No.

In the Supreme Court of the United States

KEVIN RAYCRAFT, ACTING DIRECTOR OF THE DETROIT FIELD OFFICE OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ET AL., PETITIONERS

v.

JUAN MANUEL LOPEZ-CAMPOS, ET AL.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under 8 U.S.C. 1225(a)(1), "[a]n alien present in the United States who has not been admitted" is "deemed for purposes" of the immigration laws to be "an applicant for admission." Section 1225(b)(2)(A) further provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for" a removal proceeding under 8 U.S.C. 1229a. 8 U.S.C. 1225(b)(2)(A).

Respondents are aliens who entered the United States without inspection and are now present in the United States without having been admitted. Pet. App. 3a. Immigration officers apprehended them and initiated removal proceedings. *Ibid.* The questions presented are:

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

2. Whether detaining respondents without a bond hearing during their removal proceedings comports with due process.

PARTIES TO THE PROCEEDING

Petitioners (respondents-appellants below) are Kevin Raycraft, Acting Director of the Detroit Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; Markwayne Mullin, Secretary of Homeland Security; the United States Department of Homeland Security; Todd W. Blanche, Acting United States Attorney General; and the Executive Office for Immigration Review.

Respondents (petitioners-appellees below) are Juan Manuel Lopez-Campos; Juan Carlos Sanchez Alvarez; Jose Daniel Contreras-Cervantes; Fredy de los Angeles-Flores; Mariela Virginia Ocando-Leon; Luis Felipe Jarquin-Jarquin; Debbie Vasquez-Cruz; Jairo Manuel Godoy-Perez; Marifer Diaz-Alcantar; Miguel Angel Reyes-Sanchez; and Jesus Jose Pizarro Reyes.

RELATED PROCEEDINGS

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

Lopez-Campos v. *Raycraft*, No. 25-cv-12486 (Aug. 29, 2025)

Pizarro Reyes v. *Raycraft*, No. 25-cv-12546 (Sept. 9, 2025)

Contreras-Cervantes v. *Raycraft*, No. 25-cv-13073 (Oct. 17, 2025)

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

Sanchez Alvarez v. *Noem*, No. 25-cv-1090 (Oct. 17, 2025)

United States Court of Appeals (6th Cir.):

Lopez-Campos v. *Raycraft*, No. 25-1965 (May 11, 2026)

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

PETITION FOR A WRIT OF CERTIORARI

The Solicitor General—on behalf of Kevin Raycraft, the Acting Director of the Detroit Field Office of U.S. Immigration and Customs Enforcement, and others—respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-87a) is reported at 175 F.4th 713. The opinions and orders of the district courts (Pet. App. 88a-111a, 112a-132a, 133a-158a, 159a-181a) are available at 797 F. Supp. 3d 771, 2025 WL 2609425, 2025 WL 2952796, and 807 F. Supp. 3d 777.

JURISDICTION

The judgment of the court of appeals was entered on May 11, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides in relevant part that no "person" shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V.

The pertinent statutory provisions are reproduced in the appendix to this petition. Pet. App. 182a-198a.

INTRODUCTION

This case presents a critically important question of immigration law that has divided the courts of appeals: whether aliens who illegally enter and remain in the country without admission must be detained while their removal proceedings unfold.

The answer is yes, as the Fifth and Eighth Circuits have held. The relevant provision, 8 U.S.C. 1225(b)(2)(A), applies "in the case of an alien who is an applicant for admission." That provision mandates that an alien "shall be detained" "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." *Ibid.* Aliens like respondents, who entered the country illegally and remained here without admission, are plainly covered. Such aliens are "deemed" to be "applicant[s] for admission." 8 U.S.C. 1225(a)(1). As such, they are also "alien[s] seeking admission." 8 U.S.C. 1225(b)(2)(A). "Just as an applicant to a college seeks admission, an applicant for admission to the United States is 'seeking admission' to the same." *Buenrostro-Mendez* v. *Bondi*, 166 F.4th 494, 502 (5th Cir. 2026). And they have been found by immigration officers not to be "entitled to be

admitted." 8 U.S.C. 1225(b)(2)(A). Section 1225(b)(2)(A) thus requires that they be detained pending removal proceedings.

The government's detention of such unlawfully present aliens while their removal proceedings unfold implements the statute Congress enacted. Congress's decision to mandate detention pending removal proceedings for aliens who are not entitled to be admitted into the country reflects vital policy objectives. Detaining aliens who are living in the country after an illegal entry while their removal proceedings unfold prevents those aliens from evading hearings and helps ensure their removal from the United States. Mandatory detention also eliminates a perverse incentive for further illegal entry by preventing those aliens from otherwise benefiting from illegal entry.

But the Sixth Circuit, in a split decision, joined the Second and Eleventh Circuits in rejecting that interpretation and holding that only a far narrower category of aliens—those who are actively pursuing lawful entry (*i.e.*, admission) after inspection by an immigration officer, but are ineligible for admission—can be detained under Section 1225(b)(2)(A) pending removal proceedings. The Sixth Circuit majority reasoned that Section 1225(b)(2)(A) does not apply to the significant number of aliens who remain present in the United States after they illegally enter, on the theory that such aliens are not "seeking admission." 8 U.S.C. 1225(b)(2)(A); see Pet. App. 27a. Separately, the majority held, Fifth Amendment due-process principles prohibit the government from detaining such aliens without a bond hearing. Pet. App. 33a. The upshot is that, within the Sixth Circuit, Section 1225(b)(2)(A)'s detention mandate applies to inadmissible aliens arriving at a port of

entry, but not those aliens who illegally entered, evaded detection, and remained here for some time thereafter.

Those conclusions are unsupportable, as Judge Murphy explained in his dissent. The majority's statutory reading rests on the flawed, atextual premise that an "applicant for admission" is not necessarily an "alien seeking admission." Nor is there a due-process problem with detaining respondents without a bond hearing pending removal proceedings. Section 1225(b)(2)(A) requires detention regardless of an individual alien's flight risk or dangerousness, and respondents have no procedural-due-process right to a hearing to present facts that are not "relevant under the statutory scheme." *Connecticut Dep't of Pub. Safety* v. *Doe*, 538 U.S. 1, 8 (2003). Respondents' substantive-due-process claim also fails under the applicable rational-basis standard. See Pet. App. 86a (Murphy, J., dissenting).

The entrenched circuit split—with the Fifth and Eighth Circuits on one side and the Second, Sixth, and Eleventh Circuits on the other side—is disrupting the orderly administration of immigration law. In the past year, thousands of aliens have filed habeas petitions challenging the lawfulness of the government's interpretation of Section 1225(b)(2)(A)—often both on statutory and due-process grounds. Under the Fifth and Eighth Circuit's rulings, aliens who illegally entered the United States and are within those circuits can be detained pending removal proceedings. Yet the same aliens could be released on bond and potentially evade removal within the Second, Sixth, or Eleventh Circuits. Immigration enforcement should not depend on geographical happenstance. Moreover, the volume of habeas litigation will continue to impose immense burdens

on district courts and U.S. Attorney's Offices throughout the nation until this issue is resolved.

The decision below presents the best vehicle for this Court to resolve this untenable divide. The circuit courts have sharply split on the statutory question. And while the Sixth Circuit is the first court of appeals to squarely decide the constitutional issue, its due-process holding effectively invalidated a federal statute as applied to respondents. Further, those same due-process arguments are often framed as constitutional-avoidance-based justifications for adopting respondents' interpretation of Section 1225(b)(2)(A). Especially given the volume of cases involved, this Court should grant review and resolve this case as swiftly as practicable.

STATEMENT

A. Legal Background

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

1. Before 1996, the applicable procedures for detaining and expelling an alien under the INA depended largely on whether the alien had physically "entered" the United States, regardless of whether that entry had been lawful. "[E]xpelling an alien who had already entered required a *deportation* proceeding." *Jama* v. *ICE*, 543 U.S. 335, 349 (2005). Aliens in deportation proceed-

ings could be released on bond while those proceedings unfolded. 8 U.S.C. 1252(a)(1) (1994).

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

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

2. In IIRIRA, Congress acted to correct that disparity. Congress replaced the defined term "entry" with the term "'admission,'" which it defined as "the *lawful* entry of the alien into the United States after inspection

and authorization by an immigration officer." § 301(a), 110 Stat. 3009-575 (8 U.S.C. 1101(a)(13)(A)) (emphasis added). Members of Congress described the significance of that change as follows: Instead of making physical entry into the United States the touchstone of an alien's status, the "pivotal factor" became "whether or not the alien has been *lawfully* admitted." House Report 225 (emphasis added).

IIRIRA also eliminated the prior distinction between "deportation" and "exclusion" proceedings, consolidating both sets of hearings into "removal proceedings." § 304(a)(3), 110 Stat. 3009-589 (8 U.S.C. 1229a); see *Jama*, 543 U.S. at 349. Now, in removal proceedings, the burden of proof depends on whether the alien has been lawfully admitted. An alien who is an "applicant for admission" must establish that he is "clearly and beyond doubt entitled to be admitted" and "not inadmissible." 8 U.S.C. 1229a(c)(2)(A). By contrast, the government bears "the burden of establishing by clear and convincing evidence that, in the case of an alien who has been admitted to the United States, the alien is deportable." 8 U.S.C. 1229a(c)(3)(A).

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

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

- ***Section 1225(a)(1)***, titled "Aliens treated as applicants for admission," provides that "[a]n alien present in the United States who has not been admitted or who arrives in the United States * * *

shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. 1225(a)(1).

- ***Section 1225(a)(3)*** adds that "[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers." 8 U.S.C. 1225(a)(3). That inspection is to determine whether the alien may be "admitted" to the country or instead must be referred to immigration proceedings.

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

- ***Section 1225(b)(1)*** creates an "expedited removal" process "for certain 'applicants for admission.'" *DHS* v. *Thuraissigiam*, 591 U.S. 103, 108-109 (2020). Those procedures apply to certain inadmissible aliens who are (1) "arriving in the United States," or (2) as designated by the Secretary of Homeland Security, have not "been admitted or paroled in the United States" and have not shown that they have been "physically present in the United States" for two years prior to the date of the inadmissibility determination. 8 U.S.C. 1225(b)(1)(A)(i)-(iii).
- ***Section 1225(b)(2)***, titled "Inspection of other aliens," supplies the removal and detention procedures relevant here. 8 U.S.C. 1225(b)(2). Subject to certain narrow exceptions not applicable here, Section 1225(b)(2)(A) provides that: "in the case

of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for" a removal proceeding under Section 1229a. 8 U.S.C. 1225(b)(2)(A). Though Section 1225(b)(2)(A) speaks in mandatory language, the Department of Homeland Security (DHS) has the discretion to release "any alien applying for admission to the United States" on parole, albeit "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. 1182(d)(5)(A).

Section 1226. Section 1226 addresses the arrest and detention of aliens more generally, without limitation to applicants for admission. Unlike Section 1225, detention under Section 1226 is discretionary for many aliens; only certain classes of criminal aliens are subject to mandatory detention under Section 1226. Specifically:

- ***Section 1226(a)*** authorizes the arrest and detention of aliens "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. 1226(a). Such detention is discretionary; the government "may continue to detain the arrested alien" or "may release the alien" on "bond" or "conditional parole." 8 U.S.C. 1226(a)(1) and (2). By regulation, the alien is entitled to a "custody redetermination" (a bond hearing) before an immigration judge, which can be appealed to the Board of Immigration Appeals. 8 C.F.R. 236.1(d), 1003.19, 1236.1(d)(1).
- ***Section 1226(c)*** mandates detention for certain criminal aliens. In IIRIRA, Congress required the

detention of any alien who is inadmissible or deportable because he (1) committed certain covered offenses, or (2) engaged in terrorism-related activities. § 303(a), 110 Stat. 3009-585; see *Nielsen* v. *Preap*, 586 U.S. 392, 398-399 (2019). Recently, Congress amended Section 1226(c) to require the detention of additional categories of criminal aliens. See Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3 (8 U.S.C. 1226(c)(1)(E)). Section 1226(c) prohibits the release of covered criminal aliens except for narrow, witness-protection purposes. 8 U.S.C. 1226(c)(4).

4. After IIRIRA was enacted, the government continued to treat aliens who were present in the United States without having been admitted as eligible for bond hearings—just as they had been before IIRIRA's comprehensive immigration reforms. See 8 U.S.C. 1252(a)(1) (1994). The preamble to interim rules promulgated in 1997 announced: "Despite being applicants for admission, aliens who are present without having been admitted or paroled * * * will be eligible for bond and bond redetermination." 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). The preamble did not explain why Section 1225(b)(2)(A)'s new mandatory-detention regime did not apply to such aliens, whom the government recognized were "applicants for admission." *Ibid.*

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

In July 2025, DHS revisited the issue and determined that its prior approach was inconsistent with the

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

B. Factual And Procedural Background

1. Respondents are eleven aliens who entered the United States illegally and are now present in the country without having been admitted. Pet. App. 3a. Immigration officers apprehended each of them between June and September 2025 and initiated removal proceedings against them. All respondents were charged with being inadmissible under 8 U.S.C. 1182(a)(6)(A)(i), for being present in the United States without being admitted or paroled. Several respondents were also charged with being inadmissible under 8 U.S.C. 1182(a)(7)(A)(i), for not possessing valid immigration documents. See Pet. App. 90a, 115a, 138a, 161a.

DHS determined that respondents must be detained for the duration of their removal proceedings pursuant to Section 1225(b)(2)(A)'s detention mandate. Some (but not all) respondents requested bond hearings before an immigration judge. See Pet. App. 3a. In those

cases, each immigration judge ultimately determined that Section 1225(b)(2)(A) deprived the judge of authority to grant bond. See *ibid.*[1]

2. Since the government implemented its revised interpretation of Section 1225(b)(2)(A), thousands of aliens who are present in the country without having been admitted have filed petitions for habeas corpus seeking release from detention or a bond hearing under 8 U.S.C. 1226(a).

Respondents are among that group. See Pet. App. 3a. Respondents Juan Manuel Lopez-Campos and Jesus Jose Pizarro Reyes filed individual habeas petitions in the United States District Court for the Eastern District of Michigan. *Id.* at 88a, 112a. Respondent Juan Carlos Sanchez Alvarez filed a petition in the Western District of Michigan. *Id.* at 159a. The remaining eight respondents jointly filed a single habeas petition in the Eastern District of Michigan. See *id.* at 133a. All four habeas petitions alleged that respondents' detention without a bond hearing violated the INA and the Fifth Amendment's Due Process Clause.

In each case, the district court granted the petition. Pet. App. 89a, 114a, 134a, 160a. Each court held that, while Section 1225(b)(2)(A) mandates detention pending removal proceedings, that provision does not apply to respondents; Section 1226(a) instead applies and authorizes a bond hearing. See *ibid.* The courts held that Section 1225(b)(2)(A) applies to aliens who are "seeking admission," 8 U.S.C. 1225(b)(2)(A), and interpreted that phrase to refer only to aliens who are currently trying

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[1] In the case of respondent Jesus Jose Pizarro Reyes, the immigration judge initially granted bond but then amended his decision and denied bond, concluding that 8 U.S.C. 1225(b)(2)(A) deprived him of the authority to grant bond. See Pet. App. 116a.

to obtain lawful entry at the Nation's borders—not to aliens like respondents, who had illegally entered the country without detection some time ago. See Pet. App. 101a-102a, 123a, 149a-150a, 169a.

In three of the four cases, the district court also held that detaining respondents without providing a bond hearing violated their due-process rights. See Pet. App. 108a, 155a, 177a. Several of the courts reasoned that a bond hearing is required under the due-process framework set out in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976). See Pet. App. 110a, 175a. The district court in Pizarro Reyes's case declined to reach the due-process issue after ruling against the government on statutory grounds. *Id.* at 131a.

Following the district court decisions, the government released each detained respondent from detention without a bond hearing and then appealed. Pet. App. 4a.

3. The court of appeals consolidated all four appeals for oral argument and affirmed in a divided opinion. Pet. App. 1a-87a.

The panel majority concluded that Section 1225(b)(2)(A) does not apply to aliens who have already illegally entered the country, such as respondents, on the theory that such aliens are not "seeking admission." Pet. App. 9a-10a. The court did not dispute that respondents qualify as "applicants for admission" under Section 1225, because Section 1225(a)(1) expressly applies that term to "[a]n alien present in the United States who has not been admitted." 8 U.S.C. 1225(a)(1); see Pet. App. 8a, 10a. But the court nonetheless considered Section 1225(b)(2)(A) inapplicable, reasoning that an "applicant for admission" is not necessarily "seeking admission" because the latter term requires that the alien "must actively be in search of lawful entry into the

United States via inspection and authorization by an immigration officer." Pet. App. 9a. The court reasoned that Congress chose to use "applicant for admission" and "seeking admission" as distinct terms in Section 1225(b)(2)(A). *Id.* at 10a-11a. The court also relied on the government's previous practice of providing bond hearings to aliens present in the United States after an illegal entry. *Id.* at 13a-14a.

The court of appeals separately held that respondents' detention without bond hearings violated their due-process rights. Pet. App. 28a-33a. Respondents had argued that their detention violated both procedural due process and substantive due process, see 25-1965 Resp. C.A. Br. 47, but the court appeared to rest its holding only on "procedural due process." Pet. App. 28a. The court concluded that "noncitizens within the interior of the United States" are entitled to due process "'whether their presence here is lawful, unlawful, temporary, or permanent.'" *Ibid.* (quoting *Zadvydas* v. *Davis*, 533 U.S. 678, 693 (2001)). The court held that the detention of such aliens pending their removal proceedings must "effectuate two regulatory goals: (1) ensuring the appearance of noncitizens at future immigration proceedings and (2) preventing danger to the community." *Id.* at 29a. The court held that bond hearings are required to assess whether detention satisfies those two factors in any individual case. *Id.* at 33a.

Judge Murphy dissented. Pet. App. 34a-87a. He explained that "an 'applicant' for admission *applies for* or *seeks* that admission under the ordinary understanding of the word." *Id.* at 50a. Thus, when Congress deemed aliens present without admission to be "applicants for admission" in Section 1225(a)(1), Congress also presumptively deemed them to be "seeking admission."

Ibid. Judge Murphy next turned to statutory structure, emphasizing that the INA elsewhere equates "applicants for admission" with "seeking admission," or uses the term "seeking admission" to refer to unlawfully present aliens. *Id.* at 59a-71a (discussing 8 U.S.C. 1225(a)(3), 1225(a)(5), 1182(d)(5)(A), 1101(a)(13)(C), 1182(a)(9)(B)(i)(II)). Judge Murphy explained that this reading is consistent with IIRIRA's history of eliminating procedural advantages for aliens who entered the country unlawfully, whereas the majority's reading would "expand" the "'perverse incentive'" that existed before IIRIRA. *Id.* at 76a (citation omitted).

Judge Murphy also would have rejected respondents' due-process claim. Pet. App. 82a-87a. He explained that respondents have no substantive-due-process right to an individualized assessment of their flight risk or dangerousness at a bond hearing. *Id.* at 86a. And he reasoned that respondents' request for a bond hearing as a matter of procedural due process merely boils down to a substantive claim, as respondents seek "a hearing that the law renders *irrelevant* to their detention." *Id.* at 87a (citing *Connecticut Dep't of Pub. Safety* v. *Doe*, 538 U.S. 1, 7-8 (2003)).

REASONS FOR GRANTING THE PETITION

This case presents a vitally important question of immigration law that has divided the courts of appeals: whether aliens present in the United States after an illegal entry must be detained while their removal proceedings unfold. The correct answer is yes: 8 U.S.C. 1225(b)(2)(A) mandates detention for such aliens pending their removal proceedings, and there is no due-process problem with that result. The Sixth Circuit, however, erroneously held that Section 1225(b)(2)(A) does not apply to aliens like respondents, who are present after en-

tering illegally. Under the Sixth Circuit's ruling, such aliens are instead subject to discretionary detention—with the possibility of bond—under 8 U.S.C. 1226(a). Further, the court held, due process independently forecloses mandatory detention and requires providing such aliens with bond hearings.

Both the Sixth Circuit's statutory and constitutional holdings are incorrect. The court misinterpreted the text, structure, and history of the INA, then misapplied this Court's due-process precedents. Both errors warrant this Court's review. Five courts of appeals have now weighed in on the statutory issue and divided 3-2, with additional cases on both the statutory and constitutional issues currently pending in the circuits. The result is an unworkable patchwork of inconsistent immigration enforcement, where aliens present without admission are subject to mandatory detention in some circuits but are entitled to bond hearings and often released in others. This case is the best vehicle for resolving both issues, and the Court should grant the petition.

A. The Decision Below Is Incorrect

1. Section 1225(b)(2)(A) mandates the detention pending removal proceedings of aliens who are present in the United States without having been admitted

a. The plain text of 8 U.S.C. 1225(b)(2)(A) mandates the detention during removal proceedings of aliens like respondents who entered the United States illegally and remain present here without admission. Section 1225(b)(2)(A) mandates detention "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. 1225(b)(2)(A) (requiring that

such aliens "shall be detained"); see Pet. App. 6a. Respondents satisfy each part of that language.

To begin, each respondent is undisputedly "an alien who is an applicant for admission." 8 U.S.C. 1225(b)(2)(A). Section 1225(a)(1) provides that "[a]n alien present in the United States who has not been admitted or who arrives in the United States * * * shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. 1225(a)(1). "'[A]dmission,'" in turn, means "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. 1101(a)(13)(A). Putting those two provisions together, aliens who are present after an illegal entry are treated as applicants for lawful entry. See Pet. App. 8a-9a; *id.* at 44a (Murphy, J., dissenting).[2]

Next, as "applicants for admission," respondents are necessarily "seeking admission." 8 U.S.C. 1225(b)(2)(A). In ordinary English, an "applicant" for something is one who applies for, or "seeks," that thing. See, *e.g.*, *The American Heritage Dictionary of the English Language* 89 (3d ed. 1992) ("apply" means "[t]o request or *seek* assistance, employment, or admission") (emphasis added). For example, an applicant for admission to a college or a club is a person who seeks admission to that college or club. See *Buenrostro-Mendez* v. *Bondi*, 166 F.4th 494, 502 (5th Cir. 2026).

Finally, "examining immigration officer[s]" found that respondents are "not clearly and beyond a doubt en-

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[2] Although respondents in this case entered the United States illegally and have not been admitted or paroled, the government's arguments in this case are not limited to that group. An alien who was paroled into the country also qualifies as an alien "present in the United States who has not been admitted," and thus as an "applicant for admission." 8 U.S.C. 1225(a)(1); see 8 U.S.C. 1182(d)(5)(A).

titled to be admitted" when they initiated removal proceedings against respondents. 8 U.S.C. 1225(b)(2)(A). Indeed, respondents are unquestionably not "entitled to be admitted." *Ibid.* Aliens who are "present in the United States without being admitted or paroled" are "inadmissible," subject to narrow exceptions not applicable here. 8 U.S.C. 1182(a)(6)(A).

Because respondents satisfy each part of Section 1225(b)(2)(A), the statute mandates that they "shall be detained" pending their removal proceedings. 8 U.S.C. 1225(b)(2)(A). That mandate makes no exception for aliens based on how long they remain in the country undetected. Nor is that mandate limited to "arriving" aliens or aliens near the border; Congress expressly referred to aliens "arriving in the United States" in the neighboring expedited-removal provision in Section 1225(b)(1), but not in (b)(2). Instead, Section 1225(b)(2)(A)'s detention mandate is subject only to the narrow exceptions outlined in subparagraphs (B) and (C), which cover stowaways and crew members, among others, and unquestionably do not apply here. See 8 U.S.C. 1225(b)(2)(A)-(C). The statute thus requires the government to detain respondents pending their removal proceedings and leaves no discretion to release them on bond.

b. The court of appeals erroneously rejected that reading of Section 1225(b)(2)(A) and interpreted the provision to apply only to aliens who are making active efforts to lawfully enter the United States, such as by presenting themselves for inspection at a port of entry.[3]

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[3] Although the court of appeals declined to address respondents' argument that Section 1225(b)(2)(A) "applies only at the border," Pet. App. 23a, the court did not explain in which other circumstances an alien could be "seeking admission" under its reading.

The court thus excluded all aliens in respondents' shoes, who "are actively avoiding being inspected for lawful entry." Pet. App. 10a. The court reasoned that despite being "applicants for admission," respondents are not "aliens seeking admission" under Section 1225(b)(2)(A). That interpretation is textually unsupportable.

i. The statutory text and structure show that as applicants for admission, respondents are necessarily "aliens seeking admission." As noted above, someone "applying" for something is by definition *seeking* that thing. See p. 17, *supra*. By "treat[ing]" aliens present in the United States as applicants for admission, the INA adopts a "'legal fiction'" that those aliens are "seeking admission"—even if they have not in fact applied for or otherwise pursued lawful entry into the United States. Pet. App. 50a (Murphy, J., dissenting) (citation omitted). As the Board of Immigration Appeals has long recognized, "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *In re Lemus-Losa*, 25 I. & N. Dec. 734, 743 (2012).

Nearby provisions confirm that applicants for admission are "aliens seeking admission." Most notably, Section 1225(a)(3) requires the inspection of all aliens "who are applicants for admission or *otherwise* seeking admission or readmission." 8 U.S.C. 1225(a)(3) (emphasis added). "Otherwise" means "[i]n another way" or "in a different manner," further confirming that being an applicant is one way of seeking admission. 10 *The Oxford English Dictionary* 984 (2d ed. 1989). Section 1225(a)(5) reinforces the point by providing that an "applicant for admission may be required to state under oath" any information "regarding the purposes and intentions of the

applicant in *seeking admission* to the United States." 8 U.S.C. 1225(a)(5) (emphases added). That "language strongly suggests that those who are applicants for admission are 'seeking admission,'" *Buenrostro-Mendez*, 166 F.4th at 503, because it presumes that any applicant for admission has "purposes and intentions * * * in seeking admission," 8 U.S.C. 1225(a)(5).

ii. The court of appeals instead held that the phrases "applicant for admission" and "alien seeking admission" must mean different things. The court reasoned that the phrase "'applicant for admission'" is a "statutorily defined term of art," and that Section 1225(a)(1) supplies a specialized "definition" for that phrase and that phrase alone. Pet. App. 19a-20a. Thus, even though the court did not dispute that the INA treats respondents as "applicants for admission," the court viewed that as irrelevant to whether respondents should be treated as "aliens seeking admission."

That reasoning misapprehends Section 1225(a)(1), which does not purport to "define" the phrase "applicant for admission" as a term of art. Contra Pet. App. 19a-20a. Instead, Section 1225(a)(1), titled "Aliens *treated* as applicants for admission," is a deeming provision. 8 U.S.C. 1225(a)(1) (emphasis added). It provides that certain classes of alien—including those "present in the United States" without being admitted and those who "arrive[] in the United States"—"shall be *deemed* for purposes of this chapter an applicant for admission." *Ibid.* (emphasis added).

"The key word here is 'deemed.'" *Sturgeon* v. *Frost*, 587 U.S. 28, 47 (2019). "Deemed" is used in statutes to "treat (something) as if it were really something else." *Ibid.* (quoting *Black's Law Dictionary* 504 (10th ed. 2014) (brackets and ellipsis omitted)). Thus, in *Stur-*

geon, a statute "deemed" certain private lands not "to be included as a portion of" the national parks in which they sat. *Ibid.*; see 16 U.S.C. 3103(c). Because of the deeming provision, the Court held that the private lands were not covered by a statute authorizing the regulation of property "within" the boundaries of those parks. *Sturgeon*, 587 U.S. at 48-49; see 54 U.S.C. 100751.

Here, Congress used "deemed" to treat certain aliens who have not applied for anything at all—because they entered the United States unlawfully—as though they are applicants for admission. Deeming a group of aliens as applicants for admission does not merely apply a specific "label" to them; it subjects them to all the legal "consequences" of being a person who applies for admission. *Hernandez Alvarez* v. *Warden*, 175 F.4th 1258, 1288 (11th Cir. 2026) (Lagoa, J., dissenting). Because an applicant for admission is necessarily a person seeking admission, see p. 17, *supra*, an alien who is treated like an applicant for admission is covered by a statute that applies to aliens "seeking admission." See Pet. App. 35a (Murphy, J., dissenting).

iii. The court of appeals believed that if "applicants for admission" were necessarily "seeking admission," the latter phrase would be surplusage. Pet. App. 10a-11a. But the canon against superfluity is a presumption, "not an absolute rule." *Marx* v. *General Revenue Corp.*, 568 U.S. 371, 385 (2013). And it is not a particularly useful presumption here, because IIRIRA's text "teems with" a "'belt-and-suspenders approach' to draftsmanship." Pet. App. 56a (Murphy, J., dissenting). For example, "stowaway[s]" are expressly exempted from Section 1225(b)(2)(A)'s detention mandate. 8 U.S.C. 1225(b)(2)(B)(iii). But that provision is unquestionably redundant, because Section 1225(b)(2)(A) applies only

"in the case of an alien who is an applicant for admission," 8 U.S.C. 1225(b)(2)(A), and a separate provision states that "[i]n no case may a stowaway be considered an applicant for admission," 8 U.S.C. 1225(a)(2). Because redundancy is inevitable in Section 1225(b)(2), the court of appeals was wrong to strain to read the statutory text in order to avoid surplusage. See *Marx*, 568 U.S. at 385.

Moreover, even if "seeking admission" required some separate affirmative conduct by the alien, respondents are by any definition "seeking admission." By attempting to remain in the United States, rather than requesting to voluntarily "depart immediately from the United States," 8 U.S.C. 1225(a)(4), respondents qualify. See Pet. App. 49a (Murphy, J., dissenting).

c. The court of appeals' interpretation also contravenes the history underlying IIRIRA.

Before IIRIRA was enacted, Section 1225(b) mandated detention only for aliens arriving at a port of entry. See 8 U.S.C. 1225(b) (1994) (requiring detention of aliens "who may not appear to the examining immigration officer *at the port of arrival* to be clearly and beyond a doubt entitled to *land*") (emphases added). Congress amended the provision shortly before it passed IIRIRA, but the provision's application was still limited to aliens "seeking *entry*." AEDPA § 422, 110 Stat. 1271 (emphasis added).

Meanwhile, in the pre-IIRIRA regime, aliens present in the United States after an unlawful entry were not subject to mandatory detention, but rather could be released on bond while their deportation proceedings unfolded. 8 U.S.C. 1252(a)(1) (1994). This was one of the several ways in which, before IIRIRA, aliens who entered unlawfully were perversely given "equities and

privileges in immigration proceedings that [we]re not available to aliens who present[ed] themselves for inspection at a port of entry." House Report 225.

IIRIRA corrected that anomaly, as its changes to Section 1225 illustrate. Instead of distinguishing between aliens arriving at the border and aliens who had managed to evade detection and were already physically present in the United States, IIRIRA put both groups "on equal footing" as "applicants for admission." *Buenrostro-Mendez*, 166 F.4th at 508; 8 U.S.C. 1225(a)(1). And in Section 1225(b)(2)(A), the detention mandate, Congress removed its prior references to "ports of arrival" or "entry." Instead, it applied that detention mandate to "applicant[s] for admission," a group that now included aliens already present in the United States without admission. See 8 U.S.C. 1225(b)(2)(A).

The court of appeals' interpretation disregards that statutory change. Instead, it restores the very regime that Congress sought to discard: one under which only arriving aliens are subject to mandatory detention, and aliens who sneaked across the border are perversely provided more "privileges" than those who follow the rules and present at a port of entry. House Report 225. To be sure, aliens who entered unlawfully may have retained certain privileges unavailable to aliens *outside the United States*. See Reply Br. 16-17, *Mullin* v. *Al Otro Lado*, No. 25-5 (argued Mar. 24, 2026). But there is no reason to think Congress provided a more lenient detention regime for such unlawfully present aliens than for aliens who dutifully presented themselves for inspection at a port of entry on U.S. soil.

d. Respondents' and the court of appeals' remaining arguments lack merit.

The court of appeals speculated that if Congress intended for Section 1225(b)(2)(A) to cover the millions of aliens present after an unlawful entry, "it likely would have" allowed for the provision's effective date to be delayed while the government built up its detention capacity. Pet. App. 12a. The court pointed out that Congress authorized the Attorney General to delay by up to two years the effective date of Section 1226(c), which mandated the detention of certain criminal aliens. *Ibid.* (citing IIRIRA § 303(b)(2), 110 Stat. 3009-586). But it "is never the court's job to rewrite statutory text under the banner of speculation about what Congress might have done." *Buenrostro-Mendez*, 166 F.4th at 507 (brackets, citation, and ellipsis omitted). Such speculation is particularly unpersuasive given that the government "has never had 'sufficient detention capacity to maintain in custody every single person described in section 1225,'" under any interpretation. *Biden* v. *Texas*, 597 U.S. 785, 792 (2022) (citation omitted).

The court of appeals also relied on the government's previous practice of detaining aliens present in the United States without admission under Section 1226(a)'s discretionary scheme rather than Section 1225(b)(2)(A)'s mandatory scheme. Pet. App. 13a-14a; see 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). But Congress's mandate "cannot evaporate through lack of administrative exercise," *Bankamerica Corp.* v. *United States*, 462 U.S. 122, 131 (1983) (citation omitted), and even "longstanding agency interpretations must fall to the extent they conflict with statutory language," *Public Emps. Ret. Sys.* v. *Betts*, 492 U.S. 158, 171 (1989). For example, this Court rejected an interpretation of the INA that reflected 21 years of government practice in *Pereira* v.

Sessions, 585 U.S. 198, 204-205 (2018). See *Buenrostro-Mendez*, 166 F.4th at 506.

Although the court of appeals declined to address the argument, see Pet. App. 23a, respondents also contended that the government's interpretation renders superfluous Congress's recent amendments to Section 1226(c) in the Laken Riley Act. Section 1226(c) requires the detention of certain criminal aliens after they are released from federal or state imprisonment. See 8 U.S.C. 1226(c). The Laken Riley Act added to the list of covered criminal aliens those who are "present * * * without being admitted" and have committed certain serious crimes. 8 U.S.C. 1182(a)(6)(A), 1226(c)(1)(E). Although Section 1225(b)(2)(A)'s plain text already required those aliens to be detained, at the time of the Laken Riley Act, the government's practice was to not detain such aliens under that authority. See p. 24, *supra*. So, at the time of enactment, the Act had considerable work to do. See *Buenrostro-Mendez*, 166 F.4th at 505. Even if the government had been properly interpreting Section 1225(b)(2)(A) when the Laken Riley Act was passed, the Act would still have independent work to do, because Section 1226(c) alters the availability of release from detention for covered aliens. See 8 U.S.C. 1226(c); Pet. App. 73a (Murphy, J., dissenting).

Finally, respondents have invoked constitutional avoidance "[a]s a last resort," raising what they view as due-process problems with the government's interpretation. Pet. App. 81a (Murphy, J., dissenting). But Section 1225(b)(2)(A) is unambiguous, and that canon "has no application in the absence of ambiguity." *Warger* v. *Shauers*, 574 U.S. 40, 50 (2014) (citation and ellipsis omitted). Regardless, for the reasons explained in Section A.2 below, interpreting Section 1225(b)(2)(A) to

mandate respondents' detention pending removal proceedings poses no constitutional problems.

2. Due process does not entitle respondents to a bond hearing

The court of appeals separately held that due-process principles entitle respondents to a bond hearing. See Pet. App. 28a-33a. The court insisted that its constitutional holding was not "derivative" of its statutory holding, and endorsed a freestanding due-process right to a bond hearing regardless of the statute of detention. *Id.* at 30a, 32a; see *id.* at 33a (explaining that if Section 1225(b)(2)(A) applied to respondents, they would be subjected "to the hardship of mandatory detention without due process"). The court provided no sound basis for that conclusion, and detaining respondents without bond under Section 1225(b)(2)(A) does not violate any conception of due process.

a. Detainees under Section 1225(b)(2)(A) have no cognizable procedural-due-process right to a bond hearing. A person "who assert[s] a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme." *Connecticut Dep't of Pub. Safety* v. *Doe*, 538 U.S. 1, 8 (2003). Respondents seek a bond hearing to assess whether they are flight risks or dangerous. See Pet. App. 4a. But Section 1225(b)(2)(A) applies to covered aliens without regard to whether they are flight risks or dangerous. 8 U.S.C. 1225(b)(2)(A). Respondents thus "do not have a procedural right to prove facts at a hearing that the law renders *irrelevant* to their detention." See Pet. App. 87a (Murphy, J., dissenting) (citing *Doe*, 538 U.S. at 7-8).

Regardless, this Court has long recognized that for aliens who have never "been admitted into the country

pursuant to law, the decisions of executive or administrative officers, acting within the powers expressly conferred by Congress, are due process of law." *DHS* v. *Thuraissigiam*, 591 U.S. 103, 138 (2020) (citation omitted). This is true even for aliens who have been "paroled elsewhere in the country for years pending removal" and may have developed significant ties to the country. *Id.* at 139.

The court of appeals asserted that *Thuraissigiam* does not apply to aliens who have already "'passed through our gates'" and have "resided within the United States for years." Pet. App. 31a (quoting *Shaughnessy* v. *United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)). But *Thuraissigiam*'s discussion of parolees makes clear that admission—not the number of years physically present in the country—is the touchstone for when aliens might gain due-process interests that could potentially require additional procedures beyond what the political branches have provided. See 591 U.S. at 139. As the Court explained in *Landon* v. *Plasencia*, 459 U.S. 21 (1982), "once an alien gains *admission* to our country and begins to develop the ties that go with permanent residence his constitutional status changes." *Id.* at 32 (emphasis added); see *Nishimura Ekiu* v. *United States*, 142 U.S. 651, 659 (1892).

b. At bottom, respondents are essentially raising a "substantive challenge to [Congress's] statute 'recast in "procedural due process" terms.'" *Doe*, 538 U.S. at 8 (citation omitted). But substantive due process does not entitle respondents to a bond hearing. A right to a bond hearing pending removal proceedings is not "objectively, deeply rooted in this Nation's history and tradition," *Department of State* v. *Muñoz*, 602 U.S. 899, 910 (2024) (citation omitted), because "prior to 1907 there

was no provision permitting bail for any aliens during the pendency of their deportation proceedings," *Demore* v. *Kim*, 538 U.S. 510, 523 n.7 (2003) (emphasis omitted). Accordingly, rational-basis review is the appropriate standard for analyzing respondents' substantive-due-process claims. *Washington* v. *Glucksberg*, 521 U.S. 702, 728 (1997). To satisfy that standard, the detention without bond of respondents under Section 1225(b)(2)(A) must "be rationally related to legitimate government interests." *Ibid.*

Mandatory detention under Section 1225(b)(2)(A) readily satisfies rational-basis review. In *Demore*, this Court addressed a similar "substantive due process" claim by a criminal alien detained under Section 1226(c), who argued that his detention violated due process because he was never assessed to be dangerous or a flight risk. 538 U.S. at 514-515. The Court rejected the claim, explaining that it had long "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process" because "deportation proceedings 'would be vain if those accused could not be held in custody pending the inquiry into their true character.'" *Id.* at 523 (quoting *Wong Wing* v. *United States*, 163 U.S. 228, 235 (1896)). Here, detention of aliens present after an illegal entry serves the same legitimate purpose as the detention upheld in *Demore*: preventing aliens "from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed." *Id.* at 528.

The court of appeals attempted to distinguish *Demore* as involving criminal aliens detained under Section 1226(c), rather than "noncitizens subject to § 1226(a)'s permissive detention scheme." Pet. App. 31a. But,

again, respondents are *not* in fact subject to Section 1226(a)'s detention scheme. See pp. 16-26, *supra*. The court of appeals also distinguished *Demore* as relying on congressional findings about the need for detaining criminal aliens, and that "no such finding" existed for noncriminal aliens. Pet. App. 32a. But this Court does not require Congress to find particular "legislative facts" "on the record"; the question is "whether there is any conceivable rational basis" for the choice that Congress made. *FCC* v. *Beach Comms., Inc.*, 508 U.S. 307, 309, 315 (1993). Congress's decision to mandate the detention of unadmitted aliens during their removal proceedings was eminently rational to prevent those aliens from absconding and to ensure their actual removal. Regardless, the court of appeals was wrong about the congressional record: Congress considered the benefits of detaining the broader group of "deportable aliens," not only criminal aliens. House Report 124.

Instead of applying *Demore*, the court of appeals relied on *Zadvydas* v. *Davis*, 533 U.S. 678 (2001), which held that indefinite detention of aliens after final removal orders, under a different provision of the INA, violated due process. But *Zadvydas* is "materially different" from cases involving detention pending removal proceedings, as *Demore* recognized. 538 U.S. at 527. First, the aliens in *Zadvydas* were "ones for whom removal was 'no longer practically attainable.'" *Ibid.* (citation omitted). That was not true in *Demore* and is not true here. Second, *Zadvydas* involved "indefinite" and "potentially permanent" detention, while the detention under Section 1226(c) in *Demore*—and under Section 1225(b)(2)(A) here—will end when respondents' removal proceedings conclude. *Id.* at 528 (citation omitted).

Zadvydas thus does not support respondents' due-process claims.

B. The Decision Below Warrants This Court's Review

This Court's review is abundantly warranted to correct both the Sixth Circuit's misinterpretation of Section 1225(b)(2)(A) and its flawed due-process holding.

1. The statutory question plainly warrants review. The decision below deepens an acknowledged circuit conflict on an important issue that recurs virtually every day and affects many thousands of aliens.

a. In holding that Section 1225(b)(2)(A) does not apply to aliens present after an illegal entry, the court of appeals parted ways with the Fifth and Eighth Circuits. The Fifth Circuit in *Buenrostro-Mendez* v. *Bondi* analyzed the statutory text, structure, and history and determined that "the government's position is correct," because as applicants for admission, aliens present without being admitted are "seeking admission." 166 F.4th at 498, 504. The Eighth Circuit in *Avila* v. *Bondi*, 170 F.4th 1128, 1135 (2026), likewise ruled for the government, rejecting the aliens' argument that "'seeking admission' and 'applicant for admission' are different."

In rejecting the decisions of the Fifth and Eighth Circuits, the Sixth Circuit "join[ed] the Second and Eleventh Circuits." Pet. App. 7a. Those courts have also held that aliens present in the United States after an illegal entry are presumptively entitled to bond hearings. See *Barbosa da Cunha* v. *Freden*, 175 F.4th 61 (2d Cir. 2026); *Hernandez Alvarez*, 175 F.4th 1258.[4]

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[4] The Sixth Circuit also noted its agreement with "Judge Lee's individual opinion in" *Castañon-Nava* v. *DHS*, 175 F.4th 828 (7th Cir. 2026). Pet. App. 7a. The Seventh Circuit did not reach a decision on whether Section 1225(b)(2)(A) applies to unadmitted aliens, but at the stay stage, the panel majority found that the government

That conflict will not resolve itself without this Court's intervention. Both the Fifth and Eighth Circuits have denied rehearing en banc, thereby cementing the disagreement among the circuits. See 4/9/26 Order, *Buenrostro-Mendez*, *supra* (No. 25-20496); 6/17/26 Order, *Avila*, *supra* (No. 25-3248).

b. As the rapidly deepening circuit split indicates, the issue of which aliens must be detained under Section 1225(b)(2)(A) pending removal proceedings constantly recurs. In the past year alone, the government estimates that thousands of aliens similarly situated to respondents have filed habeas petitions seeking bond hearings on the ground that Section 1225(b)(2)(A) does not apply to them. See *Buenrostro-Mendez*, 166 F.4th at 500 (noting that "well over a thousand aliens have filed habeas corpus petitions seeking bond hearings" as of February 2026). The ensuing administrative burden on the government and the courts remains immense. Even petitioning aliens—represented by the same counsel as respondents—have agreed that the question presented is "a matter of exceptional importance" given the vast number of aliens present without admission. Pet. for Reh'g 3, *Avila*, *supra* (8th Cir. May 26, 2026).

Resolving the circuit conflict is imperative for the uniform administration of the immigration laws. Under some circuits' decisions, aliens present after an illegal entry *must* be detained pending their removal proceedings; in other circuits, similarly situated aliens are entitled to a bond hearing. In the circuits like the Sixth Circuit where a bond hearing is required, perverse consequences ensue: aliens who evaded inspection and en-

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was "not likely to succeed on the merits" of its interpretation of Section 1225(b)(2)(A). *Castañon-Nava* v. *DHS*, 161 F.4th 1048, 1061 (2025).

tered the United States unlawfully are afforded more process than those who properly present themselves for inspection at a port of entry. See Pet. App. 76a (Murphy, J., dissenting). This Court should grant review of the first question presented to clarify that Section 1225(b)(2)(A) applies to aliens present without having been admitted.

2. This Court should also grant review of the second question presented: whether respondents are entitled to bond hearings as a matter of due process. The effect of the Sixth Circuit's decision is to hold unconstitutional an Act of Congress. Further, this constitutional question is highly important, recurring, and in all events entwined with the statutory issue. This Court recently granted certiorari in a case presenting a similar due-process challenge to mandatory detention under a different INA provision, Section 1226(c), and it should follow the same course here. See *Genalo* v. *Black*, cert. granted, No. 25-886 (June 15, 2026).

a. "[W]hen a lower court has invalidated a federal statute," the Court's "usual" approach is to grant certiorari. *Iancu* v. *Brunetti*, 588 U.S. 388, 392 (2019). Even in the absence of a circuit conflict, this Court regularly grants review when lower courts invalidate federal statutes. See, *e.g.*, *Fuld* v. *Palestine Liberation Org.*, 606 U.S. 1, 10-11 (2025); *Kennedy* v. *Braidwood Mgmt., Inc.*, 606 U.S. 748, 758-759 (2025).

As-applied invalidations are no exception. This Court regularly grants review of decisions holding federal statutes invalid as applied. For example, in *Thuraissigiam*, this Court reviewed a court of appeals' invalidation of IIRIRA's limitations on habeas review "as applied" to certain aliens. 591 U.S. at 107. And in *United States* v. *Hemani*, No. 24-1234 (June 18, 2026),

slip op. 18, this Court reviewed a court of appeals' as-applied invalidation of a federal statute that prohibits unlawful users of controlled substances from possessing firearms.

Here, the court of appeals determined that Section 1225(b)(2)(A) is unconstitutional as applied to aliens present in the United States without having been admitted. Although some of the court's due-process reasoning rested on its erroneous statutory interpretation, see p. 29, *supra*, the court clarified that its due-process holding was not "derivative" of its statutory holding. Pet. App. 30a. Instead, the court of appeals apparently concluded that if Section 1225(b)(2)(A) mandates the detention of respondents, the application of that statute would violate the Due Process Clause. See *id.* at 33a (stating that Section 1225(b)(2)(A) does not cover respondents and that "[t]o hold otherwise would subject [them] to the hardship of mandatory detention without due process"). This Court should therefore adhere to its "usual" practice, *Brunetti*, 588 U.S. at 392, and review the Sixth Circuit's invalidation of Section 1225(b)(2)(A) as applied to respondents.

b. The due-process issue is also important and often outcome-determinative. Of the thousands of habeas petitions filed by unadmitted aliens detained under Section 1225(b)(2)(A), many have raised due-process claims in addition to the statutory claims. Even in the two circuits that have rejected statutory challenges to the government's legal interpretation, many district courts continue to order bond hearings or release on due-process grounds.[5] Thus, even if the Court were to grant review

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[5] See, *e.g.*, *Rodriguez* v. *Frink*, 823 F. Supp. 3d 678 (S.D. Tex. 2026); *Flores Perez* v. *Warden*, No. 26-ca-2400, 2026 WL 1403340

of the first question presented and hold that Section 1225(b)(2)(A) applies to respondents, some district courts would still order release on constitutional grounds. Reviewing both questions is essential to ensuring that the immigration laws are enforced uniformly nationwide.

Moreover, the two issues are conceptually intertwined. Respondents and many other aliens have raised constitutional avoidance as a justification for their statutory interpretation. See 25-1965 Resp. C.A. Br. 41-47. Resolving the due-process issue as part of the statutory-interpretation question thus requires considering the merits of the due-process issue itself, at least provisionally. See, *e.g.*, *Barbosa da Cunha*, 175 F.4th at 95-96.

Because this case presents both the statutory and constitutional issues, it is an excellent vehicle for deciding the lawfulness of the government's mandatory detention of unadmitted aliens under Section 1225(b)(2)(A). This Court should grant review and, as swiftly as practicable, reverse on both questions presented.

(W.D. Tex. May 15, 2026); *R.M.* v. *Blanche*, No. 26-cv-2283, 2026 WL 1506306 (D. Minn. May 29, 2026).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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