Plaintiff Guevara-Alcantar was
20 released on bond on December 4, 2025. See ECF Nos. 41, 42, 44.

21 On November 11, 2026, the Court set a briefing schedule on class certification and set a
22 deadline for Defendants to file an answer or motion to dismiss in response to the Class Action
23 Complaint. See ECF No. 24. After an extension, see ECF No. 37, on December 3, 2025,
24 Defendants filed their “Response” to the Class Action Complaint, which made arguments for
25 dismissal under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), as well as on the merits
26 of Plaintiffs’ statutory claim. See ECF No. 39. After full briefing and a hearing on class
27 certification and Defendants’ dismissal arguments, see ECF Nos. 32, 38, 55, 59, 60, on February
28 5, 2026, the Court denied dismissal under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6),

1 granted class certification pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), and
2 appointed class counsel. See ECF No. 71. The Court certified the following class:

3 All noncitizens in the U.S. without lawful status (1) who are or will be arrested or
4 detained by ICE; (2) who are or will be in removal proceedings before an
5 Immigration Court within the District of Nevada; (3) whom DHS alleges or will
6 allege to have entered the United States without inspection or parole; (4) who are
7 not or will not be subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or
8 1231 at the time they are scheduled for or request a bond hearing; and (5) whose
9 most recent arrest by ICE occurred inside the United States and not while arriving
10 in the United States.

11 Id. The Court further found that notice to Class Members regarding this action and any forthcoming
12 classwide relief was appropriate pursuant to Federal Rule of Civil Procedure 23(c)(2)(A) and
13 ordered Plaintiffs to file any proposed notice by February 13, 2026—with a deadline for
14 Defendants’ opposition to the proposal, if any, by February 18, 2026. See id. Defendants did not
15 file an opposition.

16 On February 13, 2026, Plaintiffs filed the instant Motion for Partial Summary Judgment
17 pursuant to Federal Rule of Civil Procedure 56. ECF No. 74. On March 3, 2026, Defendants filed
18 their Opposition. ECF No. 87. On March 5, 2026, Plaintiffs filed their Reply. ECF No. 88. On
19 March 6, 2026, the Court held a hearing on the Motion and indicated its preliminary ruling in
20 Plaintiffs’ favor, with the instant written Order to follow. ECF No. 89. On March 19, 2026,
21 Plaintiffs filed an amended notice to be issued to Class Members upon issuance of this Order. ECF
22 No. 95. To date, Defendants have not lodged any objection to Plaintiffs’ proposed notice.

23 **III. STANDARD OF REVIEW**

24 A party may move for partial summary judgment by identifying part of a claim on which
25 summary judgment is sought. See Fed. R Civ. P. 56(a). “The court shall grant summary judgment
26 if the movant shows that there is no genuine dispute as to any material fact and the movant is
27 entitled to judgment as a matter of law.” Id. A fact is material if it “might affect the outcome of
28 the suit under the governing law.” Eat Right Foods Ltd. v. Whole Foods Mkt., Inc., 880 F.3d 1109,
1118 (9th Cir. 2018) (quoting Anderson v. Liberty Lobby Inc., 477 U.S. 242, 247 (1986)). In
determining whether a genuine dispute of fact exists, the Court must “view the evidence in the

1 light most favorable to the nonmoving party and make all reasonable inferences in favor of that
2 party.” Eat Right Foods, 880 F.3d at 1118 (citing Tolan v. Cotton, 572 U.S. 650, 660 (2014)).

3 The moving party bears the initial “burden of demonstrating the absence of a genuine issue
4 of material fact.” Hollis v. R&R Restaurants, Inc., 159 F.4th 677, 683 (9th Cir. 2025) (citing
5 Celotex Corp v. Catrett, 477 U.S. 317, 323 (1986)). If the moving party meets their initial burden,
6 “the burden then shifts to the non-moving party to designate specific facts demonstrating the
7 existence of genuine issues for trial.” In re Oracle Corp. Securities Litig., 627 F.3d 376, 387 (9th
8 Cir. 2010) (citing Celotex, 477 U.S. at 325). If the opposing party fails to challenge the facts
9 asserted by the moving party in the manner required by Federal Rule of Civil Procedure 56(c), the
10 court may deem the undisputed facts admitted for purposes of the motion and grant summary
11 judgment “if the motion and supporting materials—including the facts considered undisputed—
12 show that the movant is entitled to it.” Fed. R. Civ. P. 56(e)(2) & (3); see Beard v. Banks, 548 US
13 521, 527 (2006).

14 15 **IV. STATUTORY FRAMEWORK UNDER THE INA**

16 Under the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101 et seq., two statutory
17 provisions generally govern the government’s authority to civilly detain noncitizens during the
18 pendency of removal proceedings: 8 U.S.C. §§ 1225(b) and 1226. The interpretation of these two
19 provisions is the central issue at the heart of Plaintiffs’ statutory and regulatory claims. The Court
20 thus begins with the statutory framework of those two provisions as interpreted by the Supreme
21 Court and Ninth Circuit.

22 Jennings v. Rodriguez, 583 U.S. 281 (2018), provides an explication of the relevant
23 statutory provisions. See id. at 289. In Jennings “the primary issue” before the Supreme Court was
24 “the proper interpretation of §§ 1225(b), 1226(a), and 1226(c).” Id. at 289.¹⁰ In outlining the

25
26 ¹⁰ In Buenrostro-Mendez, the Fifth Circuit majority discounted the Supreme Court’s clear
27 explication of § 1225 and § 1226 in Jennings as *dicta*. See id., 166 F.4th at 505. As did the Eighth
28 Circuit majority. See Avila, 2026 WL 819258 at *5 (discounting the Supreme Court’s
interpretation of “§ 1225 to apply to aliens detained at the border and § 1226 to aliens detained in

1 interaction between §§ 1225 and 1226, the Court explained § 1225 generally governs “at the
 2 Nation’s borders and ports of entry, where the Government must determine whether an alien
 3 *seeking to enter the country* is admissible.” *Id.* at 287 (emphasis added). In contrast, § 1226
 4 “generally governs the process of arresting and detaining” noncitizens already “*inside the United*
 5 *States.*” *Id.* at 288 (emphasis added); see also *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th
 6 Cir. 2022) (“8 U.S.C. § 1226, provides the general process for arresting and detaining aliens who
 7 are present in the United States and eligible for removal.”).

8 **A. Section 1226 – “Apprehension and detention of aliens”**

9 Section 1226 is titled “Apprehension and detention of aliens.” 8 U.S.C. § 1226(a). Section
 10 1226(a), which Plaintiffs assert governs their detention, is titled “[a]rrest, detention, and release,”
 11 and provides:

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

15 (1) may continue to detain the arrested alien; and

16 (2) may release the alien on—

17 (A) bond of at least \$ 1,500 with security approved by, and
 18 containing conditions prescribed by, the Attorney General; or

19 (B) conditional parole; but

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

24
 25 the interior” in *Jennings* as “general background information” and nonbinding *dicta*) (citations
 26 omitted). However, the opinion in *Jennings* constitutes a clear explication of the relevant statutory
 27 provisions and their interplay. Given the Supreme Court’s assertion that the central issue before it
 28 was the proper interpretation of §§ 1225(b), 1226(a), and 1226(c), that explication should not be
 so readily cast aside. In any case, in the Ninth Circuit, considered *dicta* from the Supreme Court
 is treated with appropriate deference “as prophecy of what that Court might hold.” *United States*
v. Montero-Camargo, 208 F.3d 1122, 1132 n.17 (9th Cir. 2000) (citations omitted).

1 Section 1226(a) thus “sets out the general rule” regarding the arrest, detention and release of
2 “aliens present in the country” “who are believed to be subject to removal.” Nielsen v. Preap, 586
3 U.S. 392, 396 (2019). It generally gives the Secretary of Homeland Security¹¹ “discretion either
4 to detain the alien or to release him on bond or parole.” Id. at 397. The Secretary has delegated
5 that power to the Department of Homeland Security and the immigration courts through regulation.
6 Id. (citing 8 CFR §§ 236.1(c)(8) and (d)(1), 1003.19, 1236.1(d)(1)).

7 ICE can arrest and take into custody an individual under § 1226(a) upon “the issuance of”
8 a “notice to appear” commencing removal proceedings or any time during the pendency of those
9 removal proceedings through the authority of an administrative “Form I-200, Warrant of Arrest”
10 which may only be issued and served by certain designated supervisory immigration officers. See
11 8 C.F.R. §§ 236.1(b); 287.5(d); 287.8(c)(2)(i)-(ii). “When a person is apprehended under § 1226(a),
12 an ICE officer makes the initial custody determination.” Rodriguez Diaz, 53 F.4th at 1196 (citing
13 8 C.F.R. § 236.1(c)(8)). “The noncitizen will be released if they ‘demonstrate to the satisfaction of
14 the officer that such release would not pose a danger to property or persons, and that the alien is
15 likely to appear for any future proceeding.’” Id.

16 If ICE denies bond or conditional parole and continues to detain a noncitizen, that
17 noncitizen is afforded “substantial procedural protections” under § 1226(a) and its implementing
18 regulations. Rodriguez Diaz, 53 F.4th at 1196. First, “a detainee may request a bond hearing before
19 an [immigration judge (“IJ”)] at any time before a removal order becomes final.” Id. at 1197.
20 (citing 8 C.F.R. §§ 236.1(d)(1), 1003.19). “If at this hearing the detainee demonstrates by the
21 preponderance of the evidence that he is not ‘a threat to national security, a danger to the
22 community at large, likely to abscond, or otherwise a poor bail risk,’ the IJ will order his release.”
23 Id. (quoting Matter of Guerra, 24 I. & N. Dec. 37, 40 (B.I.A. 2006); citing Matter of Barreiros, 10
24 I. & N. Dec. 536, 537–38 (B.I.A. 1964)).

25
26 ¹¹ Although the text of § 1226 refers to the Attorney General, “Congress has empowered
27 the Secretary to enforce the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., though the
28 Attorney General retains the authority to administer removal proceedings and decide relevant
questions of law.” Nielsen, 586 U.S. at 397 n.2. (citing 6 U.S.C. §§ 202(3), 251, 271(b), 542 note,
557; 8 U.S.C. §§ 1103(a)(1) and (g), 1551 note).

1 “The IJ considers various factors in making this determination, including the individual’s
2 ties to the United States as well as his employment history, criminal record, history of immigration
3 violations, and manner of entry into this country.” Id. (citing Matter of Guerra, 24 I. & N. Dec. at
4 40). “The IJ also decides whether bond or other conditions on the alien’s release are appropriate.”
5 Id. (citing 8 U.S.C. § 1226(a)(2)). “The detainee may be represented by counsel and can submit
6 evidence in support of” eligibility for bond. Id. (citing 8 C.F.R. § 1003.19(b); Matter of Fatahi, 26
7 I. & N. Dec. 791, 792 (B.I.A. 2016)). The noncitizen “can also appeal an adverse [bond] decision
8 to the [Board of Immigration Appeals (“BIA”).” Id. (citing 8 C.F.R. § 236.1(d)(3)). To the extent
9 the noncitizen asserts the bond determination was constitutionally deficient, legally erroneous, or
10 an abuse of discretion, it is subject to judicial review in habeas. See generally Martinez v. Clark,
11 124 F.4th 775 (9th Cir. 2024). Further, “an individual detained pursuant to § 1226(a) may request
12 an additional bond hearing whenever he experiences a material change in circumstances.”
13 Rodriguez Diaz, 53 F.4th at 1196 (citing 8 C.F.R. § 1003.19(e)). “The same procedures apply to
14 this new hearing, and its outcome is also appealable to the BIA.” Id.

15 “Section 1226(c), however, carves out a statutory category of aliens who may not be
16 released under § 1226(a).” Jennings, 583 U.S. at 289; see also Nielsen, 586 U.S. at 398 (“[W]hile
17 8 U.S.C. § 1226(a) generally permits an alien to seek release . . . that provision’s sentence on
18 release states that all this is subject to an exception that is set out in § 1226(c).”). Section 1226(c),
19 “was enacted as part of [IIRIRA], and it sprang from a ‘concern that deportable criminal aliens
20 who are not detained continue to engage in crime and fail to appear for their removal hearings in
21 large numbers.’” Nielsen, 586 U.S. at 398 (quoting Demore v. Kim, 538 U.S. 510, 513 (2003)).
22 “To address this problem, Congress mandated that aliens who were thought to pose a heightened
23 risk be arrested and detained without a chance to apply for release on bond or parole.” Id. Section
24 1226(c) thus mandates the detention of any noncitizen “who falls into one of several enumerated
25 categories involving criminal offenses and terrorist activities.” Jennings, 583 U.S. at 289; see 8
26 U.S.C. 1226(c)(1)(A)-(E). “ICE may only release a person detained pursuant to [§ 1226(c)] if
27 necessary for witness protection purposes.” Rodriguez Diaz, 53 F.4th at 1189 (citing § 1226(c)(2));
28 Jennings, 583 U.S. at 289).

1 Among the individuals subject to this mandatory detention provision are noncitizens who
2 are deemed “inadmissible” under § 1182, see 8 U.S.C. §§ 1226(c)(1)(A), (D), (E), and noncitizens
3 who are “deportable” under § 1227, see id., §§ 1226(c)(1)(B), (C), (D). Several of these categories
4 were added in January 2025, through passage of the Laken Riley Act. Pub. L. No. 119-1, §§2, 3(b),
5 139 Stat. 3, 4 (2025); 8 U.S.C. § 1226(c)(1)(E). Specifically, the Laken Riley Act amendment
6 mandates detention for an individual who is inadmissible under either §§ 1182(a)(6)(A) (for
7 noncitizens present in the U.S. without being admitted or paroled), 1182(a)(6)(C)
8 (misrepresentation), or 1182(a)(7) (lacking valid documentation) and who has been arrested for,
9 charged with, or convicted of certain crimes. See 8 U.S.C. § 1226(c)(1)(E)(i)-(ii).

10 **B. Section 1225 – “Inspection by immigration officers; expedited removal of**
11 **inadmissible arriving aliens; referral for hearing”**

12 Section 1225 is titled “Inspection by immigration officers; expedited removal of
13 inadmissible arriving aliens; referral for hearing.” 8 U.S.C. § 1225. As characterized by the Ninth
14 Circuit, § 1225(b) “supplements § 1226’s detention scheme.” Rodriguez Diaz, 53 F.4th at 1197.
15 Section 1225(a), titled “Inspection” defines “aliens treated as applicants for admission.” 8 U.S.C.
16 § 1225(a)(1). As relevant here, “[a]n alien present in the United States who has not been admitted
17 or who arrives in the United States (whether or not at a designated port of arrival) . . . shall be
18 deemed for purposes of this chapter an applicant for admission.” Id. Under § 1225(b)(1), an
19 applicant for admission “initially determined to be inadmissible due to fraud, misrepresentation,
20 or lack of valid documentation” is “normally ordered removed ‘without further hearing or review’
21 pursuant to an expedited removal process.” Rodriguez Diaz, 53 F.4th at 1197 (citing Jennings, 583
22 U.S. at 287 (quoting 8 U.S.C. § 1225(b)(1)(A)(i)). “But if the alien applies for asylum and has a
23 credible fear of persecution, ‘the alien shall be detained for further consideration of the
24 application.’” Id. (citing 8 U.S.C. § 1225(b)(1)(B)(ii)). “All other applicants for admission are
25 covered by § 1225(b)(2), which ‘serves as a catchall provision,’ and which mandates detention ‘if
26 the examining immigration officer determines that an alien seeking admission is not clearly and
27 beyond a doubt entitled to be admitted.’” Id. (first citing Jennings, 583 U.S. at 287, then quoting
28 U.S.C. § 1225(b)(2)(A)).

1 Although § 1225(b) generally mandates detention, applicants for admission detained under
2 §§ 1225(b)(1) and (b)(2)(A) “may be temporarily released on parole ‘for urgent humanitarian
3 reasons or significant public benefit’” at the arresting ICE officer’s discretion. Jennings, 583 U.S.
4 at 288 (citing 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5). “Such parole, however, ‘shall not be
5 regarded as an admission of the alien.’” Id. (quoting 8 U.S.C. § 1182(d)(5)(A)). A § 1182(d)(5)(A)
6 parolee is eligible for certain benefits not available to noncitizens released on conditional parole
7 under § 1226(a), including ceasing to accrue unlawful presence time, see 8 U.S.C. §
8 1182(a)(9)(B)(ii), and the ability to apply for adjustment of status under § 1255(a). See Ortega-
9 Cervantes v. Gonzales, 501 F.3d 1111, 1119 (9th Cir. 2007) (“Congress responded in IIRIRA by
10 narrowing the circumstances in which aliens could qualify for ‘parole into the United States’ under
11 § 1182(d)(5)(A) and thus become eligible for adjustment of status.”). Importantly, “[t]hat Congress
12 did not similarly limit the Attorney General’s discretion under § 1226(a) strongly suggests that
13 Congress did not view ‘conditional parole’ [under § 1226(a)(2)(B)] as the equivalent of “parole
14 into the United States” under § 1182(d)(5)(A) and thus as a path to lawful permanent residence
15 under § 1255(a).” Id.

16

17 **V. FACTUAL BACKGRUOND**

18 In their Opposition, Defendants have not addressed Plaintiffs’ assertion of undisputed
19 material facts, as required by Federal Rule of Civil Procedure 56(c) and this Court’s Local Rules.
20 See United States District Court District of Nevada Local Rule of Practice (“LR”) 56-1 (“Motions
21 for summary judgment and responses thereto must include a concise statement setting forth each
22 fact material to the disposition of the motion that the party claims is or is not genuinely in issue,
23 citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer,
24 admission, or other evidence on which the party relies.”). The Court thus finds the following facts
25 admitted for purposes of this Motion and supported by the record. See Fed. R. Civ. P. 56(e)(2).

26 **A. The Challenged Policies**

27 Prior to July 2025, DHS, ICE, and the Las Vegas Immigration Court considered anyone
28 who entered the United States without inspection to be subject to detention under 8 U.S.C. §

1 1226(a) unless that person was subject to the expedited removal provisions of 8 U.S.C. §
2 1225(b)(1), or the detention provisions of § 1226(c) or § 1231. Pls.’ Mot. 5, Statement of
3 Undisputed Material Facts, ECF No. 74 (citing Declaration of Michael Kagan, Esq. ¶¶ 31-33, ECF
4 No. 18-1 [hereinafter “Kagan Decl.”]). This interpretation has been consistent during the nearly
5 thirty years that IIRIRA has been in effect and aligns with statements published by the DOJ shortly
6 after enactment clarifying that noncitizens arrested inside the United States have access to bond
7 hearings pursuant to § 1226(a), while mandatory detention pursuant to § 1225(b)(2) applies only
8 to noncitizens detained while arriving at or near the border. Id. (citing Inspection and Expedited
9 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum
10 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“[I]nadmissible aliens, except for arriving
11 aliens, have available to them bond redetermination hearings before an immigration judge . . . This
12 procedure maintains the *status quo.*”); id. at 10313 (“Several sections of the statute, such as
13 sections 212(a)(9), 240B, and 241 of the Act, refer to arriving aliens, even though this term is not
14 defined in statute. After carefully considering these references, the Department felt that the statute
15 seemed to differentiate more clearly between aliens at ports-of-entry and those encountered
16 elsewhere in the United States.”).

17 On July 8, 2025, Acting ICE Director Todd Lyons issued a memo (“the July 8th Memo”)
18 announcing that DHS, “in coordination with the Department of Justice,” reversed course, and
19 directed its personnel nationwide to classify previously bond-eligible detainees under § 1226(a) as
20 ineligible for bond under § 1225(b)(2)(A) if they originally entered the country without inspection.
21 Pls.’ Mot., Ex. 1 at 2-3, ECF No. 74-1. The policy outlined in the July 8th Memo is the official
22 formal nationwide policy of DHS and DOJ. Pls. Mot. 5 (citing Hr’g. Tr. at 7:23-24, Dec. 18, 2025,
23 ECF No. 61). The Memo provides, “[f]or custody purposes, these aliens are now treated in the
24 same manner that ‘arriving aliens’ have historically been treated.” Pls.’ Mot., Ex. 1 at 2, ECF No.
25 74-1. The July 8th Memo further instructs ICE personnel not to issue any “Form I-286, Notice of
26 Custody Determination” to such noncitizens, because such initial custody determinations are only
27 required under 8 U.S.C. § 1226 and its implementing regulations. Id. at 3 (citing 8 C.F.R. §
28 236.1(c)(8)).

1 On September 5, 2025, the BIA issued a precedential decision, Matter of Yajure Hurtado,
2 29 I. & N. Dec. 216 (BIA 2025) [hereinafter “Hurtado”], which adopted the policy captured in the
3 July 8th Memo and legally binds all immigration judges (IJs). Pls.’ Mot. 6, ECF No. 74. Hurtado
4 announced “just as Immigration Judges have no authority to redetermine the custody of arriving
5 aliens who present themselves at a port of entry, they likewise have no authority to redetermine
6 the custody conditions of an alien who crossed the border unlawfully without inspection[.]”
7 Hurtado, 29 I. & N. at 228.

8 Pursuant to the agency policies adopted in the July 8th Memo and Hurtado, it is undisputed
9 in this case that Class Members are routinely and systemically misclassified and detained without
10 any consideration for bond or conditional release by ICE or the immigration court. Pls.’ Mot. 6,
11 ECF No. 74 (citing Kagan Decl. ¶¶ 32-36, ECF No. 18-1 (IJs in Las Vegas Immigration Court “no
12 longer conduct bond hearings for [noncitizens] who entered without inspection and now hold they
13 lack jurisdiction to hear such requests because they are bound by the decisions of the BIA.”)).

14 **B. Named Plaintiffs**

15 Plaintiffs Victor Kalid Jacobo-Ramirez and Edgar Michel Guevara-Alcantar are both
16 longtime residents of the United States who were subjected to § 1225(b)(2)(A) mandatory
17 detention pursuant to Defendants’ new policies until this Court issued preliminary injunctive relief.
18 Pls.’ Mot. 7, ECF No. 74 (citing Kagan Decl. ¶¶ 8, 18, 20, 24). Both Plaintiffs entered the United
19 States without inspection as minors many years ago and have since built their lives here with their
20 U.S. citizen children and loved ones. Id. (citing Kagan Decl. at ¶¶ 8, 9, 13, 20, 28). They do not
21 have criminal records disqualifying them from consideration for bond under § 1226(c). Id. (citing
22 Kagan Decl. at ¶¶ 10, 11, 14, 26). Their experiences are representative of the class. Id. (citing
23 Order Granting Motion to Certify Class 34–35, ECF No. 71 [hereinafter “Class Cert. Order”]).

24 **VI. DISCUSSION**

25 **A. Jurisdiction**

26 In their Opposition, Defendants incorporate the arguments they raised in their Response to
27 Plaintiffs’ Class Action Complaint, which assert this Court lacks jurisdiction over Plaintiffs’
28

1 claims under 8 U.S.C. § 1252. See Defendants’ Opposition to Pls.’ Mot. for Partial Summ. J. 21
2 [hereinafter “Defs.’ Opp’n”], ECF No. 87 (citing Defendants’ Response to Class Action Complaint
3 22–26, ECF No. 39 [hereinafter “Defs.’ Resp. to Compl.”]). The Court already confirmed its
4 jurisdiction in its Order denying dismissal under Federal Rule of Civil Procedure 12(b)(1) and
5 granting class certification. See Class Cert. Order 12–24, ECF No. 71. As this Court previously
6 found, 8 U.S.C. § 1252(g), (b)(9), and (e)(1)(B) do not strip this Court of jurisdiction over
7 Plaintiffs’ claims. See id. The Court incorporates its previous finding by reference here. Id.

8 **B. Review of Agency Action as “Not in Accordance with Law” APA § 706(2)(A)**

9 The Court also rejects Defendants’ arguments that Plaintiffs’ APA claim fails as a matter
10 of law, as it did in its Order denying dismissal under Federal Rule of Civil Procedure 12(b)(1) and
11 12(b)(6). See Defs.’ Opp’n 21, ECF No. 87; Class Cert. Order 24–27, ECF No. 71. The APA “sets
12 forth the procedures by which federal agencies are accountable to the public and their actions
13 subject to review by the courts.” Franklin v. Massachusetts, 505 U.S. 788, 796 (1992). With limited
14 exceptions, judicial review under the APA is available for “final agency action for which there is
15 no other adequate remedy in a court.” 5 U.S.C. § 704. Judicial review is available to any “person
16 suffering legal wrong because of [the] agency action, or adversely affected or aggrieved by [such]
17 action.” Id. § 702. As relevant here, the APA requires courts to “hold unlawful and set aside agency
18 action” if they find such action to be “not in accordance with law.” Id. § 706(2)(A). Whether
19 agency action is “not in accordance with law” is a question of statutory interpretation, rather than
20 an assessment of reasonableness under arbitrary and capricious review. See Singh v. Clinton, 618
21 F.3d 1085, 1088 (9th Cir. 2010) (Nw. Envntl. Advocates v. U.S. Envntl. Prot. Agency, 537 F.3d
22 1006, 1014 (9th Cir.2008)).¹²

23 The Court previously considered and rejected Defendants’ arguments that the challenged
24 policies are unreviewable under the APA and found that Plaintiffs state a claim under § 706(2)(A):
25 Defendants’ policies are “not in accordance with law,” *i.e.*, unlawful under the INA and its

26
27 ¹² Thus, the Court need not address at this time Defendants’ arguments asserting the July
28 8th Memo and Hurtado are not arbitrary or capricious under § 706(2)(A), because Plaintiffs do not
move for summary judgment on that aspect of their APA claim.

1 implementing regulations. See Class Cert. Order 24–27, ECF No. 71. The Court incorporates that
2 finding by reference here.

3 To reiterate, the July 8th Memo, which Defendants have confirmed is a uniform,
4 nationwide policy that was effective upon issuance, is a final agency action reviewable under the
5 APA. Id. at 25 (citing Garro Pinchi v. Noem, No. 25-CV-05632-PCP, 2025 WL 3691938, at *20
6 (N.D. Cal. Dec. 19, 2025) (“Acting Director Lyons’s internal memorandum conclusively
7 establishes that DHS had a written policy as to the meaning of § 1225(b)(2) as of July 2025.”).
8 Defendants do not contest this. Likewise, the Court finds, and Defendants do not contest, that the
9 BIA’s precedential decision in Hurtado is a final agency action reviewable under the APA. Id.
10 (citing Judulang v. Holder, 565 U.S. 42, 52–53 (2011) (holding a BIA policy encapsulated in
11 precedential decisions was reviewable under the APA, 5 U.S.C. § 706(2)(A)). The Court likewise
12 incorporates its previous finding that the APA’s exception for action committed to agency
13 discretion under § 701(a)(2) does not prevent this Court’s review of the challenged policies. See
14 Class Cert. Order 25–26, ECF No. 71 (citing 5 U.S.C. § 701(a)(2)).

15 **C. The Lawfulness of Defendants’ Policies Under the INA**

16 The Court now turns to the statutory question at the center of this case: whether Class
17 Members are subject to detention under § 1226(a) as they contend, or § 1225(b)(2)(A), as the July
18 8th Memo and Hurtado contend. For the sake of efficiency, the Court incorporates by reference its
19 statutory analysis in Escobar Salgado, 809 F.Supp.3d at 1134–58. Below, the Court reiterates its
20 statutory construction and reaffirms it even after carefully considering new arguments raised by
21 the government, which are largely based on the Fifth Circuit majority’s reasoning in Buenrostro-
22 Mendez, 166 F.4th 494. To the extent the government incorporates by reference its previous
23 arguments made in its “Response to Verified Petition for a Writ of Habeas Corpus and Class Action
24 Complaint,” see ECF No. 39, and those arguments are not explicitly addressed herein, the Court
25 finds its discussion in Escobar Salgado resolves them.

26 **1. Statutory Text and Structure**

27 The first step of statutory interpretation is interpreting the plain meaning of the statute’s
28 text. Esquivel-Quintana v. Sessions, 581 U.S. 385, 391 (2017) (“We begin, as always, with the

1 text.”). “Where the language is plain and admits of no more than one meaning, the duty of
2 interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion.”
3 Caminetti v. U.S., 242 U.S. 470, 485 (1917). However, the INA is a “dense statute” with “complex
4 provisions” and “[d]ivining its meaning is ordinarily not for the faint of heart.” Torres v. Barr, 976
5 F.3d 918, 923 (9th Cir. 2020). As such, where, as here, the text is somewhat ambiguous, a court
6 must “use every tool at [its] disposal to determine the best reading of the statute.” Loper Bright
7 Enters. v. Raimondo, 603 U.S. 369, 400 (2024).

8 The Court finds the INA is not entirely pellucid regarding the interaction and application
9 of §§ 1225 and 1226 to Class Members. The government contends that the plain language of
10 § 1225(b)(2) requires DHS to detain all noncitizens like Plaintiffs, who are present in the U.S.
11 without admission or parole and subject to removal proceedings, regardless of how long they have
12 been in the country or how far from the border they are apprehended. See Defs.’ Opp’n 9, ECF
13 No. 87. But this Court finds that the government reads § 1225(b)(2)(A) as a fragment of statutory
14 text in isolation. Yet, “[s]tatutory language ‘cannot be construed in a vacuum. It is a fundamental
15 canon of statutory construction that the words of a statute must be read in their context and with a
16 view to their place in the overall statutory scheme.’” Sturgeon v. Frost, 577 U.S. 424, 438 (2016)
17 (quoting Roberts v. Sea-Land Servs., Inc., 566 U.S. 93, 101 (2012)).

18 The Court finds the government’s reading of the statutory text inapposite for several
19 reasons. First, the government distorts the statutory text, including terms of art specially defined
20 by Congress. Second, the government isolates and abstracts the phrases it favors in §
21 1225(b)(2)(A) from their context within § 1225 and the statutory scheme, while rendering
22 language it finds inconvenient within § 1225(b)(2)(A) both contrary to ordinary meaning and
23 needless surplusage. Finally, the government’s interpretation unnecessarily renders provisions of
24 § 1226(c) superfluous in all but the rarest cases, unjustifiably construes Congress’ addition of
25 § 1226(c)(1)(E) through the 2025 Laken Riley Act to be utterly ineffectual, and creates
26 unnecessary tension between the relevant provisions, §§ 1225 and 1226.

27 The Court cannot accept such a fraught interpretation when a reading devoid of such
28 conflict, which gives each statutory phrase and section independent meaning and force, is far more

1 plausible. Specifically, Plaintiffs’ proffered reading—which aligns with the clearly stated
2 understanding of both the Supreme Court and the Ninth Circuit, see Jennings, 583 U.S. at 287;
3 Rodriguez Diaz, 53 F.4th at 1196—treats the statute as “a symmetrical and coherent regulatory
4 scheme” which fits “all parts into a harmonious whole.” Perez-Guzman v. Lynch, 835 F.3d 1066,
5 1074 (9th Cir. 2016) (quoting FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133
6 (2000)). In sum, as illustrated below, Defendants assert the phrase “applicants for admission” in §
7 1225(b)(2)(A) must be interpreted “to the outer limits of its definitional possibilities,” even where
8 that broad sweep “sits uncomfortably with common usage” of its surrounding terms and “disrupts
9 [the INA’s] careful structure.” United States v. Corrales-Vazquez, 931 F.3d 944, 950 (9th Cir.
10 2019) (citing Abuelhawa v. United States, 556 U.S. 816, 820 (2009) (citation omitted)). But this
11 Court is duty bound to reject the government’s broad construction where the narrower meaning of
12 § 1225(b)(2)(A) proffered by Plaintiffs “make[s] sense rather than nonsense out of the *corpus*
13 *juris*.” Maslenjak v. United States, 582 U.S. 335, 345 (2017) (citation omitted).

14 ***i. Section 1225 Governs Inspection at the Border***

15 First, turning to § 1225(a)(1), titled “aliens treated as applicants for admission,” the Court
16 agrees that, read in isolation, Plaintiffs clearly fall into the definition of “applicants for admission”
17 as noncitizens “present in the United States who ha[ve] not been admitted.” 8 U.S.C. § 1225(a)(1)
18 (“An alien present in the United States who has not been admitted . . . shall be deemed for purposes
19 of this chapter an applicant for admission.”). However, interpreting that specially defined phrase
20 within the context of its surrounding language and the statutory scheme clarifies that “the phrase
21 ‘applicant for admission’ is a term of art denoting a particular legal status” and the fact that Class
22 Members occupy that “fictive legal status for purposes of removal proceedings” does not mean
23 they are subject to *inspection* and *detention* as contemplated in § 1225(b)(2)(A). Torres v. Barr,
24 976 F.3d 918, 927 (9th Cir. 2020); see also Biden v. Texas, 597 U.S. 785, 803 (2022) (evaluating
25 statutory structure and context to inform interpretation of § 1225(b)(2)).

26 In interpreting § 1225, the Ninth Circuit held that it governs “[t]he responsibilities of
27 officials with respect to noncitizens *at the border*” and “§ 1225(a)(1) is solely about people *seeking*
28 *admission* to the country.” Al Otro Lado v. Executive Office for Immigration Review, 138 F.4th

1 1102, 1118 (9th Cir. 2025), cert. granted sub nom. Noem v. Al Otro Lado, 146 S. Ct. 604 (2025)
2 (emphasis added). In accord with the Ninth Circuit, as discussed below, the Court finds the phrase
3 “applicant for admission” when read in context, rather than in isolation, makes clear that § 1225
4 “governs the obligations of *border* officials to process noncitizens.” Id. (emphasis added).

5 First, take the word “inspection” which permeates § 1225. Section 1225 is titled
6 “Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral
7 for hearing.” Section 1225(a), where the term “applicant for admission” is defined, is also titled
8 “[i]nspection,” suggesting that § 1225(a)(1), which is titled “aliens treated as applicants for
9 admission” encompasses noncitizens treated as applicants for admission *for the purpose of*
10 *inspection*. See Dubin v. United States, 599 U.S. 110, 120-21 (2023) (“The title of a statute and
11 the heading of a section are tools available for the resolution of a doubt about the meaning of a
12 statute.”) (citation and quotation marks omitted).

13 Similarly, § 1225(a)(3), also titled “[i]nspection” provides all noncitizens “who are
14 applicants for admission or otherwise seeking admission or readmission to or transit through the
15 United States *shall be inspected* by immigration officers.” 8 U.S.C. § 1225(a)(3) (emphasis
16 added). Significantly, § 1225(d) is titled “[a]uthority related to inspections” and § 1225(d)(2) sets
17 forth the scope of an immigration officer’s “[a]uthority to order detention and delivery of arriving
18 aliens.” Id. § 1225(d)(2). This provision seems to circumscribe an immigration officer’s authority
19 to order detention of a noncitizen and “deliver the alien to an immigration officer for inspection”
20 under § 1225 to “arriving aliens.”¹³ Id. § 1225(d)(2)(B). That subsection makes no reference to an
21 inspecting immigration officer’s authority to detain noncitizens like Class Members, who are
22 apprehended in the interior of the country having already entered its borders. Finally, the specific
23 subsection at issue here, § 1225(b) is titled “[i]nspection of applicants for admission.”
24

25
26 ¹³ The INA’s enacting regulations define “arriving alien” as follows: “[t]he term arriving
27 alien means an applicant for admission coming or attempting to come into the United States at a
28 port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien
interdicted in international or United States waters and brought into the United States by any
means, whether or not to a designated port-of-entry, and regardless of the means of transport.” 8
C.F.R. § 1001.1.

1 Id. § 1225(b). For the following reasons, the Court finds the word “inspection” as it is used
2 throughout § 1225, and in § 1225(b) specifically, describes a specific process that only occurs at
3 or near the border when a noncitizen is seeking entry or apprehended shortly after unlawful entry
4 into the country (*i.e.* upon arrival)—rather than a process that occurs when an ICE officer
5 apprehends an individual in the interior and inquires as to their lawful or unlawful presence.

6 The INA defines “admission” as “the lawful *entry* of the alien into the United States after
7 *inspection* and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(12)(A) (emphasis
8 added). While the statute does not define the term “entry,” the Ninth Circuit has “long understood
9 this term to refer to ‘coming from outside’ into the United States.” Torres, 976 F.3d at 924 (citing
10 United States ex rel. Claussen v. Day, 279 U.S. 398, 401 (1929); United States v. Yong Jun Li,
11 643 F.3d 1183, 1186–88 (9th Cir. 2011) (explaining that [the Ninth Circuit continues] to construe
12 the INA to incorporate Claussen’s conception of “entry”). Class Members here are charged as
13 being inadmissible, *i.e.* ineligible for a visa or admission, as “[i]llegal entrants” due to their status
14 as being “present in the United States” “without being admitted or paroled.” See
15 8 U.S.C. § 1182(a)(6)(A)(i). As the statutory definition of “admission” clarifies, a noncitizen
16 cannot be present “without being admitted” unless they have already *entered* the country
17 unlawfully, *i.e.*, without *inspection and authorization* by an immigration officer.
18 See 8 U.S.C. § 1101(a)(12)(A). Taken together, the use of the term “inspection” in § 1225 denotes
19 a process that occurs at or near the border, when a noncitizen is seeking entry or in the process of
20 entering (*i.e.* arriving) in the country.

21 The INA does not specifically define “inspection,” but where that term is used elsewhere
22 in the statute, its usage supports the above-described construction. See Powerex Corp. v. Reliant
23 Energy Servs., Inc., 551 U.S. 224, 232 (2007) (“[I]dentical words and phrases within the same
24 statute should normally be given the same meaning.”). Under § 1255, for instance, a noncitizen
25 “who was *inspected* and admitted or paroled into the United States” is eligible for adjustment of
26 status to lawful permanent resident. 8 U.S.C. § 1255(a) (emphasis added). Thus, generally,
27 noncitizens “who entered the country without *inspection* are ineligible to seek adjustment to lawful
28 permanent status.” Chan v. Reno, 113 F.3d 1068, 1071 (9th Cir. 1997) (emphasis added) (citing

1 8 U.S.C. § 1255(a) (“The status of an alien who was *inspected and admitted or paroled* into the
2 United States may be adjusted . . . to that of an alien lawfully admitted for permanent residence[.]”)
3 (emphasis added)). Congress made an exception to this general rule for noncitizens “physically
4 present in the United States” “who entered the United States without *inspection*” and meet certain
5 additional requirements. *Id.* (quoting 8 U.S.C. § 1255(i)) (emphasis added). Satisfying those
6 additional requirements “only confers the right to apply” for adjustment of status. Guevara v.
7 Holder, 649 F.3d 1086, 1093 (9th Cir. 2011). But a noncitizen who entered without inspection
8 cannot assert eligibility for adjustment of status simply by claiming that they were “inspected” by
9 an ICE agent in Las Vegas or elsewhere in the interior such that they do not qualify as being present
10 without inspection under § 1225(i)(1)(A)(i). The adjustment of status requirements contained in
11 the text of § 1255 therefore support construing the meaning of “inspection” in that provision as
12 referring to a process that occurs at the border. And, under accepted principles of statutory
13 interpretation, that meaning should extend to the interpretation of the term “inspection” as it is
14 used in § 1225. See Powerex Corp., 551 U.S. at 232.

15 This construction of “inspection” as temporally and geographically limited to the border is
16 further bolstered by that term’s use in other provisions of the INA. Section 1325(a)(2) makes it a
17 crime for “[a]ny alien” to “elude[] examination or *inspection* by immigration officers[.]” United
18 States v. Corrales-Vazquez, 931 F.3d 944, 946 (9th Cir. 2019) (quoting 8 U.S.C. § 1325(a)(2))
19 (emphasis added). In Corrales-Vazquez, the Ninth Circuit considered whether any noncitizen “who
20 crosses into the country at a non-designated time or place is guilty of ‘eluding examination or
21 inspection by immigration officers’ under § 1325(a)(2).” *Id.* The Court held the term “‘inspection’
22 refers to background screening, searches, and other prerequisites for admission” by reference to
23 its use in § 1225, and specifically §§ 1225(a)(3), (d). *Id.* at 948 n.4. The Court held that “as a literal
24 matter” the phrase “eludes examination or inspection by immigration officers” in § 1325(a)(2)
25 could be read so as to encompass anyone who “entered the United States without examination or
26 inspection” but that “basic interpretive principles” such as “the presumption that statutory
27 language is not superfluous” and that specific phrases must be read within their context and place
28 “in the overall statutory scheme” demonstrated that § 1325(a)(2) concerns only “conduct occurring

1 at a designated port of entry that is open for inspection, where ‘examination [and] inspection of
2 immigration officers’ take place.” Id. at 948–53.

3 In divining the meaning of § 1325(a)(2), the Ninth Circuit relied on the meaning of the
4 phrase “examination or inspection by immigration officers” at the time of the phrase’s origins in
5 1929, because Congress left that phrase unchanged in subsequent amendments to the INA. Id. at
6 948. Based on its original meaning, the Court held “the crime of ‘elud[ing] examination or
7 inspection by immigration officers’ can be committed only *where and when examinations or*
8 *inspections take place*—at open ports of entry.” Id. at 948 (emphasis added). The Court also
9 referred to the meaning of inspection under § 1225, and noted “an immigration inspection can
10 technically occur anywhere *along the border* and at any time” because any noncitizen “‘who
11 arrives in the United States’—whether or not at a designated port of arrival—is ‘deemed . . . an
12 applicant for admission’ and all ‘all applicants for admission . . . shall be inspected by immigration
13 officers[.]’” Id. at 948 n.4 (first quoting 8 U.S.C. § 1225(a)(1), then § 1225(a)(3)). The Court
14 specifically contemplated inspection under § 1225 as geographically and temporally limited: as a
15 process performed by a “border patrol agent” who discovered a noncitizen near the border, which
16 can occur under § 1225 “hours or perhaps days after the alien crossed into the United States.” Id.

17 Returning to § 1225(b), the above-described usage of the term “inspection” in other
18 provisions of the INA suggests “inspection” of “applicants for admission” as contemplated in
19 § 1225(b) is similarly geographically and temporally limited, *i.e.*, a process that occurs when a
20 noncitizen is seeking to *enter* the country, at or near the border. Cf. Al Otro Lado, 138 F.4th at
21 1119 (finding § 1225(a)(1) and its surrounding statutory text indicate “that Congress did not intend
22 to impose strict limits on which noncitizens *at the border* must be inspected.”) (emphasis added).
23 As such, the notion that an ICE officer conducting removal operations in the interior is engaging
24 in “inspection of applicants for admission” under § 1225(b) stretches “the statutory text beyond its
25 breaking point” when that phrase is read in the context of its surrounding language and the statutory
26 scheme. Torres, 976 F.3d at 926.

27 Consistent with the above construction of “inspection,” the Court now focuses on the
28 specific mandatory detention provision relied on by the government, § 1225(b)(2)(A), and finds

1 that it only applies in the border context. Section 1225(b)(2)(A) does not simply state that an
2 “applicant for admission” “shall be detained” for failure to prove their admissibility; rather it reads:
3 “[i]n the case of an alien who is an applicant for admission, if the examining immigration officer
4 determines that an alien seeking admission is not clearly and beyond a doubt entitled to be
5 admitted, the alien shall be detained for a proceeding under section 1229a of this title.”
6 8 U.S.C. § 1225(b)(2)(A) (referring to removal proceedings under 8 U.S.C. § 1229a). The
7 provision thus restricts its reach to 1) a noncitizen “who is an applicant for admission” who is also
8 2) “an alien seeking admission” and 3) questioned by “an examining immigration officer” in the
9 context of “inspection.” *Id.* The language of these conditions suggests a moment in time when a
10 noncitizen is seeking to cross, crossing, or has recently crossed a border, not an indefinite status
11 that applies whenever and wherever a noncitizen is apprehended by an immigration officer and
12 charged with inadmissibility. *See Al Otro Lado v. Wolf*, 952 F.3d 999, 1011–12 (9th Cir. 2020)
13 (“the use of the present progressive, like use of the present participle, denotes an ongoing
14 process.”) (citation omitted); *see also Carr v. United States*, 560 U.S. 438, 448 (2010) (“Consistent
15 with normal usage, we have frequently looked to Congress’ choice of verb tense to ascertain a
16 statute’s temporal reach.”).

17 That this provision is only applicable in the border context is further enforced by the
18 statutory history,¹⁴ where “§ 1225(b)(2)(A) is the descendant of the statutory provisions that have
19 historically governed detention of noncitizens arriving at the borders for well over a hundred years,
20 whereas § 1226 stems from newer-interior detention laws.” *Buenrostro-Mendez*, 166 F.4th at 513
21 (Douglas, J., dissenting); *see Barco Mercado v. Francis*, 811 F.Supp.3d 487, 500 (S.D.N.Y. 2025)
22 (describing an “unbroken chain of granting discretion to immigration authorities to release
23 noncitizens [living in the United States] pending final removal decisions,” beginning with the
24 Immigration and Nationality Act of 1952). The statutory text and its history indicate Congress
25 sought to preserve this distinction. For example, pre-IIRIRA, § 1225 was titled “Inspection by

26
27 ¹⁴ “Statutory history refers to the changes in the text of a statute when it is subsequently
28 amended by Congress. That is not to be confused with legislative history, which relates to the
various legislative materials and reports produced when a bill is passed by Congress.” *Alaska Dept.
of Fish and Game v. Fed. Subsistence Bd.*, 139 F.4th 773, 786 n.11 (9th Cir. 2025).

1 immigration officers” and 1225(b) stated “[e]very noncitizen . . . who may not appear to the
2 examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to
3 land shall be detained[.]” 8 U.S.C. § 1225(b) (1995). An “examining immigration officer” thus
4 referred to officers conducting inspections at the border, *i.e.* “the port of arrival.” *Id.* And where
5 the phrases “inspection by immigration officers” and “examining immigration officer” in §
6 1225(b) have “remained unchanged” throughout statutory amendments of the relevant provision
7 since they were first used in 1952, they “presumptively retain[] [their] original meaning.”
8 Corrales-Vazquez, 931 F.3d at 948 (citing Whitfield v. United States, 574 U.S. 265 (2015)).

9 This suggests that “inspection” by an “examining immigration officer” under §
10 1225(b)(2)(A) is a process that occurs, as it always has, at the border. *See id.* That Congress
11 removed the phrase “ports of arrival” through the IIRIRA amendments is consistent with the Ninth
12 Circuit’s interpretation of § 1225, and § 1225(a)(1) specifically, as amended to ensure there are no
13 “strict limits on which noncitizens *at the border* must be inspected.” Al Otro Lado, 138 F.4th at
14 1119 (emphasis added). In other words, Congress preserved § 1225 as a border provision, but
15 expanded the categories of noncitizens subject to inspection to ensure “an immigration inspection
16 can technically occur anywhere along the border and at any time” such that a noncitizen
17 apprehended near the border, or between ports of entry, after crossing without admission would
18 be subject to inspection under § 1225(b)(2)(A). Corrales-Vazquez, 931 F.3d at 948 n.4; *see also*
19 Abramski v. United States, 573 U.S. 169, 179 (2014) (explaining that courts “interpret the relevant
20 words not in a vacuum, but with reference to the statutory context, ‘structure, history, and
21 purpose’”) (citation omitted).

22 Section 1225(b)(4) further underscores the above analysis. That subsection provides “[t]he
23 decision of the examining immigration officer, if favorable to the admission of any alien, shall be
24 subject to challenge by any other immigration officer” and referred to “an immigration judge” for
25 a removal proceeding under § 1229a. 8 U.S.C. § 1225(b)(4). But ICE officers conducting
26 enforcement and removal operations in the interior of the country cannot make a binding decision
27 that is favorable to the admission of an apprehended noncitizen. To suggest otherwise would mean
28 that an ICE officer has the authority to confer an “admission,” and all the legal benefits that arise

1 from an admission, on a noncitizen in the interior who is present without admission or parole. But
2 when ICE officers apprehend noncitizens like Class Members, they *charge* them with being
3 inadmissible and thereby commence removal proceedings *before an immigration judge*. It is the
4 immigration court, not the arresting ICE officers, that makes a “decision” that is either favorable
5 or unfavorable regarding a noncitizen’s admissibility. This further clarifies that “inspection” by an
6 “examining immigration officer” as contemplated in § 1225(b)(2)(A) refers to a process that occurs
7 only at the border.¹⁵

8 ***ii. Class Members are not ‘Seeking Admission’ Under § 1225(b)(2)(A)***

9 That § 1225(b)(2)(A) only applies in the border context, and cannot apply to Class
10 Members, is also evident in Congress’ use of the phrase “seeking admission,” a phrase which was
11 similarly preserved from the predecessor statutory provision. See 8 U.S.C. § 1225(a) (1995). To
12 reiterate, Class Members are noncitizens without lawful status, who are charged with being present
13 without inspection or parole, and thus inadmissible. See 8 U.S.C. § 1182(6)(A). Again, admission
14 is statutorily defined as “lawful entry into the United States.” 8 U.S.C. § 1101(a)(12)(A). Seeking,
15 however, is not defined, and while “Congress may . . . define a word or phrase [like ‘admission’
16 and ‘applicant for admission’] in a specialized way,” “absent such [a definition], those whose lives
17 are governed by the law are entitled to rely on its ordinary meaning, not left to speculate about
18 hidden messages.” Feliciano v. Dep’t of Transp., 605 U.S. 38, 45 (2025). The ordinary meaning
19 of “seeking” in this context means “to go in search of” “to move or act so as to reach or arrive at”
20 “to ask for” or “to try to acquire or gain.” Seek, Merriam-Webster’s Unabridged Dictionary,
21 MERRIAM-WEBSTER [<https://perma.cc/R8D8-CBTT>] (last visited Mar. 30, 2026).

22 It simply defies common usage to state that Class Members, who are arrested while *already*
23

24 ¹⁵ Congress also specifically indicated that § 1225, as amended by IIRIRA, continues to
25 govern “arrival and inspection” at the border while § 1226 governs after unlawful entry “through
26 proceedings and removal.” See H.R. Rep 104-469, pt. 1, at 13 (1996). Specifically, Congress
27 explained the IIRIRA amendments were intended to “reorganize[]” the provisions of the INA “to
28 provide a more logical progression from arrival and inspection through proceedings and removal.”
Id. This strongly suggests that Congress used the term “inspection” throughout the INA, and in
§ 1225, as it had been historically used, to refer to a process that occurs upon “arrival,” while
subsequent provisions, such as § 1226, govern within the country, after entry. Id.

1 *inside* the U.S, and not while arriving in the country, are trying to acquire or gain “lawful entry,”
2 where entry means “‘coming from outside’ into the United States.” Torres, 976 F.3d at 924
3 (citation omitted). Thus, the government’s contention that the ordinary meaning of “seeking
4 admission” encompasses Class Members does not pass muster. See Defs.’ Opp’n 13–14, ECF No.
5 87. As Justice Scalia wrote, “the acid test of whether a word can reasonably bear a particular
6 meaning is whether you could use the word in that sense at a cocktail party without having people
7 look at you funny.” Johnson v. United States, 529 U.S. 694, 718 (2000) (Scalia, J., dissenting).
8 The government’s “assigned meaning would surely fail that test, even late in the evening.” Id. One
9 cannot come from outside *into* the country when they are already present within it and have been
10 for years, or as one district court succinctly put it, “you can’t go into a place where you already
11 are.” J.G.O. v. Francis, 25-CV-7233 (AS), 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025); see
12 also Kyong Ho Shin v. Holder, 607 F.3d 1213, 1220 (9th Cir. 2010) (counseling that courts must
13 use common sense in construing the INA).

14 Adopting the reasoning of the Fifth Circuit majority, the government contends “every
15 ‘applicant for admission’ is inherently and necessarily ‘seeking admission.’” Defs.’ Opp’n 13,
16 ECF No. 87. The Fifth Circuit reasoned that “seeking” is like “applying” and an applicant for
17 admission is therefore necessarily seeking admission, with an analogy to applying to college and
18 thereby seeking admission. Buenrostro-Mendez, 166 F.4th at 502 (Using the example of a college
19 applicant, stating “[i]t would make no sense to say that as soon as the applicant clicks ‘submit’ on
20 her application, she is no longer seeking admission, merely because she does not take any further
21 affirmative steps to gain admittance.”); accord Avila, 2026 WL 819258, at *3. But that distorts the
22 specially defined term of art that Congress created in “applicant for admission” through
23 § 1225(a)(1). “[T]hough in the usual sense an ‘applicant’ usually has sought permission for
24 something” imposing an ordinary meaning of “applicant” in this context, “would break apart the
25 term of art—‘applicant for admission’—that has been plainly defined by the statute and gloss the
26 singular word ‘applicant’ with a meaning that Congress expressly never intended.” de Jesus
27 Aguilar v. English, 3:25-CV-898 DRL-SJF, 2025 WL 3280219, at *7 (N.D. Ind. Nov. 25, 2025)
28 (citing Digital Realty Tr., Inc. v. Somers, 583 U.S. 149, 160 (2018) (“When a statute includes an

1 explicit definition, we must follow that definition, even if it varies from a term's ordinary
 2 meaning.”) (quotations altered and citation omitted)). “So ‘applicant for admission’ means, and
 3 only means, what Congress says it means.” Id.

4 Indeed, the Ninth Circuit specifically overruled its prior decision in Minto v. Sessions, 854
 5 F.3d 619 (9th Cir. 2017) for misreading the “deeming provision” in § 1225(a)(1), “which places
 6 some physically-but-not-lawfully present noncitizens into a fictive legal status for purposes of
 7 removal proceedings” as equivalent to “application for admission” as that phrased is used in §
 8 1182(a)(7). Torres, 976 F.3d at 927–29. Specifically, the Court held that “application for
 9 admission” under § 1182(a)(7) refers to “a real event”: “the moment in time when the immigrant
 10 actually applies for admission *into* the United States.” Id. at 929 (citing 8 U.S.C. § 1182(a)(7))
 11 (emphasis added). The Ninth Circuit also pointed to a BIA decision which accurately distinguished
 12 between the term “‘applicant for admission’ in the deeming provision of § 1225(a)(1)” as “‘merely’
 13 determine[ing] a [noncitizen’s] legal status for purposes of removal proceedings” and “otherwise
 14 ‘distinguishable from “applying . . . for admission to the United States” within the meaning of’
 15 § 1182(h).” Id. at 929 (quoting Matter of Y-N-P-, 26 I. & N. Dec. 10 (BIA 2012)).

16 Interpreting “applicant for admission” according to ordinary meaning, rather than as a term
 17 of art, as the government does, would suggest that since a noncitizen present in the U.S. without
 18 admission remains an “applicant for admission” under § 1225(a)(1), they are likewise perpetually
 19 submitting an “application for admission” under 8 U.S.C. §§ 1182(a)(7) and 1182(h). But the Ninth
 20 Circuit specifically rejected a reading that conflates the term of art “applicant for admission” with
 21 the term “application” as it is used elsewhere in the INA, and held “the time of *application* for
 22 admission is the time when a noncitizen seeks permission to physically enter United States
 23 territory.”¹⁶ Torres, 976 F.3d at 924 (emphasis added). It is thus equally erroneous to state that a
 24

25 ¹⁶ In fact, consistent with their new policies, Defendants charge Class Members with
 26 inadmissibility under § 1182(a)(7), in addition to § 1182(a)(6), even though the application of §
 27 1182(a)(7) to Plaintiffs is foreclosed by the Ninth Circuit’s decision in Torres. See, e.g., Pls.’ Mot.
 28 to Certify Class, Ex. 2C, ECF No. 15-5 (October 3, 2025 Order of Immigration Judge noting
 Named Plaintiff Jacobo-Ramirez is charged by DHS as inadmissible under §§ 1182(a)(6)(A)(i)
 and (a)(7)(A)(i)(I)); see also Avila, No. 25-3248, 2026 WL 819258, at *1 (DHS “initiated removal

1 noncitizen who occupies the “fictive legal status for purposes of removal proceedings” of
2 “applicant for admission” is perpetually *applying for* (*i.e.* seeking) admission when they long ago
3 entered the country *without admission*. Id. at 928.

4 Further, the government and Fifth Circuit’s reading of “an alien seeking admission” as
5 synonymous to “an applicant for admission” would render Congress’ use of the phrase “seeking
6 admission” superfluous, and thereby violate fundamental canons of construction. See Pulsifier v.
7 U.S., 601 U.S. 124, 149 (2024) (“In a given statute . . . different terms usually have different
8 meanings.”) (citing A. Scalia & B. Garner, Reading Law 170-71 (2012) (explaining the
9 meaningful-variation canon)); see also Microsoft Corp. v. 14l Ltd. Partn., 564 U.S. 91, 106 (2011)
10 (The canon against surplusage applies to give effect “to every clause and word of a statute.”) If
11 Congress intended all noncitizens already present in the U.S. without inspection to be subject to
12 § 1225(b)(2)(A), as the government contends, that provision could read: “in the case of an alien
13 who is an applicant for admission, if the examining immigration officer determines that ~~an alien~~
14 ~~seeking admission~~ [the alien] is not clearly and beyond a doubt entitled to be admitted, the alien
15 shall be detained for a proceeding under section 1229a of this title.”¹⁷ See Biden v. Texas, 597
16 U.S. at 798 (“If Congress had wanted the provision to have that effect, it could have said so in
17 words far simpler than those that it wrote.”). Instead, Congress limited the subsection’s mandatory
18 detention requirement to apply only to a noncitizen who is both an applicant for admission and *is*
19 *also* a noncitizen “seeking admission.” 8 U.S.C § 1225(b)(2)(A).

20 The government responds that “seeking admission” does not have independent meaning in
21 _____
22 proceedings against [Avila] . . . charging him with removability under
23 8 U.S.C. §§ 1182(a)(6)(A)(I), (a)(7)(A)(i)(I) for being an alien present in the United States without
24 being admitted and lacking valid entry documentation.”).

24 ¹⁷ As Plaintiffs’ point out, in its brief, the government quotes § 1225(b)(2)(A), but
25 substitutes the word “the” for the word “an” before the term “alien seeking admission” in an effort
26 to equate the phrase “*an* alien seeking admission” with the preceding reference to “*an* applicant
27 for admission.” Pls.’ Reply 8 n.1, ECF No. 88 (citing Defs.’ Opp’n at 13, line 17, ECF No 87). By
28 rewriting § 1225(b)(2)(A) in this manner, the government seems to recognize that the statutory
text as written does “not create the equivalency it is looking for.” Id. (citing United States Sugar
Corp. v. E.P.A., 113 F.4th 984, 993 (D.C. Cir. 2024) (“Congress’s choice between a definite and
indefinite article matters when determining statutory meaning.”) (citing Corner Post, Inc. v. Bd.
Of Governors of Fed. Rsrv. Sys., 604 U.S. 799, 817 (2024))).

1 § 1225(b)(2)(A) because “[r]edundancies are common in statutory drafting—sometimes in a
2 congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack
3 of foresight, or sometimes simply because of the shortcomings of human communication.” Defs.’
4 Opp’n 15, ECF No. 87 (quoting Barton v. Barr, 590 U.S. 222, 223 (2020)). However, as the
5 Supreme Court held in Rimini St., Inc v. Oracle USA, Inc., 586 U.S. 334 (2019), the case Barton
6 cited in support of its reasoning, “[i]f one possible interpretation of a statute would cause some
7 redundancy and another interpretation would avoid redundancy, that difference in the two
8 interpretations can supply a clue as to the better interpretation of a statute.” Id. at 346. And in
9 Barton, both parties agreed that their competing interpretations would render at least some separate
10 statutory provisions superfluous. See Barton, 590 U.S. at 239; see also Rimini, 586 U.S. at 345
11 (explaining the party invoking the surplusage canon was hypocritically presenting an interpretation
12 that “would create its own redundancy problem” by rendering a portion of a separate provision
13 “largely redundant.”). In contrast, Plaintiffs’ proposed interpretation creates no surplusage.
14 Therefore, interpreting Congress’ use of the phrase “seeking admission” in § 1225(b)(2)(A) to do
15 the independent work of limiting the mandatory detention provision’s application to all “applicants
16 for admission” is clearly the superior interpretation. See Corrales-Vazquez, 931 F.3d at 950
17 (rejecting the government’s interpretation of the INA as violating “the cardinal principle of
18 interpretation that courts must give effect, if possible, to every clause and word of a statute”) (citing
19 Loughrin v. United States, 573 U.S. 351, 358 (2014) (internal quotation marks omitted).

20 Additionally, as discussed below, construing the phrase “seeking admission” as limiting
21 § 1225(b)(2)(A)’s application to the border context allows for a consistent interpretation of that
22 identical phrase as it is used in a separate provision of the INA, 8 U.S.C. § 1357(c). See discussion
23 infra Section VI.C.3.ii.

24 The Court further rejects the government’s reliance on the neighboring provision in §
25 1225(a)(3) to demonstrate that “applicant[s] for admission” are a subset of noncitizens “seeking
26 admission.” See Defs’ Opp’n 13–14, ECF No. 87. That provision requires the inspection of “[a]ll
27 aliens . . . who are applicants for admission or otherwise seeking admission or readmission to or
28 transit through the United States.” 8 U.S.C. § 1225(a)(3). The government states “the word

1 ‘otherwise’ means in a ‘different way or manner.’” Defs.’ Opp’n 13, ECF No. 87 (citing Texas
2 Dep’t of Hous. & Cmty. Affs. V. Inclusive Communities Project, Inc., 576 U.S. 519, 535 (2015)
3 (quoting Webster’s Third International Dictionary 1598 (1971)). However, that meaning does not
4 necessarily support the government’s interpretation that “[b]eing an applicant for admission’ is
5 thus a particular ‘way or manner’ of ‘seeking admission,’ such that an alien who is an “applicant
6 for admission” is “seeking admission for purposes of § 1225(b)(2)(A).” Id. at 14.

7 The dictionary definition of the phrase “or otherwise,” is “used to refer to something that
8 is *different* from something already mentioned.” Or Otherwise, Merriam-Webster's Collegiate
9 Dictionary, MERRIAM-WEBSTER [<https://perma.cc/5S5M-L3HY>] (last visited Mar. 30, 2026)
10 (emphasis added). This is consistent with the ordinary meaning of “or,” a term that is “almost
11 always disjunctive, that is, the words it connects are to be given separate meanings.” Loughrin v.
12 United States, 573 U.S. 351, 357 (2014) (citation omitted). The government’s insistence that
13 “seeking admission” is necessarily a subset of “applicant for admission” is not consistent with the
14 ordinary meaning of “or otherwise.” Further, the case law the government cites for its
15 interpretation of “or otherwise” as creating a category-subset relationship is based on statutory
16 phrases where “otherwise” connects multiple verbs.¹⁸ See Villarreal v. R.J. Reynolds Tobacco Co.,
17 839 F.3d 958, 963–64 (11th Cir. 2016) (*en banc*) (analyzing “otherwise” that connected two

18
19 ¹⁸ Meanwhile other statutes use “or otherwise” without signaling a category-subset
20 relationship. See, e.g., 22 U.S.C. § 7103(d)(7)(C) (requiring report of “the number of persons who
21 have applied for, been granted, or been denied a visa or otherwise provided status under [other
22 provisions]”); 38 U.S.C. § 8102(b) (“No medical facility may be constructed or otherwise acquired
or altered except [under specified circumstances].”).

23 In fact, § 1226(a)(3) uses “or otherwise” to distinguish two categories without suggesting
24 one is a subset of the other. That provision allows the Secretary to release a noncitizen and provide
25 work authorization if the noncitizen “is lawfully admitted for permanent residence or otherwise
26 would (without regard to removal proceedings) be provided such authorization.”
27 8 U.S.C. § 1226(a)(3). Lawful permanent residents do not require work authorization, as they are
28 automatically work-eligible. See 8 U.S.C. § 1324a(h)(3) (a noncitizen “lawfully admitted for
permanent residence” is work-eligible and does not need to be “authorized to be . . . employed.”).
Thus, the two categories in § 1226(a)(3) (lawful permanent residents and other individuals who
would be eligible for work authorization) do not form a category-subset relationship and
demonstrate that the government and Fifth Circuit majority’s characterization of the ordinary
meaning of “or otherwise” is misplaced.

1 verbs); see also Kleber v. CareFusion Corp., 914 F.3d 480, 483 (7th Cir. 2019) (same). But
2 “Section 1225(a)(3)'s list reflects a mix of parts of speech: the noun ‘applicants for admission’
3 alongside the adjectival present participle ‘seeking’ and participial phrase ‘seeking admission or
4 readmission.’” Buenrostro-Mendez, 166 F.4th at 518 (Douglas, J., dissenting).

5 Thus, the subsection Congress actually wrote is more like saying, at the end of
6 football season, “All students who are football players or otherwise seeking to play
7 football or cheerlead should come to the gym for an info session this evening.” In
8 a grammatical void, we might be tempted to equate “football players” with
9 “students seeking to play football,” or deem the former a subset of the latter, but
10 the players on the actual football team (the high school equivalent of a statutory
11 term of art) would likely disagree.

12 Id. In any event, reading “or otherwise” according to its ordinary meaning, *i.e.*, referring to
13 “seeking admission” as meaning something different from “applicant for admission,” recognizes
14 that “Congress chose to include this additional phrase—‘seeking admission’—not once but . . .
15 multiple times [which] suggests that it must mean something distinct.” J.G.O., 2025 WL 3040142,
16 at *3.

17 The government alternatively argues that Class Members are presently engaged in the act
18 of “seeking admission” when, after being arrested and detained for removal proceedings, they
19 decide not to depart from the country pursuant to 8 U.S.C. § 1225(a)(4). Defs.’ Opp’n 16–17, ECF
20 No. 87. But the government’s reference to that provision only further emphasizes the
21 inapplicability of § 1225 to Class Members. Section 1225(a)(4) codified a longstanding
22 mechanism for noncitizens who have not yet entered the country to withdraw an application for
23 admission and depart immediately to avoid the entry of a removal order. See 62 Fed. Reg. at 10313.
24 This statutory withdrawal is not available to Class Members, because they already entered the U.S.
25 without inspection and are not “arriving aliens.” See, e.g., 8 C.F.R. § 1240.1(d) (“An immigration
26 judge may allow only an arriving alien to withdraw an application for admission.”) Instead, Class
27 Members have access to a distinct form of discretionary relief to avoid removal proceedings and
28 other statutory penalties: voluntary departure. See 8 U.S.C. § 1229c; Dada v. Mukasey, 554 U.S.
1, 8-13 (2008). Notably, the government provides no mechanism for Class Members to rely on
§ 1225(a)(4)’s withdrawal relief.

Similarly, the government suggests that Class Members like Named Plaintiff Guevara-

1 Alcantar who apply for relief from removal while living in the U.S. are “seeking admission”
2 pursuant to § 1225(b)(2)(A) because they are engaged in an affirmative act to obtain lawful status.
3 Defs.’ Opp’n 16–17, ECF No. 87. The government points to Mr. Guevara-Alcantar’s U-Visa
4 application to support this argument, but its own recently issued policy guidance clarifies that a
5 grant of a U-Visa is not an “admission.” See U.S. Citizenship & Immigr. Servs., Policy Alert,
6 Admission for Adjustment of Status under INA 254(a), PA-2025-25 (Nov. 3, 2025). Similarly, the
7 Supreme Court has clarified that a noncitizen inside the country, who entered without inspection,
8 who applies for relief from removal is “seeking lawful status,” not “seeking admission” which
9 could confer lawful permanent residence See Sanchez v. Mayorkas, 693 U.S. 409, 414 (2021); see
10 also Guerro Orellana v. Moniz, No. 25-CV-12664-PBS, 2025 WL 2809996, at *7 (D. Mass. Oct.
11 3, 2025) (“A grant of cancellation of removal would result in [the plaintiff’s] adjustment of status
12 . . . while he remains in the United States, not his lawful entry into the country.”). In sum, the
13 Court finds that § 1225(b)(2)(A) does not apply to Class Members because they are not “seeking
14 admission” as contemplated in that provision.

15 *iii. Section 1226 Applies to Class Members*

16 Even if the Court had doubts that the text of § 1225, without more, is sufficient to resolve
17 the mandatory detention provision’s inapplicability to Class Members, the text of § 1226 resolves
18 those doubts. That section, titled “[a]pprehension and detention of aliens” allows DHS “on a
19 warrant” to arrest, detain, and release any noncitizen “pending a decision on whether the alien is
20 to be removed from the United States.” 8 U.S.C. § 1226(a). The term “apprehension” in § 1226,
21 as compared to “inspection” by “examining immigration officer[s]” in § 1225(b)(2)(A), far more
22 accurately describes what ICE Enforcement and Removal officers are doing when they encounter
23 Class Members in the interior. See Apprehension, Merriam-Webster’s Unabridged Dictionary,
24 MERRIAM-WEBSTER [<https://perma.cc/26QN-GR6N>] (last visited Mar. 30, 2026) (“the taking by
25 legal, especially criminal, process: arrest”). The government has not argued that the plain text of
26 § 1226(a) is inapplicable to Class Members, nor can it. Instead, it asserts § 1225(b)(2)(A)
27 supersedes § 1226(a): as explained by the BIA in Hurtado, the government’s new reading asserts
28 that because § 1226 “does not purport to overrule the mandatory detention requirements for

1 arriving aliens and applicants for admission explicitly set forth” in § 1225(b), any noncitizen who
2 entered the country without inspection “shall be detained” under § 1225(b)(2) during the pendency
3 of removal proceedings. Hurtado, 29 I. & N. at 218–19 (quoting § 1225(b)(2)).

4 Importantly, the text of § 1226(c) *mandates* detention for certain noncitizens charged as
5 “deportable” (meaning they were previously lawfully admitted to the United States) or
6 “inadmissible” under, *inter alia*, 8 U.S.C. §§ 1182(a)(6)(A), (6)(C), or (7) (meaning they have not
7 been admitted to the United States). See 8 U.S.C. §§ 1226(c)(1)(A)–(E). Most relevant here,
8 § 1226(c) requires detention of a noncitizen who is deemed inadmissible because they are “present
9 in the United States without being admitted or paroled” under § 1182(a)(6)(A) and is “charged
10 with, is arrested for, is convicted of, admits having committed, or admits committing acts which
11 constitute the essential elements” of certain crimes. 8 U.S.C. §§ 1226(c)(1)(E)(i)–(ii). A plain
12 reading of the exceptions under § 1226(c), and, most importantly, the fact that such “exceptions”
13 to the availability of being released on bond *exist*, supports a finding that § 1226(a) applies to all
14 noncitizens who, like Class Members, are charged as being “present in the United States without
15 being admitted or paroled” under § 1182(a)(6)(A) but who have not been implicated in any of the
16 enumerated crimes set forth in § 1226(c). See Shady Grove Orthopedic Assocs. P.A. v. Allstate
17 Ins. Co., 559 U.S. 393, 400 (2010) (finding that where Congress creates “specific exceptions” to a
18 statute’s general applicability, it “proves” that absent those exceptions, the statute generally
19 applies). Indeed, if Congress had intended § 1225(b)(2)(A) to apply to all noncitizens who had not
20 been admitted, regardless of whether they were detained at the border, there would have been no
21 need to again specify mandatory detention for certain categories of inadmissible noncitizens (but
22 not others) under § 1226(c). Id.; see also Nielsen, 586 U.S. at 409 (interpreting § 1226(a) and
23 holding “subsection (c) is simply a limit on the authority conferred by subsection (a).”)

24 The government responds that these provisions are not rendered entirely useless because
25 they apply in the case of noncitizens who “are inadmissible but were erroneously admitted.” See
26 Defs.’ Resp. to Pls.’ Compl. 15, ECF No. 39. But that describes a relatively small category of
27 noncitizens, compared to the millions who are present without admission, and the fact that the
28 government’s reading “would in practical effect render [§ 1226(c)(1)(E)] entirely superfluous in

1 all but the most unusual circumstances” cannot cure a surplusage problem. TRW Inc. v. Andrews,
2 534 U.S. 19, 29 (2001). Moreover, the fact that the Laken Riley Act added § 1226(c)(1)(E), which
3 mandates detention for certain noncitizens inadmissible under § 1182(a)(6)(A), further emphasizes
4 the importance of interpreting § 1225(b)(2)(A) to avoid rendering § 1226(c)(1)(E) superfluous.
5 Shulman v. Kaplan, 58 F.4th 404, 410–11 (9th Cir. 2023) (“a court must interpret the statute as a
6 whole, giving effect to each word and making every effort not to interpret a provision in a manner
7 that renders other provisions of the same statute inconsistent, meaningless or superfluous.”)
8 (citation and quotation marks omitted); Gieg v. Howarth, 244 F.3d 775, 776 (9th Cir. 2001)
9 (“When Congress acts to amend a statute, [courts] presume it intends its amendments to have real
10 and substantial effect.”).

11 The government, the BIA in Hurtado, and the Fifth and Eighth Circuit minimize the
12 disharmony created by their interpretation of § 1225(b)(2)(A) and § 1226(c) as another redundancy
13 to be interpreted as “a congressional effort to be doubly sure” see Hurtado, 29 I. & N. at 222
14 (quoting Barton, 590 U.S. 239). But this reading needlessly takes a “sledgehammer to the statutes
15 Congress wrote, including laws it passed just a year ago.” Buenrostro-Mendez, 554 U.S. at 512
16 (Douglas, J., dissenting). A harmonious reading *must* prevail over a reading that would create
17 redundancy between §§ 1225 and 1226, because “the Court does not lightly assume Congress
18 adopts two separate clauses in the same law to perform the same work,” and there is no evidence
19 that Congress did so in enacting § 1226(c)(1)(E). United States v. Taylor, 596 U.S. 845, 847
20 (2022); see also Marx v. Gen. Revenue Corp., 568 U.S. 371, 386 (2013) (“the canon against
21 surplusage is strongest when an interpretation would render superfluous another part of the same
22 statutory scheme.”).

23 Relatedly, “[w]hen Congress adopts a new law against the backdrop of a ‘longstanding
24 administrative construction,’ the Court generally presumes the new provision should be
25 understood to work in harmony with what has come before.” Monsalvo v. Bondi, 604 U.S. 712,
26 725 (2025) (quoting Haig v. Agee, 453 U.S. 280, 297–98 (1981)). For decades, succeeding
27 administrations have applied § 1225 only to individuals who presented themselves at a United
28 States border or who were arrested while attempting to enter the country other than at a port of

1 arrival. They applied § 1226 to individuals arrested after having entered the country without
2 detection and who had lived in the country for some period. Congress enacted the Laken Riley Act
3 in this historical context. Had the generally understood meaning of § 1225 been what the
4 government now claims, Congress would have had no need to add § 1226(c)(1)(E).

5 The Fifth Circuit responds that Congress passed the Laken Riley Act “at a time when the
6 Executive was still declining to exercise its full enforcement authority under the INA. Accordingly,
7 the Act did have a substantial effect when passed insofar as it required the detention without bond
8 or parole of certain aliens the administration was then treating as bond-eligible.” Buenrostro-
9 Mendez, 554 U.S. at 505. But that does not explain why Congress effectively ratified the existing
10 agency practice by amending § 1226 rather than amending § 1225 to clarify that Congress had
11 always intended all noncitizens who entered without inspection to be subject to mandatory
12 detention. To the extent that the Executive has been violating the law for the past thirty years, as
13 the government claims, it is reasonable to assume that Congress “would have made it plain”
14 through the Laken Riley Act amendments. Torres, 976 F.3d at 928.

15 *iv. Defendants Create Unnecessary Conflict Between §§ 1225 and 1226*

16 Finally, the government’s interpretation of the statute does not simply render § 1226(c)
17 duplicative or superfluous—it creates significant tension between the statutory provisions and the
18 differences in the discretionary detention authority each provision delegates. To illustrate,
19 § 1225(b)(2) and § 1226(c) mandate different categories of detention with different requirements.
20 An applicant detained under § 1225(b)(2) may only be released under the parole provisions of
21 § 1182(d)(5) “on a case-by-case basis for urgent humanitarian reasons or significant public
22 benefit.” 8 U.S.C. § 1182(d)(5). While the Secretary’s discretion to grant release under
23 § 1182(d)(5) is more limited than under § 1226(a), noncitizens granted § 1182(d)(5) parole from
24 custody under § 1225(b)(2) are also granted more rights, including the ability to apply for work
25 authorization and adjustment of status. In contrast, § 1226(a) specifically forbids the Secretary
26 from providing a noncitizen released on conditional parole (other than legal permanent residents)
27 with a work authorization. Id. § 1226(a)(3). And noncitizens released on conditional parole under
28 § 1226(a) are not eligible for adjustment of status. Accordingly, the various grants of authority

1 under which the Secretary may detain a noncitizen under §§ 1225 and 1226 are not simply
2 redundant—they impose entirely different detention schemes.

3 The government anticipated the inconsistency created by its new interpretation of the
4 statutory scheme as evidenced in the July 8th Memo. It insists “DHS does not take the position
5 that prior releases of applicants for admission pursuant to [§ 1226(a)] were releases on parole under
6 [§ 1182(d)(5)(A)].” See Pls.’ Mot., Ex. A at 3, ECF No. 74-1. Complications from this inconsistent
7 position have already arisen in the Eleventh Circuit. On December 12, 2025, that court heard oral
8 argument in Labrada-Hechavarria v. U.S. Attorney General, a case that concerns whether Cuban
9 nationals who were denied adjustment to lawful permanent resident status because they were
10 previously released on conditional parole under § 1226(a), should nevertheless be granted the
11 benefits of humanitarian or public benefit parole under § 1182(d)(5)(A) (such as eligibility for
12 adjustment of status) given the government’s assertion that, as a matter of law, their detention
13 should have occurred under § 1225(b)(2). During argument, the court noted that the situation
14 created by the government’s changed policy was a “mess” and stated: “You can’t have your cake
15 and split it up in two ways so that you get the good side of it and not the bad side of it. You can’t
16 get the mandatory detention that the administration wants for almost all aliens and deny a class of
17 aliens that you [released under a different section of the INA] the benefits of that severe scheme.”
18 Oral Argument at 18:01, 19:21, Labrada-Hechavarria v. U.S. Att’y Gen., No. 23-13664 & 24-
19 10645 (11th Cir. Dec. 12, 2025).

20 The Eleventh Circuit has since vacated and remanded the BIA’s decisions which held that
21 noncitizens previously detained and released under § 1226(a) are ineligible for adjustment of
22 status, due to the government’s changed legal position and the BIA’s decision in Hurtado. Labrada-
23 Hechavarria v. U.S. Attorney General, 23-13664, 2026 WL 496486 (11th Cir. Feb. 23, 2026). This
24 portends a conflict that upends the delicate statutory structure of the INA, which the judiciary must
25 avoid where a harmonious interpretation is not just possible, but far more plausible. See Epic Sys.
26 Corp. v. Lewis, 584 U.S. 497, 511 (2018) (“Our rules aiming for harmony over conflict in statutory
27 interpretation grow from an appreciation that it’s the job of Congress by legislation, not this Court
28 by supposition, both to write the laws and to repeal them.”).

1 For all these reasons, the court finds that § 1225 applies to inspections at the border,
2 whereas § 1226 applies to noncitizens living in the country. While the provisions of § 1226(a)
3 clearly apply to Class Members, there is substantial doubt about whether the provisions of
4 § 1225(b)(2) also apply. The government has therefore failed to show that the mandatory detention
5 requirement of § 1225(b)(2)(A) must supersede the discretionary detention requirement of §
6 1226(a)—and, as a result, the Court finds that the government’s policies refusing to provide Class
7 Members the procedural protections they are entitled to under § 1226(a) are unlawful under the
8 INA and its implementing regulations.

9 2. Legislative History and Purpose

10 Although the Court finds the above discussion resolves the statutory question, the Court
11 turns to the legislative history and purpose of the INA as amended by IIRIRA, because the
12 government frames its interpretation of § 1225(b)(2)(A) as necessary to preserve Congress’
13 legislative purpose. First, the Court notes that while legislative history is an “additional tool of
14 analysis,” “only the most extraordinary showing of contrary intentions from those data would
15 justify a limitation on the ‘plain meaning’ of the statutory language.” Garcia v. U.S., 469 U.S. 70,
16 75 (1984). As Judge Douglas described, and the Court agrees, “[s]tarting from a purpose-centered
17 reading of the wrong statutory provision [§ 1225(a)(1)], the [government] produces textualism
18 without text.” Buenrostro-Mendez, 166 F.4th at 520 (Douglas, J., dissenting). As illustrated below,
19 the government’s characterization of legislative purpose based on statements regarding the
20 enactment of § 1225(a) does not rise to an “extraordinary showing of contrary intentions”
21 sufficient to justify distorting § 1225(b)(2)(A). Garcia, 469 U.S. at 75. To the contrary, the
22 legislative history further supports the above harmonious reading of §§ 1225 and 1226 and the
23 many flaws in the government’s new interpretation of § 1225(b)(2)(A).

24 One purpose of the IIRIRA amendments was to equalize the treatment in enforcement
25 proceedings of noncitizens presenting themselves for inspection at ports of entry, and those
26 apprehended in the interior after effecting an unlawful entry. See Hing Sum v. Holder, 602 F.3d
27 1092, 1099 (9th Cir. 2010). “Prior to 1996, the INA primarily distinguished individuals on the
28 basis of ‘entry’ and not ‘admission.’” Id. “Entry” included entry without inspection, and “[n]on-

1 citizens who had effected an ‘entry’ into the United States were subject to deportation proceedings,
2 while those who had not made an ‘entry’ were subject to exclusion proceedings.” *Id.* Prior to
3 IIRIRA, “non-citizens who had entered without inspection could take advantage of the greater
4 procedural and substantive rights afforded in deportation proceedings, while non-citizens who
5 presented themselves at a port of entry for inspection were subjected to more summary exclusion
6 proceedings.” *Id.* “IIRIRA addressed this anomaly by substituting ‘admission’ for ‘entry’ and by
7 replacing deportation and exclusion proceedings with a general ‘removal’ proceeding.” *Id.* IIRIRA
8 also “added § 1225(a)(1) to ensure that all immigrants who have not been lawfully admitted,
9 regardless of their physical presence in the country, are placed on equal footing in removal
10 proceedings under the INA—in the position of an ‘applicant for admission.’” *Torres*, 976 F.3d at
11 928.

12 The government maintains, as the Fifth Circuit majority found, that an interpretation of the
13 INA that subjects Class Members to the detention framework of § 1226(a) undoes the fix created
14 by Congress by granting them a privilege not available if they had presented themselves for
15 inspection at a port of entry. *See* Defs.’ Opp’n 4–6. This argument misunderstands both the nature
16 of the distinction between §§ 1225 and 1226, as well as the extent of the fix that IIRIRA provided.
17 First, it assumes that it is always better to be subject to the discretionary detention provisions of
18 § 1226(a) rather than the mandatory detention provisions of § 1225(b). But as discussed above, a
19 noncitizen detained under § 1225 may apply for humanitarian or significant public benefit parole
20 under § 1182(d)(5). A grant of parole under § 1182(d)(5) provides a parolee with greater
21 substantive rights, including work authorization, *see* 8 C.F.R. § 274a.12(c)(11), a tolling of
22 unlawful presence time, *see* 8 U.S.C. § 1182(a)(9)(B)(ii), and eligibility for Social Security
23 benefits, *see* 20 C.F.R. § 416.1618(a), (b)(2). *See Carbajal v. Wimmer*, 2:26-CV-00093, 2026 WL
24 353510, at *2 (D. Utah Feb. 9, 2026). In contrast, noncitizens granted conditional parole under
25 § 1226(a) are not eligible for these benefits. *Id.* The government’s revised position, and the Fifth
26 Circuit and Eighth Circuit’s opinions upholding that position (*i.e.*, that § 1225(b)(2) is the
27 controlling detention provision for noncitizens in the interior of the country who entered without
28 inspection) would grant eligibility for humanitarian or public benefit parole under § 1182(d)(5)(A)

1 to a large class of noncitizens to whom the benefits of that parole were previously unavailable. Id.

2 Because the government does not address the INA's provisions concerning parole, the Fifth
3 Circuit presumed detention under § 1226(a) is necessarily preferable to detention under §
4 1225(b)(2). Buenrostro-Mendez, 166 F.4th at 508 n.15 (referring to discretionary detention as “one
5 of the most significant advantages available for unlawful entrants”). And because the majority
6 notes that a “predominant goal” in the enactment of IIRIRA was “to reduce the disparity between
7 lawful and unlawful applicants for admission[,]” the majority found that Congress *must have*
8 intended that all applicants for admission who cannot establish admissibility beyond doubt be
9 detained without the possibility of release on bond. Id. But for the reasons stated above, the
10 detention schemes under § 1225 and § 1226 are distinct, with different advantages and
11 disadvantages. The failure to account for that distinction illustrates the importance of courts relying
12 upon ordinary tools of statutory interpretation, rather than overlooking them based on a speculative
13 determination of what “better honors [the] predominant goal in the enactment of IIRIRA.” Id.; see
14 Luna Perez v. Sturgis Public Schs., 598 U.S. 142, 150 (2023) (“[N]o law pursues its purposes at
15 all costs.”); Rodriguez v. United States, 480 U.S. 522, 526 (1987) (“Deciding what competing
16 values will or will not be sacrificed to the achievement of a particular objective is the very essence
17 of legislative choice—and it frustrates rather than effectuates legislative intent simplistically to
18 assume that whatever furthers the statute's primary objective must be the law.”)

19 Moreover, IIRIRA *did* place noncitizens charged with inadmissibility, whether at a port of
20 entry or within the country, on equal footing concerning the procedures and the burden of proof in
21 removal proceedings—but removal proceedings are distinct from custody determination
22 proceedings. See 8 C.F.R. § 1003.19(d) (noting that an Immigration Judge’s consideration of
23 requests for “custody or bond ... shall be separate and apart from, and shall form no part of, any
24 deportation or removal hearing or proceeding”). “Now, *in removal proceedings*, the relevant
25 distinction for procedural purposes is whether the immigrant has been lawfully admitted,
26 regardless of actual physical presence.” Torres, 976 F.3d at 928 (emphasis added). Specifically,
27 the framework enacted by IIRIRA requires that an applicant for admission, regardless of physical
28 presence, must prove either “clearly and beyond doubt” that they are entitled to be admitted or,

1 “by clear and convincing evidence,” that they are lawfully present in the United States due to a
2 prior admission. 8 U.S.C. § 1229a(c)(2). In contrast, in the case of a noncitizen who has been
3 lawfully admitted but is charged with deportability, it is DHS who has the burden of establishing
4 “by clear and convincing evidence” that the noncitizen is deportable. *Id.* § 1229a(c)(3).

5 But nothing in the legislative history supports an assumption that Congress’s stated concern
6 about procedural and substantive discrepancies *in removal proceedings* would also extend to
7 *custody* determinations. *See* H.R. Rep. 104-469, pt. 1, at 225 (1996) (explaining § 1225(a)(1)
8 “[wa]s intended to replace certain aspects of the current ‘entry doctrine,’ under which illegal aliens
9 who have entered the United States without inspection gain equities and privileges *in immigration*
10 *proceedings* that are not available to aliens who present themselves for inspection at a port of
11 entry”) (emphasis added). Further, even with regards to removal proceedings as opposed to
12 custody determinations, Congress explicitly reflected its understanding of longstanding due
13 process precedent that recognizes the more substantial due process rights of noncitizens already
14 present and residing in the U.S. compared to the minimal rights of noncitizens seeking to enter.
15 *See id.* at 163–66 (recognizing the “constitutional liberty interest to remain in the U.S.” held by
16 noncitizens “present in the U.S.” versus the lack of a liberty interest in entering the U.S. held by
17 “aliens seeking admission,” *i.e.*, “initial entrants,” *i.e.*, “applicant[s] for initial entry”) (first quoting
18 Landon v. Plasencia, 459 U.S. 21, 32 (1982), then quoting Knauff v. Shaughnessy, 338 U.S. 537
19 (1950)). Nothing in the legislative history indicates Congress sought to legislate away this bedrock
20 constitutional principal underlying immigration law.

21 Moreover, there are good reasons why Congress would provide for mandatory detention at
22 the border but discretionary detention within the country. As another district court explained:

23 [N]oncitizens who have lived for years in this country are more likely to be working
24 in critical industries, parenting U.S. citizen children, or otherwise serving their
25 communities. The mass detention of these individuals—without regard to flight
26 risk or danger to the public—is far more disruptive to local American economies,
27 families, and communities than the detention of noncitizens who have just crossed
28 the border.

27 Rodriguez v. Bostock, No. 3:25-cv-5240-TMC, 2025 WL 2782499, at *24 (W.D. Wash. Sept. 30,
28 2025) (citation modified).

1 In fact, in passing IIRIRA, Congress was acutely concerned about the strain on detention
2 capacity that § 1226(c) would impose by mandating detention of an estimated 45,000 noncitizens
3 subject to removal on criminal grounds each year. See H.R. Rep. No. 104-469, pt. 1 at 118, 120,
4 123. To address that concern, Congress authorized the Executive to defer implementation of
5 § 1226(c) for two years while the agency built up detention capacity, which was promptly invoked.
6 IIRIRA, § 303(b), 110 Stat. 3009-586 to 3009-587; Doris Meissner, Comm’r, INS to Henry J.
7 Hyde Chariman, Comm. On the Judiciary, U.S. House of Representatives, Letter Invoking IIRIRA
8 Transitional Period Custody Rules (Oct. 3, 1997). It is therefore reasonable to assume that if
9 Congress intended to mandate the detention of what was at the time estimated to be two million
10 people living in the U.S., as the government insists, there would be some reference to the practical
11 realities that mass detention at such an unprecedented scale would pose.¹⁹ See Whitman v.
12 Trucking Associations, 531 U.S. 457, 468 (2001) (“Congress, we have held, does not alter the
13 fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not one
14 might say, hide elephants in mouseholes.”)

15 Further, there is ample evidence in the Congressional record that favors Plaintiffs’ position.
16 Most significantly, noncitizens present in the United States like Class Members, would have been
17 subject to deportation proceedings before the enactment of IIRIRA. See Hose v. I.N.S., 180 F.3d
18 992, 994 (9th Cir. 1999) (“A deportation hearing was the usual means of proceeding against an
19 alien already physically in the United States[.]”) (citation modified). And the predecessor statute
20 to § 1226(a) also provided for discretionary release on bond for these individuals. See 8 U.S.C. §
21 1252(a)(1) (1995) (“[A]ny such alien taken into custody may, in the discretion of the Attorney
22 General ... be continued in custody ... [or] be released under bond[.]”). When passing IIRIRA,
23 Congress specifically indicated: “Section [1226(a)] restates the current provisions in section
24 [1252(a)] regarding the authority of the Attorney General to arrest, detain, and release on bond an
25 alien who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1 at 229.

26 Notably, Congress also referred to § 1225(b)(2) as a provision that applied to the
27 _____

28 ¹⁹ The estimated population of noncitizens in the U.S. who entered without inspection as
about two million in 1996. See H.R. Rep. 104-469, pt. 1 at 111.

1 “[i]nspection of other arriving aliens.” Id. And the term “arriving alien” employed at several points
2 throughout the IIRIRA amendments was intended to distinguish “aliens at the border of the United
3 States from those who have made a substantial physical entry into the United States.” See
4 Implementation of Title III of the Illegal Immigration Reform and Immigrant Responsibility Act
5 of 1996: Hearing Before the Subcomm. on Immigration and Claims of the H. Comm. on the
6 Judiciary, 105th Cong. 17–18 (1997) at 99 (Statement by Representative Lamar Smith, Chairman
7 of the House Judiciary Committee's Subcommittee on Immigration and Claims). And with regards
8 to detention under § 1225(b)(2), it was explicitly noted that Congress was referring to “custody of
9 aliens applying at land borders” in enacting that section. Id. at 101.

10 The Court therefore finds that the legislative history supports the Court’s interpretation of
11 §§ 1225 and 1226, and the government’s characterization of Congress’ legislative purpose in
12 enacting IIRIRA as mandating the detention of millions of people is unsupported by the legislative
13 record.

14 **3. Constitutional Avoidance**

15 The government’s new reading of § 1225(b)(2) also runs afoul of the presumption that
16 Congress enacted a constitutional statute. As discussed below the government has proffered “an
17 interpretation of a federal statute that engenders constitutional issues” even though a more
18 “reasonable alternative interpretation” does not raise such constitutional concerns. See Gomez v.
19 U.S., 490 U.S. 858, 858 (1989).

20 *i. Due Process*

21 Consistent with this Court’s finding that Named Plaintiffs are likely to succeed on their
22 due process claims, see Order Granting Preliminary Injunction 12–18, ECF No. 35, by subjecting
23 Class Members to mandatory detention without meaningful procedural protections to ensure it has
24 a constitutionally legitimate interest in detaining them, the government’s policies are based on a
25 statutory interpretation that raises serious doubts under the Due Process Clause. Zadvydas v.
26 Davis, 533 U.S. 678, 689-90 (2001) (“[I]t is a cardinal principle of statutory interpretation . . . that
27 when an Act of Congress raises ‘a serious doubt’ as to its constitutionality,” courts will “first
28 ascertain whether a construction of the statute is fairly possible by which the question may be

1 avoided.”). Specifically, by collapsing the distinction between noncitizens “who have established
2 connections in this country” and their greater due process rights as compared to a noncitizen “at
3 the threshold of initial entry,” the government needlessly interprets § 1225(b)(2)(A) in a manner
4 that would render it unconstitutional. Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 107,
5 (2020) (finding a noncitizen who was apprehended “just 25 yards from the border” in the process
6 of trying to enter the country illegally was “at the threshold of initial entry” and thus subject to
7 lesser due process rights in removal proceedings than “aliens who have established connections in
8 this country”).

9 If the Court were to accept the government's new reading of § 1225(b)(2), it would still be
10 faced with Class Members due process challenge to the government’s policies. Indeed, the Ninth
11 Circuit has explicitly questioned the constitutionality of § 1225(b):

12 We have grave doubts that any statute that allows for arbitrary prolonged detention
13 without any process is constitutional or that those who founded our democracy
14 precisely to protect against the government's arbitrary deprivation of liberty would
have thought so. Arbitrary civil detention is not a feature of our American
government.

15 Rodriguez v. Marin, 909 F.3d 252, 256–57 (9th Cir. 2018) (alteration in original). The Court
16 therefore must adopt an interpretation that avoids this grave constitutional concern.

17 ***ii. Fourth Amendment***

18 Additionally, the Court finds the government’s interpretation raises serious concerns under
19 the Fourth Amendment. Although immigration removal proceedings are civil, the Supreme Court
20 has long acknowledged that immigration arrests and detentions are “seizures” within the meaning
21 of the Fourth Amendment. United States v. Brignoni-Ponce, 422 U.S. 873, 884 (1975). The INA
22 authorizes immigration officers to make warrantless arrests in the interior of the country only in
23 limited circumstances—and vests far greater warrantless search and seizure authority at the border
24 than in the interior. For example, an immigration officer has authority, without a warrant, to arrest
25 “any alien who in his view is *entering or attempting to enter* the United States in violation of any
26 law regulating the admission, exclusion, expulsion, or removal of aliens” but the arrest of a
27 noncitizen “in the United States” is only authorized if the arresting officer “has reason to believe
28 that the alien arrested is in the United States in violation of any such law or regulation and is likely

1 to escape before a warrant can be obtained.” 8 U.S.C. § 1357(a)(2) (emphasis added); see also
2 8 U.S.C. §§ 1357(a)(4)–(5) (providing other circumstances that justify warrantless arrest).
3 Similarly, immigration officers have authority to “conduct a search, without warrant, of the person,
4 and of the personal effects in the possession of any person, and of the personal effects in the
5 possession of any person *seeking admission* to the United States” if the officer has “reasonable
6 cause to suspect that grounds exist for denial of admission to the United States . . . which would
7 be disclosed by such search.” 8 U.S.C § 1357(c) (emphasis added).

8 By distinguishing between searches and seizures of noncitizens “entering or attempting to
9 enter the United States” or “seeking admission to the United States” in § 1357, the INA captures
10 the so-called “border search exception,” which recognizes “[t]hat searches made at the border,
11 pursuant to the long-standing right of the sovereign to protect itself by stopping and examining
12 persons and property crossing into this country, are reasonable simply by virtue of the fact *that*
13 *they occur at the border.*” United States v. Ramsey, 431 U.S. 606, 616 (1977) (emphasis added).
14 Under the Fourth Amendment, “the expectation of privacy [is] less at the border than in the interior
15 . . . [and] the balance between the interests of the Government and the privacy right of the
16 individual is also struck much more favorably to the Government[.]” United States v. Montoya de
17 Hernandez, 473 U.S. 531, 539–40 (1985) (citations omitted). It is therefore accepted that
18 individuals inspected at the border should expect that they will be deemed noncitizens until they
19 can prove otherwise—which is what § 1225(b)(2)(A) requires. But interpreting § 1225(b)(2)(A)
20 to apply *in the interior* and authorize ICE officers to arrest and detain a suspected individual if
21 they cannot show the officer that they are “clearly and beyond a doubt entitled to be admitted”
22 eviscerates the distinction between the border and interior for Fourth Amendment purposes.

23 Take, for example, the government’s insistence that “applicant for admission” and “seeking
24 admission” are synonymous in § 1225(b)(2)(A) such that anyone present in the country without
25 having been admitted is seeking admission. As a matter of statutory construction, the term “seeking
26 admission” should be given the same meaning as in § 1357. Robers v. United States, 572 U.S. 639,
27 643 (2014) (“Generally, identical words used in different parts of the same statute are . . . presumed
28

1 to have the same meaning.”)²⁰ In line with the long-recognized border search exception to the
2 Fourth Amendment, courts and Ninth Circuit jurists have interpreted “seeking admission” under
3 § 1357(c) to permit warrantless searches under the Fourth Amendment because they occur *at the*
4 *border*. See, e.g., United States v. Cano, 973 F.3d 966, 973 (9th Cir. 2020) (Bennett, J., joined by
5 Callahan, M. Smith, R. Nelson, Bade, and Vandyke, JJ., dissenting from the denial of rehearing
6 *en banc*) (interpreting § 1357(c)’s authorization of warrantless searches of “any person seeking
7 admission to the United States” as arising from the government’s “inherent power to protect . . .
8 the border.”); United States v. Castellanos, 518 F.3d 965, 971 (8th Cir. 2008) (interpreting
9 “seeking admission” in § 1357 as pertaining to circumstances where individuals are attempting to
10 enter the United States); cf. United States v. Nevarez-Alcantar, 495 F.2d 678 (10th Cir. 1974)
11 (interpreting “any person seeking admission” under § 1357(c) to authorize a Border Patrol Agent
12 to conduct a warrantless search of a suitcase in in the possession of a person who was in transit
13 from the border and apprehended within 48 miles of it). But if, as the government contends, all
14 noncitizens present in the U.S. without admission are “seeking admission” under § 1225(b)(2)(A),
15 then by extension, ICE officers can conduct warrantless searches of suspected noncitizens
16 anywhere in the U.S. under § 1357(c). The government’s construction thus raises serious concerns
17 under the Fourth Amendment.

18 These concerns are avoided by reading § 1225(b) to apply at the border and § 1226(a) to
19 apply where noncitizens are apprehended within the country’s interior, because § 1226(a) provides
20 significant protections against unreasonable searches and seizures by ICE officers. Under 8 C.F.R.
21 § 236.1, an individual may be arrested and detained pursuant to an administrative I-200 warrant
22 issued by an authorized official who states that he or she has “probable cause to believe” the named
23 noncitizen is removable. See N.S. v. Dixon, 141 F.4th 279, 282–283 (D.C. Cir. 2025) (citing 8
24 C.F.R. § 236.1(a); *id.* § 287.5(e) (listing categories of officers so authorized)). To execute an I-200

25
26 ²⁰ Inexplicably, the Eighth Circuit majority waived away the statutory inconsistency
27 created by its interpretation of “seeking admission” in § 1225(b)(2)(A) with its prior interpretation
28 of that identical phrase in § 1357(c) in United States v. Castellanos, 518 F.3d 965, 971 (8th Cir.
2008) by saying § 1357(c) is a “different statute.” Avila, 2026 WL 819258 at *5 n. 5. But both §§
1225 and 1357 are provisions of the INA that were amended through IIRIRA. See Pub. L. 104-
208.

1 form, an immigration officer of a type listed in the regulation must have “successfully completed
2 basic immigration law enforcement training.” Id. (citing 8 C.F.R. § 287.5(e)(3); § 287.5(c)(1)
3 (same required before making an arrest under 8 U.S.C. § 1357(a)(2))). Regulations further provide
4 that “[a] warrant of arrest shall be obtained except when the designated immigration officer has
5 reason to believe that the person is likely to escape before a warrant can be obtained.”
6 8 C.F.R. § 287.8(c)(2)(ii). A properly signed and served I-200 administrative warrant represents a
7 finding by an authorized supervisory officer that there is probable cause to believe a specific
8 individual is removable from the United States. See Castañon Nava v. Dep’t of Homeland Sec.,
9 806 F.Supp.3d 823, 851 (N.D. Ill. 2025).

10 But no administrative warrant requirements exist in the text of § 1225(b)(2)(A) or its
11 implementing regulations. The government’s interpretation of that provision as geographically
12 unlimited is thus in tension with the application of the Fourth Amendment within the country’s
13 interior, which “requires that immigration stops must be based on reasonable suspicion of illegal
14 presence, stops must be brief, arrests must be based on probable cause, and officers must not
15 employ excessive force.” Trump v. Illinois, 146 S. Ct. 432, 436 n.4 (2025) (Kavanaugh, J.,
16 concurring).

17 The record before the Court demonstrates that the government’s policies authorize ICE
18 officers to arrest Class Members in the interior of the country without a warrant and without
19 probable cause. For example, there is no evidence Named Plaintiffs were arrested pursuant to a
20 properly executed and served I-200 warrant. In fact, it is undisputed that Plaintiff Guevara-
21 Alcantar who was taken into ICE custody on August 26, 2025, was not even served with a Notice
22 to Appear, the charging document that sets forth the basis for DHS’ allegation that he is
23 inadmissible, until Thursday, October 30, 2025, *months* after his initial arrest and detention. See
24 Kagan Decl. ¶ 27, ECF No. 15-2. That is consistent with the government’s detention policy under
25 § 1225(b)(2)(A), because the issuance of a Notice to Appear prior to or upon arrest is only required
26 under § 1226(a)’s implementing regulations. See 8 C.F.R § 236.1(b). Similarly, the government
27 took the position before the Seventh Circuit that it has authority to arrest and detain noncitizens
28 like Class Members without a warrant under § 1225(b)(2)(A). See Castañon-Nava, 161 F.4th at

1 1062 (“Defendants are not likely to succeed on the merits of their argument that those individuals,
2 whom ICE arrested without a warrant, are subject to mandatory detention under
3 § 1225(b)(2)(A).”).

4 Given Class Members are apprehended and arrested in the interior of the country, not at
5 the border, the government’s policies raise serious concerns under the Fourth Amendment. As
6 Judge Douglas explained, that Congress would wish to provide noncitizens who have been living
7 in the country with the greater procedural protections available under § 1226(a) recognizes that
8 “government intrusions have always been tolerated at the border that would be intolerable in the
9 interior, for the obvious reason that citizens and noncitizens alike expect to be able to go about
10 their business without having to show that they are ‘clearly and beyond doubt entitled to be
11 admitted’ if taken, or mistaken, for an otherwise inadmissible noncitizen.” Buenrostro-Mendez,
12 166 F.4th at 520 (Douglas, J., dissenting) (quoting 8 U.S.C. § 1225(b)(2)(A)). Or, as the Supreme
13 Court put it, in considering the constitutionality of a warrantless search by Border Patrol, which
14 the government justified under § 1357(a)(3):

15 It is not enough to argue, as does the Government, that the problem of deterring
16 unlawful entry by aliens across long expanses of national boundaries is a serious
17 one. The needs of law enforcement stand in constant tension with the Constitution's
18 protections of the individual against certain exercises of official power. It is
19 precisely the predictability of these pressures that counsels a resolute loyalty to
20 constitutional safeguards. To recall the words of Mr. Justice Jackson, soon after his
21 return from the Nuremberg Trials: “These (Fourth Amendment rights), I protest,
are not mere second-class rights but belong in the catalog of indi[s]pensable
freedoms. Among deprivations of rights, none is so effective in cowing a
population, crushing the spirit of the individual and putting terror in every heart.
Uncontrolled search and seizure is one of the first and most effective weapons in
the arsenal of every arbitrary government.”

22 Almeida-Sanchez v. United States, 413 U.S. 266, 274 (1973) (citation omitted) (alterations in
23 original). These principles must prevail in the face of the current Administration’s claim to
24 unprecedented search and seizure power anywhere in the country based on an—at best,
25 colorable—interpretation, as a matter of definitional possibility, of the phrases “applicant for
26 admission” and “seeking admission.”

27 Given the grave constitutional concerns raised by the government’s interpretation of §
28 1225(b)(2)(A), and the availability of the above-described more reasonable interpretation that

1 avoids such concerns, the Court *must* reject the government's statutory reading and the detention
2 policies that flow from it. Torres, 976 F.3d at 923 (the INA is to be read “against the backdrop of
3 our constitutional principles”) (citation omitted).

4 **4. Agency Practice and Major Questions**

5 Finally, the Court finds the Supreme Court’s “major questions” cases militate against the
6 government’s claim to “broad, expansive power on an uncertain statutory basis” in this context.
7 Learning Res., Inc. v. Trump, 607 U.S. ----, 24–1287, 2026 WL 477534, at *7 (U.S. Feb. 20, 2026).
8 “In each . . . the statutory text might ‘as a matter of definitional possibilities’ have been read to
9 delegate the asserted power.” Id. (quoting West Virginia v. EPA, 597 U.S. 697, 721, 723 (2022)).
10 “But ‘context’ counseled ‘skepticism.’” Id.

11 As discussed, Defendants’ policies, which unearth a vast but hidden mandatory detention
12 authority in a long extant statute, subject millions²¹ of people living in the U.S. to prolonged
13 detention. This is a decision of “vast economic and political significance,” and the “history and
14 breadth” of civil immigration detention authority, wherein noncitizens in Class Members position
15 have been eligible for release on bond, provide “reason to hesitate before concluding that Congress
16 meant to confer such authority.” West Virginia v. EPA, at 721, 723 (quoting FDA v. Brown &
17 Williamson Tobacco Corp., 529 U.S. 120, 159–60 (2000)); see also Util. Air Regul. Grp. v. EPA,
18 573 U.S. 302, 324 (2014) (“When an agency claims to discover in a long-extant statute an
19 unheralded power . . . [the courts] typically greet its announcement with a measure of skepticism.
20 We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic
21 and political significance.”) (citations omitted).

22 With regards to economic significance, the prolonged detention of millions will certainly
23 lead to increased federal costs. See Demore v. Kim, 538 U.S. 510, 518 (2003) (“[C]onfinement of
24 criminal aliens alone cost \$724 million in 1990.”); see also Hernandez v. Sessions, 872 F.3d, 976,
25 996 (2017) (Noting in 2017 the daily cost of immigration detention was \$6.5 million, compared to
26 the cost of supervised release on bond at between 17 cents and 17 dollars each day per person).

27
28 ²¹ The estimated population of noncitizens in the United States who entered without
inspection is around six million today. Jill Wilson, *et al.*, CONG. RSCH. SERV., R47848,
Nonimmigrant Overstays: Overview and Policy Issues, at 1 n.6 (2023).

1 Recent estimates by the federal government find that supervised release programs such as those
2 available under § 1226 cost less than \$4.20 each day per participant, compared with detention costs
3 of \$152 per day. Am. Immigr. Lawyers Ass’n, Featured Issue: Immigration Detention and
4 Alternatives to Detention (Mar. 14, 2025), [https://www.aila.org/library/featured-issue-](https://www.aila.org/library/featured-issue-immigration-detention-and-alternatives-to-detention)
5 [immigration-detention-and-alternatives-to-detention](https://www.aila.org/library/featured-issue-immigration-detention-and-alternatives-to-detention) [<https://perma.cc/U3RR-WYWH>].

6 In addition to the costs of detention itself, nineteen states, including Nevada, have
7 described how “[d]etention of noncitizens during removal proceedings also deprives states and
8 localities of noncitizens’ substantial economic contributions.” Brief for States of New York, *et al.*,
9 as Amici Curiae in Support Plaintiff-Appellee and Affirmance, Rodriguez Vazquez v. Hermosillo,
10 No. 25-6842, Dkt. No. 40.1 at 10-12 (9th Cir. Jan. 28, 2026) (Summarizing data reflecting
11 undocumented immigrants like Class Members in 2023 paid nearly \$90 billion in taxes, added
12 almost \$300 billion to the economy as consumers, and contributed billions of dollars to programs
13 such as Social Security and Medicare; “[a]ll these contributions are lost when these individuals are
14 unnecessarily detained.”)

15 Likewise, the government’s detention policies are generating significant political
16 controversy as record-breaking numbers of people are held in ICE detention and the number of
17 reported deaths in immigration custody since the government’s policies took effect has risen
18 dramatically. See United States Senate, Senator Hickenlooper, et al., Letter to DHS Secretary
19 Noem and Acting Director Lyons (Feb. 13, 2026), [https://www.hickenlooper.senate.gov/wp-](https://www.hickenlooper.senate.gov/wp-content/uploads/2026/02/2026-02-13-Letter-to-DHS-ICE-re-Deaths-in-Detention.pdf)
20 [content/uploads/2026/02/2026-02-13-Letter-to-DHS-ICE-re-Deaths-in-Detention.pdf](https://www.hickenlooper.senate.gov/wp-content/uploads/2026/02/2026-02-13-Letter-to-DHS-ICE-re-Deaths-in-Detention.pdf)
21 [<https://perma.cc/D4X5-TJPN>]. Current data indicates the government’s detention policies have
22 resulted in the detention of parents of over 11,000 U.S. citizen children, with devastating economic
23 and social effects. See Jeff Ernsthansen, et al., Trump Has Detained the Parents of More Than
24 11,000 U.S. Citizen Kids, PROPUBLICA (Mar. 23, 2026, 5:30 a.m.)
25 <https://www.propublica.org/article/trump-family-deportations-ice-citizen-kids>
26 [<https://perma.cc/3H88-CVDK>].

27 So, although the government asserts that “prior agency practice applying § 1226(a) to
28 [Class Members] is unavailing” because “under Loper Bright, the plain language of the statute and

1 not prior practice controls,” the government’s sharp departure from decades of consistent prior
2 practice and precedent weighs on a matter of such profound economic and political significance
3 powerfully against its interpretation. Defs.’ Opp’n 17, ECF No. 87 (citing Hurtado, 20 I. & N. Dec.
4 at 225-26). Likewise, the fact that the government’s abrupt change in position is inconsistent with
5 existing regulations governing IJs’ bond jurisdiction, is further evidence of its unlawfulness. See,
6 e.g., 8 C.F.R. § 1003.19(h)(2) (limiting an IJ’s bond jurisdiction only over certain classes of
7 noncitizens such as *arriving* noncitizens and those encompassed § 1226(c)). Indeed, in Hurtado
8 the BIA drastically departs from prior BIA precedent, without acknowledging that departure.
9 Hurtado contradicts a BIA decision designated as precedential a month before it was issued. See
10 Matter of Akhmedov, 29 I. & N. Dec. 166 (BIA 2025) (stating unequivocally that a noncitizen
11 who entered the country without inspection in January 2022 was detained pursuant to
12 8 U.S.C. § 1226(a)).

13 Thus, under Loper Bright, the government’s interpretation of § 1225(b)(2) in the July 8th
14 Memo and Hurtado is unpersuasive. See Murillo-Chavez v. Bondi, 128 F.4th 1076, 1087 (9th Cir.
15 2025) (noting that after Loper Bright, courts may only look to agency interpretation as persuasive
16 and “may not defer to an agency interpretation of the law simply because a statute is ambiguous.”)
17 (citing Loper Bright, 603 U.S. at 413). And this Court’s finding that the government’s policies
18 violate the INA is informed by the Supreme Court’s instruction “that courts may consider the
19 consistency of an agency’s views when we weigh the persuasiveness of any interpretation it
20 proffers in court,” and caution that “[a] longstanding ‘want of assertion of power by those who
21 presumably would be alert to exercise it’ may provide some clue that the power was never
22 conferred.” Biden v. Nebraska, 600 U.S. 477, 519 (2023) (Barrett, J., concurring) (first quoting
23 Bittner v. United States, 598 U.S. 85, 97 (2023); and then quoting FTC v. Bunte Brothers, Inc.,
24 312 U.S. 349, 352 (1941)).

25 For these reasons, the Court finds that Class Members are subject to detention under
26 § 1226(a) and entitled to its procedural protections, including consideration for release on bond.
27 Accordingly, the DHS and DOJ policies enacted in the July 8th Memo and Hurtado violate the
28 INA, are therefore “not in accordance with law” under the APA U.S.C. § 706(2)(A), and Plaintiffs

1 are entitled to partial judgment to that effect as a matter of law.

2 **D. Scope of Relief**

3 As this Court previously found and hereby incorporates, 8 U.S.C. 1252(f)(1) does not limit
4 the Court's authority to issue the classwide declaratory relief requested by Plaintiffs and set aside
5 Defendants' policies in the July 8th Memo and Hurtado (*i.e.* vacatur) pursuant to § 706(2) of the
6 APA. See Class Cert. Order 37–41, ECF No. 71.

7 Accordingly, the Court issues a classwide declaratory judgment that Class Members are
8 subject to detention under § 1226(a) and its implementing regulations. Defendants must therefore
9 comply with 8 C.F.R. §§ 236.1(b); 236.1(c)(8) in arresting and detaining any Class Member. If
10 Defendants deny release on bond or conditional parole after an initial custody determination, Class
11 Members are entitled to custody redetermination(s) before an immigration judge upon request
12 consistent with 8 C.F.R. §§ 236.1(d); 1003.19.

13 The Court further “set[s] aside” the July 8th Memo and Hurtado pursuant to 5 U.S.C. §
14 706(2). In doing so, the Court declares that those agency actions were “unlawful and returns the
15 world to the *status quo*, before the unlawful action[s].” Nat'l TPS All. v. Noem, 166 F.4th 739,
16 760 (9th Cir. 2026) [“NTSPA III”]. Although the government has not raised an argument that this
17 Court lacks authority to set aside its nationwide policies due to the Supreme Court's decision in
18 Trump v. CASA, Inc., 606 U.S. 831 (2025), it has made that argument before the Ninth Circuit in
19 an emergency motion to stay the district court's February 18, 2026 Order granting petitioners
20 motion to enforce judgment and vacating Matter of Yajure Hurtado. See Bautista v. U.S. Dep't of
21 Homeland Sec., No. 26-1044, Dkt. No. 4 (9th Cir. Feb. 26, 2026). The government also argued the
22 Bautista court's vacatur of Hurtado was procedurally improper for unrelated reasons, not relevant
23 here. The Ninth Circuit granted a temporary administrative stay pending a ruling on the
24 government's emergency motion for a stay pending appeal. Bautista v. U.S. Dep't of Homeland
25 Sec., No. 26-1044, Dkt. No. 5.1 (9th Cir. Mar. 6, 2026). The Court thus finds it pertinent to
26 consider its authority to vacate the July 2025 Memo and Hurtado nationwide, as Plaintiffs request.
27 See Pls.' Mot. 17–18, ECF No. 74.

28 Defendants do not argue that this Court could or should somehow limit its vacatur of the

1 July 8th Memo and Hurtado, which they have confirmed apply uniformly nationwide, to Class
2 Members. The Supreme Court has affirmed decisions that vacated agency actions, rather than
3 enjoined their enforcement as to the specific plaintiffs. See, e.g., Dep't of Homeland Sec. v.
4 Regents of the Univ. of California, 591 U.S. 1 (2020). “And the D.C. Circuit—which handles the
5 lion's share of the country's administrative law cases” has long held “[w]hen a reviewing court
6 determines that agency [actions] are unlawful, the ordinary result is that the rules are vacated—
7 not that their application to the individual petitioners is proscribed.” Corner Post, Inc. v. Bd. Of
8 Governors of Fed. Rsrv. Sys., 603 U.S. 799, 831 (2024) (Kavanaugh, J., concurring) (quoting
9 Harmon v. Thornburgh, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989).

10 As the Ninth Circuit noted in NTPSA III, see 166 F.4th at 767, CASA declined to reach
11 the question of whether its logic extends to relief under § 706(2), though Justice Kavanaugh
12 suggested that district courts retained the ability to “set aside an agency rule under the APA,” even
13 if such relief would be the “functional equivalent of a universal injunction.” CASA, 606 U.S. at
14 873 (Kavanaugh, J., concurring); see also id. at 847 n.10 (“Nothing we say today resolves the
15 distinct question whether the Administrative Procedure Act authorizes federal courts to vacate
16 federal agency action.”) (citing 5 U.S.C. § 706(2)). The Ninth Circuit expressly declined to resolve
17 this question where it found it “would be impossible [for the district court] to grant complete relief
18 to the plaintiffs [NTPSA’s nationwide members] short of a full set aside.” NTPSA III, 166 F.4th
19 at 768. In this case, it may be possible to limit the Court’s vacatur to only apply to Class Members,
20 *i.e.*, noncitizens who have been or will be subject to removal proceedings before immigration
21 courts in the District of Nevada. But such a limitation poses serious concerns as to Class Members
22 receiving complete relief.²² Nevertheless, given the Ninth Circuit is likely to resolve this issue
23 soon, the Court will limit its set aside of Defendants’ policies to Class Members, pending
24 resolution of the government’s appeal in Bautista v. U.S. Dep’t of Homeland Sec., No. 26-1044
25 (9th Cir.). Plaintiffs are granted leave to move to lift the stay in the event they believe the Court
26

27 ²² For example, Class Members entitled to relief include individuals arrested and
28 transferred from custody in other jurisdictions, such as Utah, Idaho, and Montana. Likewise, Class
Members include individuals who have been transferred from the District of Nevada to other
jurisdictions since Plaintiffs filed their Class Action Complaint in October of 2025.

1 should reconsider, or the Ninth Circuit issues further guidance in the interim.

2 **E. Final Judgment Pursuant to Rule 54(b)**

3 “When an action presents more than one claim for relief—whether as a claim,
4 counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court
5 may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if
6 the court expressly determines that there is no just reason for delay.” Fed. R. Civ. P. 54. “In
7 deciding whether there are no just reasons to delay the appeal of individual final judgments in a
8 setting such as this, a district court must take into account judicial administrative interests as well
9 as the equities involved.” Curtiss-Wright Corp. v. Gen. Elec. Co., 446 U.S. 1, 8 (1980). Where
10 “the claims under review [are] separable from the others remaining to be adjudicated” and “the
11 nature of the claims already determined [is] such that no appellate court would have to decide the
12 same issues more than once” certifying a partial final judgment is appropriate. Id. at 2. Here, if
13 Plaintiffs prevail on any appeal of their statutory and regulatory claims, there will be no need for
14 the Court to address Plaintiffs’ remaining Due Process claim or their claim that Defendants’
15 policies are arbitrary and capricious under the APA. Further, the equities present—namely the
16 irreparable harms Class Members face if they continue to be arrested and detained in violation of
17 the INA and its implementing regulations—favor expeditious resolution of the central statutory
18 question in this case.

19 **F. Notice to Class Members**

20 Federal Rule of Civil Procedure 23(d) permits a court to issue orders on “procedural
21 matters” to “protect class members and fairly conduct the action.” Fed. R. Civ. P. 23(d)(1)(B), (E).
22 This includes entering orders “giving appropriate notice to some or all class members” of “any
23 step in the action[.]” Fed. R. Civ. P. 23(d)(1)(B)(i); see also Fed. R. Civ. P. 23 advisory committee’s
24 note to 1966 amendment (“Notice is available fundamentally for the protection of the members of
25 the class or otherwise for the fair conduct of the action[.]”); id. (“Subdivision (d)(2) does not
26 require notice at any stage, but rather calls attention to its availability and invokes the court’s
27 discretion.”). Plaintiffs have submitted a proposed notice to Class Members and Defendants have
28 not objected to that proposal. The Court finds the issuance of notice to Class Members regarding

1 the Court’s partial judgment is necessary to protect the interests of Class Members and ensure they
2 receive the benefit of the classwide relief. Therefore, the Court orders Defendants to provide the
3 form notice attached to this Order as Appendix B to Class Members.

4
5 **VII. CONCLUSION**

6 For the foregoing reasons, **IT IS HEREBY ORDERED** that Plaintiffs-Petitioners’ (ECF
7 No. 74) Motion for Partial Summary Judgment is **GRANTED**. The Court **ORDERS** as follows:

8 1. Summary judgment is **GRANTED** in favor of Plaintiffs on Ground I, Ground II,
9 and **IN PART** on Ground III (“not in accordance with law” under § 706(2)(A));

10 2. “Class Members” are:

11 All noncitizens in the U.S. without lawful status (1) who are or will be arrested or
12 detained by ICE; (2) who are or will be in removal proceedings before an
13 Immigration Court within the District of Nevada; (3) whom DHS alleges or will
14 allege to have entered the United States without inspection or parole; (4) who are
15 not or will not be subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or
1231 at the time they are scheduled for or request a bond hearing; and (5) whose
most recent arrest by ICE occurred inside the United States and not while arriving
in the United States.

16 3. The Court issues the following **Declaratory Judgment**:

17 Class Members are subject to detention under 8 U.S.C. § 1226(a) and its
18 implementing regulations 8 C.F.R. §§ 236.1, 1236.1 & 1003.19. Class Members
19 are not subject to detention under 8 U.S.C. § 1225(b)(2)(A). Class Members are
thus entitled to consideration for release from detention on bond and/or conditions
by immigration officers and immigration judges.

20 Defendants’ policies subjecting Class Members to detention under 8 U.S.C. §
21 1225(b)(2)(A) pursuant to the July 8, 2025 ICE Memo “Interim Guidance
22 Regarding Detention Authority for Applicants for Admission” and Matter of Yajure
Hurtado, 29 I. & N. Dec. 216 (BIA 2025) are unlawful under the Immigration and
Nationality Act and its implementing regulations.

23 **The Clerk of Court is kindly instructed to enter partial judgment accordingly.**

24 **IT IS FURTHER ORDERED** that the July 8, 2025 ICE Memo “Interim Guidance
25 Regarding Detention Authority for Applicants for Admission” and Matter of Yajure Hurtado, 29
26 I. & N. Dec. 216 (BIA 2025) are **VACATED** pursuant to 5 U.S.C. § 706(2).

27 **IT IS FURTHER ORDERED** that the Court’s **VACATUR** of the July 8, 2025 ICE Memo
28 and Matter of Yajure Hurtado is **STAYED**, **except as to Class Members, PENDING APPEAL**

1 in Bautista v. U.S. Dep't of Homeland Sec., No. 26-1044 (9th Cir.).

2 **IT IS FURTHER ORDERED** that Defendants must provide notice of the Court's
3 judgment using the form attached to this Order as Appendix B ("the Notice") to Class Members
4 as follows:

5 (1) By **April 14, 2026**, Defendants must individually provide (1) the Notice; (2) the
6 template habeas petition at ECF No. 95-2; and (3) a copy of this Order and judgment to all
7 noncitizens charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) who are currently detained
8 and subject to removal proceedings before an immigration court in the District of Nevada.
9 Defendants must provide the Notice in a language which the noncitizen can understand. Should
10 Defendants not have the notice translated into a language the noncitizen understands, they shall
11 secure an interpreter to translate the notice as soon as feasible;

12 (2) By **April 7, 2026**, Defendants shall post the notice in English and Spanish in common
13 areas of any facility holding immigration detainees in Nevada or in any geographic area over
14 which, as of October 30, 2025, an Immigration Court located in Nevada is the administrative
15 control court;

16 (3) By **April 7, 2026**, Defendants shall promptly serve the Notice on all noncitizen who
17 are newly detained by immigration officers and who Defendants reasonably believe may be Class
18 Members. The Notice shall be given at the time the noncitizen is processed in a language the
19 noncitizen understands. Should Defendants not have the Notice translated in a language the
20 noncitizen understands, they shall secure an interpreter to translate the Notice as soon as feasible;

21 (4) Defendants shall record the service of each Notice and retain a copy of each Notice
22 served.

23 **IT IS FURTHER ORDERED** that a **Status Conference** is set for **April 2, 2026** at **1:15**
24 **p.m.** in Las Vegas Courtroom 7C, before the Honorable Richard F. Boulware, II. A representative
25 for the Federal Public Defender for the District of Nevada (FPD) is instructed to appear to discuss
26 assisting and/or representing individual Class Members who may file habeas petitions to enforce
27 this Court's Order and partial judgment. **The Clerk of Court is instructed to send a copy of this**
28 **Order to the FPD.**

1 Pursuant to Federal Rule of Civil Procedure 25(d), the Clerk of Court is **INSTRUCTED**
2 to update the docket and case caption to reflect the following substitutions of Defendants: (1)
3 Secretary of Homeland Security Markwayne Mullin is substituted for Kristi Noem; (2) Daren K.
4 Margolin, Director of the Executive Office for Immigration Review, is substituted for Sirce Owen;
5 (3) Ruben Leyva, Acting Field Office Director of the Salt Lake City Field Office of ICE
6 Enforcement and Removal Operations, is substituted for Jason Knight.

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8 **DATED:** March 30, 2026.

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12 **RICHARD F. BOULWARE, II**
13 **UNITED STATES DISTRICT JUDGE**
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APPENDIX A

- 1
- 2 1. Simental v. Knight, No. 2:26-CV-00205-RFB-NJK, 2026 WL 313336 (D. Nev. Feb. 5, 2026);
- 3 2. Trejo v. Knight, No. 2:26-CV-00197-RFB-DJA, 2026 WL 381975 (D. Nev. Feb. 11, 2026);
- 4 3. Becerra Diaz v. Knight, No. 2:26-CV-00247-RFB-DJA, 2026 WL 412483 (D. Nev. Feb. 12,
- 5 2026);
- 6 4. Escamilla-Lopez v. Holston, No. 2:26-CV-00242-RFB-BNW, 2026 WL 412473 (D. Nev. Feb.
- 7 12, 2026);
- 8 5. Sermeno v. Noem, No. 3:26CV00084-RFB-CLB, 2026 WL 396508 (D. Nev. Feb. 12, 2026);
- 9 6. Chama v. Noem, No. 3:26CV00081-RFB-CSD, 2026 WL 396506 (D. Nev. Feb. 12, 2026);
- 10 7. Morales-Hernandez v. Noem, No. 3:26CV00079-RFB-CSD, 2026 WL 396497 (D. Nev. Feb.
- 11 12, 2026);
- 12 8. Aguirre Solis v. Noem, No. 2:26-CV-00053-RFB-EJY, 2026 WL 396432 (D. Nev. Feb. 12,
- 13 2026);
- 14 9. Figueroa v. Mattos, No. 2:26CV00184-RFB-MDC, 2026 WL 432582 (D. Nev. Feb. 16, 2026);
- 15 10. Matias-Gonzalez v. Noem, No. 2:26-CV-00326-RFB-MDC, 2026 WL 458459 (D. Nev. Feb.
- 16 18, 2026);
- 17 11. Lemus v. Knight, No. 2:26-CV-00299-RFB-BNW, 2026 WL 464540 (D. Nev. Feb. 18, 2026);
- 18 12. Carrillo-Figueroa v. Noem, No. 2:26-CV-00328-RFB-BNW, 2026 WL 464535 (D. Nev. Feb.
- 19 18, 2026);
- 20 13. Segura-Tuquinga v. Hogan, No. 2:26-CV-00283-RFB-DJA, 2026 WL 464533 (D. Nev. Feb.
- 21 18, 2026);
- 22 14. Pineda v. Noem, No. 2:26-CV-00306-RFB-NJK, 2026 WL 458458 (D. Nev. Feb. 18, 2026);
- 23 15. Rodriguez v. Noem, No. 3:26-CV-00090-RFB-CSD, 2026 WL 458389 (D. Nev. Feb. 18,
- 24 2026);
- 25 16. Villeda v. Noem, No. 2:26CV00302-RFB-EJY, 2026 WL 458360 (D. Nev. Feb. 18, 2026);
- 26 17. Ramirez-Rosales v. Noem, No. 2:26-CV-00327-RFB-NJK, 2026 WL 468278 (D. Nev. Feb.
- 27 18, 2026);
- 28 18. Matias-Gonzalez v. Noem, No. 2:26-CV-00326-RFB-MDC, 2026 WL 458459 (D. Nev. Feb.

- 1 18, 2026);
- 2 19. Pacheco-Sanchez v. Holston, No. 2:26-CV-00330-RFB-NJK, 2026 WL 483453 (D. Nev. Feb.
- 3 20, 2026);
- 4 20. Ramirez-Ramos v. Noem, No. 2:26-CV-00332-RFB-MDC, 2026 WL 496688 (D. Nev. Feb.
- 5 22, 2026);
- 6 21. Hernandez v. Bernacke, No. 2:26-CV-00355-RFB-NJK, 2026 WL 497340 (D. Nev. Feb. 23,
- 7 2026);
- 8 22. Ramos-Robles v. Noem, No. 2:26-CV-00333-RFB-NJK, 2026 WL 496687 (D. Nev. Feb. 23,
- 9 2026);
- 10 23. Perez v. Bondi, No. 2:26-CV-00315-RFB-DJA, 2026 WL 509441 (D. Nev. Feb. 24, 2026);
- 11 24. Barcenas-Francisco v. Holston, No. 2:26-CV-00329-RFB-DJA, 2026 WL 515709 (D. Nev.
- 12 Feb. 24, 2026);
- 13 25. Godinez v. Noem, No. 2:26-CV-00362-RFB-BNW, 2026 WL 515706 (D. Nev. Feb. 24, 2026);
- 14 26. Mora-Espejo v. Noem, No. 2:26-CV-00372-RFB-BNW, 2026 WL 509526 (D. Nev. Feb. 24,
- 15 2026);
- 16 27. Navarro v. Mattos, No. 2:26-CV-00359-RFB-BNW, 2026 WL 509443 (D. Nev. Feb. 24,
- 17 2026);
- 18 28. Garcia Rincon v. Noem, No. 2:26-CV-00396-RFB-BNW, 2026 WL 538327 (D. Nev. Feb. 25,
- 19 2026);
- 20 29. Gaytan Castro v. Knight, No. 2:26-CV-00445-RFB-EJY, 2026 WL 554592 (D. Nev. Feb. 26,
- 21 2026);
- 22 30. Bueno-Robles v. Noem, No. 2:26-CV-00449-RFB-MDC, 2026 WL 543823 (D. Nev. Feb. 26,
- 23 2026);
- 24 31. Arroyo Lucas v. Noem, No. 2:26-CV-00465-RFB-BNW, 2026 WL 579417 (D. Nev. Mar. 2,
- 25 2026) (three petitioners);
- 26 32. Ramirez Mendez v. Knight, No. 2:26-CV-00375-RFB-DJA, 2026 WL 579413 (D. Nev. Mar.
- 27 2, 2026);
- 28 33. Ruiz Rodriguez v. Mattos, No. 2:26-CV-00316-RFB-EJY, 2026 WL 579412 (D. Nev. Mar. 2,

- 1 2026);
- 2 34. Avalos Gonzalez v. Mattos, No. 2:26-CV-00462-RFB-DJA, 2026 WL 594809 (D. Nev. Mar.
- 3 3, 2026);
- 4 35. Flores Flores v. Mattos, No. 2:26-CV-00354-RFB-MDC, 2026 WL 594808 (D. Nev. Mar. 3,
- 5 2026);
- 6 36. Alvear Carcamo v. Noem, No. 2:26-CV-00463-RFB-MDC, 2026 WL 622732 (D. Nev. Mar.
- 7 5, 2026)
- 8 37. Villatoro v. Bernacke, No. 2:26-CV-00537, 2026 WL 638485 (D. Nev. Mar. 6, 2026);
- 9 38. Alfaro Quintanilla v. Noem, No. 2:26-CV-00541-RFB-NJK, 2026 WL 637096 (D. Nev. Mar.
- 10 6, 2026);
- 11 39. Hernandez v. Mattos, No. 2:26-CV-00365-RFB-EJY, 2026 WL 658904 (D. Nev. Mar. 9,
- 12 2026);
- 13 40. Mendez Vazquez v. Mattos, No. 2:26-CV-00262-RFB-BNW, 2026 WL 658896 (D. Nev. Mar.
- 14 9, 2026);
- 15 41. Lemus Vazquez v. Bondi, No. 2:26-CV-00182-RFB-DJA, 2026 WL 686838 (D. Nev. Mar.
- 16 11, 2026);
- 17 42. Cardenas Dorantes v. Noem, No. 2:26-CV-00650-RFB-MDC, 2026 WL 752649 (D. Nev. Mar.
- 18 17, 2026);
- 19 43. Alfaro Morales v. Noem, No. 2:26-CV-00585-RFB-MDC, 2026 WL 776986 (D. Nev. Mar.
- 20 19, 2026);
- 21 44. Contreras Gamboa v. Noem, No. 3:26-CV-00175-RFB-CSD, 2026 WL 776804 (D. Nev. Mar.
- 22 19, 2026);
- 23 45. Rubio Gomez v. Bondi, No. 2:26-CV-00264-RFB-BNW, 2026 WL 788805 (D. Nev. Mar. 20,
- 24 2026);
- 25 46. Barraza Chavez v. Knight, No. 2:26-CV-00743-RFB-MDC, 2026 WL 811518 (D. Nev. Mar.
- 26 24, 2026);
- 27 47. Santeliz Meza v. Noem, No. 2:26-CV-00706-RFB-DJA, 2026 WL 811503 (D. Nev. Mar. 24,
- 28 2026);

- 1 48. Avila-Paredes v. Holston, No. 2:26-CV-00699-RFB-EJY, 2026 WL 822477 (D. Nev. Mar. 25,
2 2026);
- 3 49. Bonifaz-Morales v. Bondi, No. 2:26-CV-00761-RFB-BNW, 2026 WL 822493 (D. Nev. Mar.
4 25, 2026);
- 5 50. Castellanos Arellano v. Knight, No. 2:26-CV-00741-RFB-EJY, 2026 WL 822480 (D. Nev.
6 Mar. 25, 2026).

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APPENDIX B

CLASS ACTION NOTICE

United States District Court for the District of Nevada (Case No. 25-cv-02136)

BACKGROUND:

A lawsuit was filed in federal court in Nevada, *Jacobo-Ramirez v. Noem*, No. 25-cv-02136 (Nev. 2025), challenging the Department of Homeland Security (DHS) and Executive Office for Immigration Review’s (EOIR) policies that certain people must be detained in custody without the opportunity to ask an Immigration Judge for release on bond while waiting to resolve their case in Immigration Court. These DHS and EOIR policies applied to people who entered the United States without being admitted or inspected.

On March 30, 2026, the Court issued a ruling that these DHS and EOIR policies are unlawful. Under the court’s order, anyone who is a member of the group in the lawsuit, called a “class member”, must be considered for release on bond and must receive a bond hearing in front of an Immigration Judge if they request one.

NOTICE:

You may be a member of the class that was certified by the judge in this case. Receiving this notice does not mean you are a class member; it means that you *might* be a class member. Class members may request release on bond or conditional parole by immigration officers and may ask for a bond hearing in Immigration Court. At the bond hearing, the Immigration Judge may determine that the class member is eligible to be released on bond while their removal proceedings are pending.

YOU MAY BE A CLASS MEMBER IF YOU MEET ALL OF THE FOLLOWING:

1. You do not have lawful status in the United States;
2. You are in removal proceedings before an Immigration Court within the District of Nevada or were in removal proceedings before an Immigration Court within the District of Nevada on or after October 30, 2025;
3. You entered the United States without inspection;
4. Your most recent arrest did not occur upon arrival to the United States;
5. You are not in expedited removal proceedings;
6. You are not in mandatory detention due to certain criminal charges or convictions; and
7. You do not have a final order of removal or a reinstated order of removal.

ATTACHED DOCUMENTS

The District Court’s order and judgment are included with this notice. This notice may be presented to the Immigration Court as proof that you may be a class member who has the right to a bond hearing.

If you are denied a bond hearing in Immigration Court after asking for one or were told that the Immigration Court does not have jurisdiction, you may seek individual relief by filing a petition in federal court in Nevada. A template petition for habeas corpus is included with this notice.

Served on date: _____

Served at location: _____

Name of person served: _____

Alien number of person served: _____

Name of officer serving notice: _____

ID number of officer serving notice: _____

Signed by serving officer: _____