UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOSE ARNULFO GUERRERO ORELLANA, on behalf of himself and others similarly situated, Petitioner-Plaintiff, v. ANTONE MONIZ, Superintendent, Plymouth County Correctional Facility, et al., Respondents-Defendants.	Case No. 25-12664-PBS

MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

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INTRODUCTION

Roughly 30 years ago, Congress passed a law providing that people arrested inside the United States for alleged civil immigration violations would be eligible for release on bond during the duration of their immigration proceedings, subject to certain narrow exceptions. This was consistent with the prior decades of law and practice of providing bond hearings for noncitizens arrested inside the United States pending removal decisions. For the past three decades, the immigration courts and the government universally and consistently applied these protections, which are codified at 8 U.S.C. § 1226(a) and its associated regulations. The alternative—that the government could arrest any person inside the United States on civil allegations and jail them for prolonged periods of time with no due process—would have contradicted not only the plain language of the Immigration and Nationality Act ("INA") and regulations, but also decades of case law establishing strong due process protections for all forms of domestic civil commitment.

About four months ago, the government abruptly reversed course and began misclassifying people arrested throughout the United States as subject to no-bond detention under 8 U.S.C. § 1225(b)(2), solely because the government contends the person originally entered the country (often many years ago) without inspection. The result has been a tidal wave of unlawful and arbitrary civil detention. In this District alone, in the month of October, judges granted *more than 60* petitions for writs of habeas corpus arising from the government's unlawful new policy. Each of those people was deprived of their liberty by the government in violation of law. And they represent only the small fraction of impacted detainees who actually have the resources, legal knowledge, language skills, and access to counsel necessary to prepare a habeas petition and file it in federal court. Many more are being and will be unlawfully detained with no practical recourse, except whatever collective relief this Court grants in this class action.

In its preliminary injunction decision, this Court ruled on statutory grounds that the government is misclassifying these bond-eligible detainees. The Court's ruling was grounded in the text of the relevant statutes, the canons of statutory construction, the legislative history, and the longstanding agency practice of providing individuals in this situation with a bond hearing. *See* Mem. and Order (D.E. 54) ("PI Order"). And it was consistent with a near-consensus in the federal courts, as reflected in dozens of other decisions across the country, rejecting the government's misclassification of these detainees. Petitioner-Plaintiff Jose Arnulfo Guerrero Orellana ("Plaintiff") now moves that the Court apply this ruling to the certified class. Specifically, Plaintiff requests that the Court grant class-wide partial summary judgment on Count I and enter a declaratory judgment in the class's favor pursuant to Rule 54(b).

Should the Court grant class-wide partial summary judgment, the Court should also provide notice to, and identification of, the class members. *See* Mem. and Order (D.E. 81) ("Class Cert. Order") at 36. As described below, a declaratory judgment raises the prospect that class members will be called upon to individually assert their rights. To do that, they must know their rights. And class counsel must be in a position to monitor their treatment in order to encourage the allocation of legal resources where needed, and to determine whether pursuit of further relief (such as a motion for APA vacatur) is necessary or appropriate.

Without notice and identification, these tasks cannot be completed, particularly given DHS's well-documented practice of transferring detainees between and among detention facilities. DHS obviously cannot circumvent the rights established in the class action by unilaterally transferring the class members away from New England to other locations around the country. But the local Immigration Courts in those other locations may not *know* a transferred detainee is a class member eligible for bond in the absence of a notice that the class member can submit. Similarly, class members may not know that they have the option to request a bond hearing, unless they are notified. And class counsel will be unable to contact them, monitor their treatment, or attempt to facilitate enforcement of their rights without at least some identifying information.

This motion presents a question of statutory interpretation that this Court has already decided. *See generally* PI Order (D.E. 54). There are no disputed issues of fact. There are no obstacles to a class-wide declaration. Without class-wide relief, the epidemic of unlawful no-bond detention will continue unabated in our communities, and our legal and judicial systems will continue to struggle with the heavy burden of unwinding these violations one at a time. Plaintiff respectfully requests that the Court grant this motion. A proposed declaration, notice, and judgment are enclosed.

STATEMENT OF FACTS

I. Legal Framework

This case concerns the detention authority for a class of people who are arrested inside the United States and are alleged to have initially entered without inspection, often years or even decades before. The class does not include people who were apprehended upon arrival at the border and detained continuously thereafter.[1] The class also does not include people who are being arrested due to revocation of humanitarian parole, people who are subject to mandatory detention due to criminal history, people who are subject to post-final order detention, nor people in expedited removal. *See* Class Cert. Order (D.E. 81) at 36–37. The class therefore represents the

[1] Plaintiff takes no position on what detention authorities may apply to these individuals in this litigation. Instead, the class definition is intended to encompass the core group for whom relief can clearly be ordered on a collective basis.

core of the group of people who for decades were subject to 8 U.S.C. § 1226(a). Now, the government claims such people are subject to 8 U.S.C. § 1225(b)(2).

Proper application of these provisions is critical. A noncitizen subject to § 1226(a) can be released by ICE on bond or conditional parole, *see* 8 U.S.C. § 1226(a)(2), 8 C.F.R. § 236.1(c)(8), and if release is denied, can seek a custody redetermination—better known as a bond hearing—before an immigration judge ("IJ"), *see* 8 C.F.R. § 1236.1(d), *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021), *Hernandez-Lara v. Lyons*, 10 F.4th 19, 26 (1st Cir. 2021). By contrast, noncitizens subject to § 1225(b)(2) are subject to mandatory detention and receive no bond hearing. *See* 8 U.S.C. § 1225(b)(2)(A). They may only be released on humanitarian parole at the arresting agency's (*i.e.*, ICE's) discretion. *See Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018); 8 U.S.C. § 1182(d)(5)(A).

The statutory and legislative history of §§ 1226(a) and 1225(b)(2) illuminate their proper application. Prior to the passage of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, the statutory authority for release of immigration detainees on bond was found at 8 U.S.C. § 1252(a) (1994). That statute provided for a noncitizen's detention during deportation proceedings—proceedings for noncitizens who had entered the United States, regardless of manner of entry[2]—as well as the authority to release them on bond. *See* 8 U.S.C. § 1252(a) (1994). IIRIRA maintained this same basic detention authority in the provision codified at 8 U.S.C. § 1226(a). When passing IIRIRA, Congress explained that the new § 1226(a) merely "restates the current provisions in [8 U.S.C. § 1252(a)] regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United

[2] Separately, "exclusion" proceedings covered those who arrived at U.S. ports of entry and had never entered the United States. *See* 8 U.S.C. § 1225 (1994); *id.* § 1226 (1994).

States." H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same). Separately, Congress enacted new detention authorities for people arriving in or who recently entered the United States, codified at 8 U.S.C. § 1225, providing that these individuals can be placed in special expedited removal proceedings (where DHS officers issue removal orders without any hearings), *see* 8 U.S.C. § 1225(b)(1), or regular removal proceedings, *see id.* § 1225(b)(2)(A), and are subject to mandatory detention unless released on humanitarian parole, *see* 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV), (b)(2)(A), *id.* at § 1182(d)(5)(A).

The immigration system has consistently made clear that noncitizens arrested inside the United States have access to bond hearings pursuant to § 1226(a), and that mandatory detention pursuant to § 1225(b)(2) applies only to noncitizens detained while arriving at or near the border. After IIRIRA's enactment, the implementing agency explained that its new procedure "maintain[ed] the status quo" for immigration detainees—access to a bond hearing—"except for arriving [noncitizens]." *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("[I]nadmissible [noncitizens], except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge . . . . This procedure maintains the status quo."); 8 C.F.R. §§ 235.3(c) ("[a]rriving aliens . . . placed in removal proceedings . . . shall be detained in accordance with [§ 1225(b)]"), 1003.19(h)(2) (no jurisdiction for IJs to redetermine conditions of custody of "[a]rriving aliens in removal proceedings"); 1.2 (defining "arriving alien"). The Supreme Court has likewise described § 1226 as relating to people "inside the United States" and "present in the country," and § 1225 as relating to "borders and ports of entry." *Jennings*, 583 U.S. at 287-89. For nearly thirty years, individuals who were arrested inside the United States after entering without inspection were placed into removal proceedings before an IJ, and they were required to receive a bond hearing upon request pursuant to § 1226(a), unless they had certain disqualifying criminal history under § 1226(c) or were subject to expedited removal. *See* 8 C.F.R. §§ 236.1(d), 1003.19(a), 1236.1(d); *see* 62 Fed. Reg. 10312; *Martinez v. Hyde*, No. 25-11613, --- F. Supp. 3d ----, 2025 U.S. Dist. LEXIS 141724, at *12 n.9 (D. Mass. July 24, 2025). Indeed, as recently as January 2025, Congress made clear in the new Laken Riley Act its understanding and intention that people in the United States who entered without inspection still fall under the umbrella of § 1226. *See* 8 U.S.C. § 1226(c)(1)(E)(i) (applying § 1226 to people who are "present in the United States without being admitted or paroled" under 8 U.S.C. § 1182(a)(6)(A)).

II. Defendants' New Mandatory Policy

Notwithstanding this long history, unbroken practice, and recent legislation, on July 8, 2025, DHS, "in coordination with the Department of Justice," abruptly reversed course when it directed its personnel nationwide to misclassify bond-eligible detainees under § 1226(a) as bond-ineligible § 1225(b)(2) detainees if they originally entered the country without inspection. Plaintiff's Statement of Uncontroverted Facts ("SUF") ¶¶ 7-13. This reversal triggered a tidal wave of litigation, as numerous detainees were effectively stripped overnight of their right to consideration for bond and were condemned to months or years of arbitrary incarceration—even if they did not present any conceivable danger or risk of flight. *See* Decl. of Irene Freidel (D.E. 15) ¶¶19-22; Decl. of Annelise Araujo (D.E. 16) ¶¶12-15; Decl. of Christine Rodriguez (D.E. 32-2) ¶3. Federal District Court judges nationwide, including many in this District, have since rejected the application of DHS's new policy as unlawful. *See, e.g.*, PI Order (D.E. 54) at 13–14 (collecting cases); Class Cert. Memo. (D.E. 32) at 11–12 (collecting case); Notices of Supplemental Authority (D.E. 45, 53, 69, 80).[3]

Nevertheless, on September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision, *Matter of Hurtado*, which makes this erroneous and unconstitutional policy legally binding on all IJs. The BIA held that any noncitizen who is present in the United States without having been inspected and admitted is subject to detention under § 1225(b)(2). 29 I. & N. Dec. 216, 228 (2025). As a result, class members are routinely and systematically misclassified and detained without any consideration for bond. SUF ¶¶ 12-13.

III. Named Plaintiff's Case

On or about September 18, 2025, Mr. Guerrero Orellana, who has resided in the United States since 2013, was arrested by immigration authorities and subjected to mandatory detention because of Defendants' new policy. SUF ¶¶ 14–22. His experience is representative of the class. *See* Class Cert. Order (D.E. 81) at 20–26. In the last month alone, courts in New England have

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[3] The Court's preliminary injunction order collected many of the cases rejecting the government's no-bond policy. *See* PI Order (D.E. 54) at 13–14. There are many additional recent decisions reaching the same conclusion. The recent decisions from this District have largely been collected in Plaintiff's notices of supplemental authority. Notable recent decisions from other Districts include: *Ruiz Mejia v. Noem*, No. 1:25-cv-1227, 2025 WL 3041827 (W.D. Mich. Oct. 31, 2025); *Hernandez Lopez v. Hardin*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025); *J.G.O. v. Francis*, No. 25-CV-7233, 2025 WL 3040142 (S.D.N.Y. Oct. 28, 2025); *Puerto-Hernandez v. Lynch*, No. 1:25-cv-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025); *J.A.C.P. v. Wofford*, No. 1:25-cv-01345, 2025 WL 3013328 (E.D. Cal. Oct. 27, 2025); *Nava Hernandez v. Baltazar*, No. 1:25-CV-03094-CNS, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Rodriguez Carmona v. Noem*, No. 1:25-cv-1131, 2025 WL 2992222 (W.D. Mich. Oct. 24, 2025); *De Fatima Lomeu v. Soto*, No. 25cv16589, 2025 WL 2981296 (D.N.J. Oct. 23, 2025); *Del Cid v. Bondi*, No. 3:25-CV-00304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025); *Bethancourt Soto v. Soto*, No. 25-CV-16200, --- F. Supp. 3d ----, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Maldonado de Leon v. Baker*, No. 25-3084, 2025 WL 2968042 (D. Md. Oct. 21, 2025); *Contreras-Cervantes v. Raycraft*, No. 2:25-CV-13073, 2025 WL 2952796 (E.D. Mich. Oct. 17, 2025); *Pablo Sequen v. Albarran*, No. 25-CV-06487-PCP, --- F. Supp. 3d ----, 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025); *Alejandro v. Olson*, No. 1:25-CV-02027, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *Rico-Tapia v. Smith*, --- F. Supp. 3d ----, 2025 WL 2950089 (D. Haw. Oct. 10, 2025); *Padron Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025; *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Giron Reyes v. Lyons*, --- F. Supp. 3d ----, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025).

granted relief to more than 60 alleged noncitizens who were arrested inside the United States and erroneously subjected to mandatory detention pursuant to § 1225(b)(2). Notices of Supplemental Authority (D.E. 53, 69, 80).

ARGUMENT

The Court should grant summary judgment where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *SEC v. Commonwealth Equity Servs., LLC*, 133 F.4th 152, 167 (1st Cir. 2025). Summary judgment is warranted where, as here, no material facts are in dispute, and Defendants' conduct is impermissible as a matter of law.

Defendants maintain that all noncitizens apprehended inside the United States after having entered without inspection are classified as an "applicant for admission," 8 U.S.C. § 1225(a)(1), and are thus subject to mandatory detention under § 1225(b)(2). Because this unlawful policy is embodied in agency memoranda and a BIA decision binding on all Immigration Courts, Defendants necessarily apply it to all members of the class and deny them bond hearings on that basis.

Defendants' policy, cemented in *Matter of Hurtado*, violates the INA and its regulations. *See* PI Order at 26 (finding Plaintiff's likelihood of success on the merits). As further described below, the plain language of the statutory provisions compels the conclusion that the Class Members's detention is governed by § 1226(a), not § 1225(b)(2)(A). This is reaffirmed by the associated regulations. *See* 62 Fed. Reg. at 10323; 8 C.F.R. §§ 235.1(d)(1), 1003.19(a). Further, Defendants' disregard of the plain language limiting the scope of § 1225(b)(2)(A) to noncitizens who are—unlike Class Members—"seeking admission," runs afoul of multiple canons of statutory construction and longstanding agency practice. Accordingly, the Plaintiff seeks partial summary judgment for the class as to Count I (violation of 8 U.S.C. § 1226(a) and Associated Regulations) because Defendants' policy violates § 1226(a) as a matter of law, entitling Plaintiff to relief which can be granted on summary judgment. *See Metro. Prop. & Cas. Ins. Co. v. Devlin*, 323 F. Supp. 3d 207, 212 (D. Mass. 2018).[4]

I. Defendants' New Policy Violates the INA.

A. Plain Language of the Statute Establishes that the Class Members' Detention is Governed by 8 U.S.C. § 1226, not § 1225(b)(2)(A).

This Court has already exhaustively analyzed the relevant statutes and concluded that the class members are subject to § 1226, not § 1225(b)(2)(A). Plaintiff will not endeavor to restate the Court's entire analysis, and the Court can and should grant summary judgment for all the reasons stated in its prior Order. *See generally* PI Order.

In summary, however, the plain language of 8 U.S.C. § 1226 and § 1225(b)(2)(A) makes clear that individuals like Class Members—apprehended inside the United States and placed into removal proceedings—are detained under § 1226, not § 1225(b)(2)(A). PI Order at 15. "[A]bsent sufficient indication to the contrary," courts assume that Congress "intends the words in its enactments to carry 'their ordinary, contemporary, common meaning." *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 45 (1st Cir. 2024) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 388 (1993)). Further, the statutory text "must be read in their

[4] In its Order on Class Certification (D.E. 81) at 10, this Court reserved decision on Plaintiff's due process and APA claims, holding that it would address those claims "at a later stage should it become necessary to do so to resolve this case." Accordingly, Plaintiff is presently moving for partial summary judgment on the claim contained in Count I only. However, Plaintiff expressly reserves the right to move for class certification and/or relief on the due process and APA claims at a later stage. Among other circumstances, consideration of vacatur under the APA may become necessary if there are disputes about compliance with any declaration.

context and with a view to their place in the overall statutory scheme." *City & Cnty. of San Francisco v. EPA*, 604 U.S. 334, 350 (2025).

Section 1226(a) authorizes arrest and detention of a noncitizen pending a decision on removability and provides the general right to seek release on bond. 8 U.S.C. § 1226(a). That is precisely the Class Members' posture: individuals who have been apprehended in the United States and are detained "pending a decision" in their removal proceedings. *Id.*; PI Order at 15 (citing *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 U.S. Dist. LEXIS 175513, at *2 (D. Mass. Sept. 9, 2025)).

Section 1226(a) applies by its terms unless a specific statutory carveout applies. Nothing in § 1226(a) excludes people who entered without inspection. Congress created only one exception in § 1226(c), which mandates detention for defined criminal and terrorism-related categories. 8 U.S.C. § 1226(c); *see Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). Notably, Congress did not cross-reference § 1225(b)(2)(A) as an exception to § 1226(a)'s default regime. Under the canon of construction *expressio unius est exclusio alterius*—when one is mentioned, the other is excluded—Section 1226's limited "express exception" compelling mandatory detention under § 1226(c) "'implies that there are no <u>other</u> circumstances under which' a noncitizen detained under § 1226 is subject to mandatory detention." *See* PI Order at 16 (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018)). Because § 1226(c) is the only express exception and does not encompass the class members, it is clear that § 1226(a)'s general detention authority applies to the class. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (considering the "fact that Congress has created specific exceptions" to the rule proves that the rule otherwise applies generally).

B. Defendants' Sweeping Interpretation of "Applicant For Admission" Runs Afoul of Multiple Canons of Statutory Interpretation.

Regardless of whether the Class members are considered "applicant[s] for admission," defined as one "present in the United States who has not been admitted or who arrives in the United States," § 1225(a)(1), the plain language of § 1225(b)(2)(A) does not apply to *all* applicants for admission. PI Order at 17. Quite the opposite: § 1225(b)(2)(A) qualifies that an applicant for admission shall be subject to mandatory detention "if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted." *Id.* (citing § 1225(b)(2)(A) (emphasis added)). Further, where the INA defines "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer," 8 U.S.C. § 1101(a)(13)(A), noncitizens apprehended while residing in the United States do not fall into the scope of § 1225(b)(2)(A), which applies to those "seeking admission." The class members cannot be subject to § 1225(b)(2)(A), because they were not "seeking admission" at the time of their arrest, PI Order at 17, nor were they being "examin[ed]". *See Martinez v. Hyde*, 2025 U.S. Dist. LEXIS 141724, at *11 (D. Mass. July 24, 2025). To the contrary, class members are noncitizens who, after entering the United States without inspection, are already inside the United States and often have resided in the country for months, years, and even decades. Even assuming they were "applicants for admission" at the time of their arrest, they were not *seeking* "lawful entry" into the United States at a port of entry subject to inspection and authorization by an immigration officer—instead, they were already in the United States and intending to *remain*. *See* PI Order at 17 (citing 8 U.S.C. § 1101(a)(13)(A)); *see also Jennings*, 583 U.S. at 288-89 (§ 1226 applies to noncitizens "inside the United States," "present in the country," and "already in the country").

Defendants' contrary reading of "seeking admission" as synonymous with "applicant for admission" "impermissibly expands the scope of the statute beyond the ordinary meaning of its text" and violates multiple canons of statutory construction. PI Order at 18-19. For example, courts presume that different terms in a given statute "usually have different meanings," thus supporting that "applicant for admission" and "seeking admission" encompass different scopes of individuals. *See Pulsifer v. United States*, 601 U.S. 124, 149 (2024). Similarly, where § 1225(b)(2)(A) requires that a noncitizen be both an "applicant for admission" and "seeking admission," Defendants' treatment of those terms as interchangeable nullifies the meaning of "seeking admission" in § 1225(b)(2)(A), running afoul of the canon against surplusage. *See City of Providence v. Barr*, 954 F.3d 23, 37 (1st Cir. 2020) (internal quotations and citation omitted) ("The canon against surplusage teaches that we must read statutes, whenever possible to give effect to every word and phrase."). And further, even if it were fairly possible to read § 1225(b)(2) to authorize no-bond civil detention for people arrested inside the United States without any due process (it is not), any such interpretation would run afoul of many decades of constitutional law requiring strong procedural protections for all forms of civil commitment,[5] and Congress is presumed not to intend such outcomes. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001); *cf. Jennings*, 583 U.S. at 296.

In addition, the recent statutory amendment to § 1226(c) under the Laken Riley Act, creating a new category of noncitizens subject to mandatory detention under § 1226(c), confirms Congress's intent that § 1226 governs the detention of noncitizens arrested inside the United States

[5] *See, e.g.*, *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992); *United States v. Salerno*, 481 U.S. 739, 755 (1987); *Addington v. Texas*, 441 U.S. 418, 425 (1979); *cf. Demore v. Kim*, 538 U.S. 510, (2003) (mandatory detention under § 1226(c) permissible where removability was conceded, detention was brief, and detention premised on convictions obtained "following the full procedural protections our criminal justice system offers").

who entered without inspection. *See* PI Order at 20 (citing Pub. L. No. 199-1, § 2(1)(C), 139 Stat. 3, 3 (2025) (codified at 8 U.S.C. § 1226(c)(1)(E))); *see also Sampiao*, 2025 U.S. Dist. LEXIS 175513, at *21. Because courts presume that Congress intends its amendments to have "real and substantial effect," *United States v. Quality Stores, Inc.*, 572 U.S. 141, 148 (2014), Defendants' contrary reading would eviscerate the amendments' meaningful effects. The canon against surplusage is "strongest when an interpretation would render superfluous another part of the same statutory scheme." *See* PI Order at 21 With that understanding, sections 1225(b)(2)(A) and 1226 should be construed in a manner that avoids "render[ing] the language in the latter section to be meaningless." *Id.*

C. Applying § 1226 to the Class Aligns with Longstanding Regulations and Agency Practice.

While courts must exercise "independent judgment in deciding whether an agency has acted within its statutory authority," agency interpretations "issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). Immediately after Congress enacted the IIRIRA, the Department of Justice issued implementing regulations explaining that "[d]espite 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. 10312, 10323 (Mar. 6, 1997). Conversely, the regulations provided that "[a]rriving aliens placed in removal proceedings under section 240 of the [INA] shall be detained in accordance with [§ 1225(b)]," 8 C.F.R. § 235.3(c), with "arriving aliens" defined, in relevant part, as "an applicant for admission *coming or attempted to come into the United States* at a port-of-entry," *id*. § 1.2. *See also id*. § 1003.19(h)(2) (no jurisdiction for IJs to redetermine conditions of custody of "[a]rriving aliens in removal proceedings"). Several courts have noted that the regulations "appear[] to contemplate that applicants *seeking admission* are a subset of applicants 'roughly interchangeable' with 'arriving aliens.'" *Cordero Pelico v. Kaiser*, No. 25-CV-07286-EMC, 2025 U.S. Dist. LEXIS 197865, at *28 (N.D. Cal. Oct. 3, 2025) (citing *Martinez*, 2025 WL 2084238, at *6)).

Moreover, in the decades since, implementing agencies consistently applied § 1226, not § 1225(b)(2)(A), to noncitizens who entered without inspection and were later arrested inside the United States. *See* SUF ¶¶ 4-6. *Vazquez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 U.S. Dist. LEXIS 193611, at *81 (W.D. Wash. Sept. 30, 2025). The relevant agencies' regulatory guidance and "subsequent years of unchanged practice is persuasive." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025). The government's consistent, longstanding practice that coheres with statutory text and structure supports that Defendants' policy exceeds the government's statutory authority under the INA.

Taken together, the plain language of the statute, canons of statutory construction, and longstanding agency regulations and practice establish that the class members are detained, if at all, under § 1226, not § 1225(b)(2)(A). Accordingly, summary judgment should be granted as to Count I.

II. Declaration of the Proper Legal Detention Authority Would Provide Class Members an Opportunity to Seek Release on Bond.

The federal government is expected to respect a declaratory judgment and faithfully execute the law as an Article III court's declaration determines it. *See, e.g.*, *Union de Empleados De Muelles De P.R., Inc. v. Int'l Longshoremen's Ass'n, AFL-CIO*, 884 F.3d 48, 58 (1st Cir. 2018) (declaratory judgments "determine the rights and obligations of the parties so that they can act in accordance with the law"). If the government did not comply with the Court's declaration, Plaintiff could seek additional remedies such as APA vacatur, *see supra* note 5, and, at a minimum, class members can pursue individual actions to enforce their rights. Cert. Order (D.E. 81) at 33.

Class members may rely on the declaration as an articulation of their rights in seeking individual habeas relief against the same defendants, *see* Restatement (Second) of Judgments § 33 (1982) ("A valid and final judgment in an action brought to declare rights or other legal relations of the parties is conclusive in a subsequent action between them as to the matters declared, and, in accordance with the rules of issue preclusion, as to any issues actually litigated by them and determined in the action."), or against a different immigration detention facility custodian, since "[t]here is privity between officers of the same government," *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 402-03 (1940).

The Court could also authorize class members to return to this Court on an individual basis for "further necessary or proper relief," including an injunction, pursuant to 28 U.S.C. § 2202. *See* 28 U.S.C. § 2202 ("Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."); *Powell v. McCormack*, 395 U.S. 486, 499 (1969) ("A declaratory judgment can [] be used as a predicate to further relief, including an injunction.") (internal citations omitted); *Unión De Empleados De Muelles De P.R., Inc.*, 884 F.3d at 58-59 ("[T]he court issuing the declaratory judgment has the authority to grant '[f]urther necessary or proper relief' pursuant to the judgment, even if such relief was not requested in the complaint."). Section 2202 "merely carries out the principle that every court, with few exceptions, has inherent power to enforce its decrees and to make such orders as may be necessary to render them effective." *Horn & Hardart Co. v. Nat'l Rail Passenger Corp.*, 843 F.2d 546, 548 (D.C. Cir. 1988), *cert denied*, 488 U.S. 849 (1988).

III. To the Extent the Class Definition Would Benefit from Additional Clarity, It Should Exclude Noncitizens Arrested "Within 25 Yards of the U.S. Land or Maritime Border, or at a U.S. Port of Entry, and within 24-hours After Their Arrival."

To clarify that the class only includes people who are arrested inside the United States and alleged to have initially entered without inspection, Plaintiff originally proposed the following exclusion to the class definition:

> (e) the person is not a person whose most recent arrest occurred at the **physical border** while they were arriving in the United States and has been continuously detained thereafter.

Post-Hearing Submission (D.E. 78) at 1–2. The Court added a similar exclusion to the class definition but used the term "border" instead of "physical border," Class Cert. Order (D.E 81), at 36–37, and has indicated that further clarification might be warranted. *See id.* at 19; Status Conf. Tr. (D.E. 86) at 9:4–17.

Plaintiff reiterates that the class is only intended to include people who are arrested inside the territorial boundary of the United States after allegedly entering without inspection. Plaintiff contends that the current definition adequately captures this limitation, and any disputes about membership in the class (which appear unlikely given the terms and geographic scope of the class definition) could be addressed in the individual enforcement context. However, to the extent the Court determines greater clarity in the class definition is appropriate, the only further limitation proposed by the Government is derived from *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020), where the Supreme Court held that a person arrested 25 yards inside the border, apparently moments after crossing, and detained continuously thereafter, was still "at the threshold" for Due Process purposes. *See* Class Cert. Opp. (D.E. 64) at 20. The Supreme Court in *Thuraissigiam* did not address the statutory detention authority for such a person (who, in that case, was concededly subject to mandatory detention due to placement in expedited removal under § 1225(b)(1), *see Thuraissigiam*, 591 U.S. at 117-18, and therefore would not fall within the current class definition in any event). Nevertheless, if the Court further clarifies the class definition based on *Thuraissigiam* as the government proposes, it should incorporate both the distance and temporal limitations reflected therein, such that the limitation would read:

> (e) the person is not a person whose most recent arrest occurred **within 25 yards of the U.S. land or maritime border,[6] or at a U.S. port of entry, and within 24-hours after their arrival** in the United States, and has been continuously detained thereafter.

This clarification reflects the geographical situation in *Thuraissigiam*, *see* 591 U.S. at 140, and the temporal limitation ensures that the exclusion applies only to those arriving and not people who simply reside or work in communities proximate to the border.[7]

IV. The Court Should Enter Its Declaration as a Partial Final Judgment Under Rule 54(b).

Although a final judgment may generally be entered only after the disposition of all claims, a court may direct entry of final judgment for "fewer than all[] claims or parties" if the court

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[6] The maritime border is included based on the Court's inquiry at the status conference. It appears unlikely to be a practical concern, given the U.S. exercises sovereignty out to 12 nautical miles. *E.g.*, "U.S. Maritime Limits & Boundaries," U.S. National Oceanic and Atmospheric Administration, https://nauticalcharts.noaa.gov/data/us-maritime-limits-and-boundaries.html. In the individual cases arising to date, counsel have not observed any class members who were apprehended at sea, much less at or near the maritime boundary. The Court may wish to make clear in any clarification that the "maritime border" refers to the furthest extent of the territorial sea, and not merely the ocean or beaches generally. This may be appropriate to ensure that the government does not contend that people arrested inside the United States near the ocean (*e.g.*, in many parts of Boston, in smaller seaside communities like New Bedford, and at the many beaches and other areas along the coastline) are outside the class.

[7] For purposes of this litigation, Plaintiff's counsel takes no position on the detention authority applicable to people excluded from the class.

"expressly determines that there is no just reason for delay." Fed. R. Civ. P. 54(b). Here, granting summary judgment in favor of Plaintiffs as to Count I "dispose[s] of all the rights and liabilities of at least one party as to at least one claim," satisfying the final judgment requirement under Rule 54(b). *See Amyndas Pharms., S.A. v. Zealand Pharma A/S*, 48 F.4th 18, 28 (1st Cir. 2022) (quoting *Credit Francais Int'l, S.A. v. Bio-Vita, Ltd.*, 78 F.3d 698, 706 (1st Cir. 2009)). Thus, final judgment under Rule 54(b) is warranted here because there is no just reason for delay in granting class-wide declaratory relief.

In determining the absence of "just reason for delay," the court must examine the "interrelationship among the adjudicated and unadjudicated claims so as to prevent piecemeal appeals" and assess the "equities to determine whether there is a justifiable reason for delay in entering the judgment." *Am. Auto. Mfrs. Ass'n v. Comm'r*, 998 F. Supp. 26, 28-29 (D. Mass. 1998) (internal quotations omitted) (quoting *Darr. v. Muratore*, 8 F.3d 854, 862 (1st Cir. 1993)). There is no concern here that an immediate appeal of final judgment as to Count I would be duplicative or wasteful of judicial resources, because the remaining counts claim separate legal violations. *See id.* at 29 (finding "no just reason for delay"). And critically, the equities at stake overwhelmingly weigh in favor of finding no just reason for delay: without a bond hearing, the Plaintiff class members face a prolonged period of mandatory detention, spanning months to a year, separated from their families and communities. *See* PI Order at 26 (discussing irreparable harm). There is no just reason for delay—in fact, there is every reason to expedite relief—where class members' loss of liberty is at stake. *See Ferrera v. United States*, 370 F. Supp. 2d 351, 360 (D. Mass. 2005) (noting severity of loss of liberty); *see also, Nystedt v. Nigro*, 700 F.3d 25, 30 (1st Cir. 2012) (affirming district court's Rule 54(b) certification that focused on protecting the defendants' reputation in the legal community while RICO and conspiracy charges were pending); *Am. Auto.*

Mfrs. Ass'n, 998 F. Supp. at 29-30 (finding no just reason for delay where requested relief would save plaintiffs "considerable work and expense"). Therefore, this Court should enter its declaration as a final judgment under Rule 54(b).

V. The Court Should Order Notice Directed to the Class Members and Identification of Class Members to Class Counsel.

The Court should direct Defendants, pursuant to Fed. R. Civ. P. 23(c)(2)(A), to (1) give notice of this action, appended to the Proposed Order submitted contemporaneously, directly to all present[8] and future class members, within seven (7) days of the Court's order, and (2) provide identification of all present members of the class within seven (7) days of this Court's order, and provide ongoing identification information to class counsel at least once per week, every week, thereafter. While not required for all Rule 23(b)(2) classes, a court may order a notice procedure under Rule 23(c)(2)(A), particularly in "exceptional situations involving due process concerns." *See* Class Cert. Order (D.E. 81) at 36; Newberg on Class Actions § 8:3. The present case is one such "exceptional situation," involving mandatory detention in violation of the INA's statutory scheme and unlawful denial of the opportunity to be released on bond. *See Hernandez-Lara*, 10 F.4th at 35 (discussing due process implications of continued detention of an individual under § 1226(a)); *Calderon Jiminez v. Cronen*, 317 F. Supp. 3d 626, 658 (D. Mass. 2018) (finding that government's failure to follow procedures under 8 CFR § 241.4 constituted due process violation resulting in unlawful continued detention of individuals). Moreover, it is appropriate to require Defendants to provide notice to class members where, as here, they are a "captive population with whom Defendants may readily communicate," including "by posting notice in designated common

[8] "Present" members of the class are those who fell within the class definition at or after the time of the filing of the class complaint on September 22, 2025, and who presently remain outside any of its exclusions.

areas of detention facilities." *See Fraihat v. United States Immig. & Custom Enf't*, No. EDC 19-1546 JGB, 2020 U.S. Dist. LEXIS 94952, at *14 (C.D. Cal. May 15, 2020) (finding Defendants' cost and burden negligible in requiring notice). And because the class members are in many cases unrepresented, may not speak English, may not have ready access to external sources of information while detained, and could have been transferred to detention locations elsewhere in the country, notice is necessary to ensure class members are both aware of their rights and that they have some proof of class membership to show local immigration officials and whichever IJ is hearing their case.

Moreover, as previously discussed in Plaintiff's Post-Hearing Submission (D.E. 78), the Court should order Defendants to provide ongoing identification of class members to class counsel. The court ordered a similar directive in *Brito v. Barr*, 415 F. Supp. 3d 258, 270-71 (D. Mass. 2019), *aff'd in part and vacated in part*, *Brito v. Garland*, 22 F.4th 240 (1st Cir. 2021). Further, for any transfer of a class member out of Massachusetts, Maine, Rhode Island, Vermont, or New Hampshire, the Court should order Defendants to notify class counsel 24 hours prior to transfer, or, where 24 hours' prior notice is not reasonably practicable, within 24 hours after the transfer is initiated. Without Defendants' identification of class members—information uniquely and exclusively in Defendants' possession—neither Plaintiff's counsel nor the Court will be able to ensure that individual class members are informed of the existence of this action and any declaratory relief that this Court may determine, assess compliance with the declaration, and make informed decisions concerning whether any further relief (such as individual enforcement actions or APA vacatur) should be considered. *See Bouchard v. Sec'y of Health & Human Servs.*, 604 F. Supp. 171, 176 (D. Mass. 1984) ("The goal of any [classwide] relief granted must be to ensure that all potential class members are aware of the right created by the Court's Order."); *see also Fraihat*, 2020 U.S. Dist. LEXIS 94952, at *20-21 (ordering identification of class members and compliance status to class counsel on biweekly basis); *Giotto v. U.S. Dep't of Homeland Sec.*, 762 F. Supp. 3d 127, 134 (D.N.H. 2025) (directing defendants to cooperate with class counsel in identifying class members and in facilitating the provision of notice on an individual basis for class settlement). It is therefore imperative that the Court orders Defendants to provide notice to class members and identify class members to class counsel.

CONCLUSION

For the foregoing reasons, the Class respectfully requests that the Court (a) grant class-wide partial summary judgment on Count I; (b) enter declaratory relief that class members are entitled to bond hearings upon request (a proposed form of declaration is enclosed); (c) enter its ruling as a partial judgment under Rule 54(b); and (d) order notice to the class members and identification of the class members to class counsel, as described above.

Respectfully submitted,

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Dated: November 7, 2025

<u>CERTIFICATE OF SERVICE</u>

I hereby certify that the foregoing document will be served on counsel for all parties through the Court's CM/ECF system.

Date: November 7, 2025

<u>/s/ Gilleun Kang</u>
Gilleun Kang