UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSE NILA CASTRO,

Petitioner,

v.

KEVIN RAYCRAFT, Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY,

Respondents.
_____/

Case No. 1:26-cv-161

Hon. Hala Y. Jarbou
Chief U.S. District Judge

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Jose Castro Nila is a noncitizen who was not lawfully admitted to the United States and has no lawful immigration status. The U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), detained Petitioner while it pursues administrative removal proceedings against him. He challenges the agency's decision to detain him under a statutory provision that does not entitle him to a bond hearing until the conclusion of his administrative immigration proceedings. *See* 8 U.S.C. § 1225.

The Court must deny the Petition for several reasons. First, Petitioner has failed to exhaust administrative remedies, as he has not requested a bond hearing with an immigration judge or pursued it in an appeal to the Board of Immigration Appeals (BIA). Second, Petitioner is properly

detained under 8 U.S.C. § 1225(b)(2)(A). Federal Respondents[1] acknowledge that the Court recently concluded that 8 U.S.C. § 1226(a), and not § 1225(b)(2)(A), "governs noncitizens . . . who have resided in the United States . . . and were already within the United States when apprehended and arrested." *Hernandez Garcia v. Raycraft et al.*, No. 1:25-CV-1281, 2025 WL 3122800, at *5 (W.D. Mich. Nov. 7, 2025). However, Federal Respondents respectfully disagree with the Court's analysis. Lastly, Petitioner's detention does not violate the Due Process Clause. Accordingly, the Court should decline to issue a writ of habeas corpus to Petitioner. Furthermore, the Court should dismiss the Secretary of the Department of Homeland Security and the U.S. Department of Homeland Security from this action because the Detroit ICE Field Office Director is the only proper respondent in this habeas suit.

FACTUAL BACKGROUND

Petitioner is a citizen of Mexico who unlawfully entered the United States over 24 years ago. (Pet., ECF No. 1, PageID.11, ¶ 37; Ex. A, Notice to Appear.) In January 2026, DHS encountered and arrested Petitioner for being illegally present in the United States and placed him into removal proceedings. (Ex. A, Notice to Appear.) Upon his detention, DHS determined that Petitioner was an applicant for admission to the United States, seeking admission, and not clearly and beyond doubt entitled to admission, under 8 U.S.C. § 1225(b)(2). (Ex. A, Notice to Appear.)

Petitioner is currently detained at the North Lake Processing Center in Baldwin, Michigan. (Pet., ECF No. 1, PageID.12, ¶ 40.) He is in removal proceedings on the detained docket before

[1] Throughout this brief, the term "Federal Respondents" shall be used to refer to Kevin Raycraft, Acting Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement, Kristi Noem, Secretary of the U.S. Department of Homeland Security, and the U.S. Department of Homeland Security.

the Detroit immigration court, where he is scheduled for a master calendar hearing on January 27, 2026. (Ex. B, Notice of Hearing.)

On January 15, 2026, Petitioner filed a petition in federal court asking the Court to issue a writ of habeas corpus ordering Federal Respondents to release him or provide him with a bond hearing. Petitioner also asks the Court to enjoin Federal Respondents from transferring the Petitioner from the Western District of Michigan during these proceedings.

STATUTORY FRAMEWORK

I. Prior to 1996, United States immigration statutes gave preferential treatment to aliens unlawfully present in the United States.

The Immigration and Nationality Act (INA), as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether the alien had physically "entered" the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) "dictated what type of [removal] proceeding applied" and whether the alien would be detained pending those proceedings, *Hing Sum v. Holder*, 602 F.3d at 1099.

At the time, the INA "provided for two types of removal proceedings: deportation hearing and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). An alien who arrived at a port of entry would be placed in "exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole." *Hurtado*, 29 I. & N. Dec.

at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens in deportation proceedings, unlike those in exclusion proceedings, "were entitled to request release on bond." *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

Thus, the INA's prior framework distinguishing between aliens based on physical "entry" had

> the 'unintended and undesirable consequence' of having created a statutory scheme where aliens who entered without inspection 'could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' *including the right to request release on bond*, while aliens who had 'actually presented themselves to authorities for inspection … were subject to mandatory custody.

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (House Rep.) ("illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection").

II. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) eliminated the preferential treatment of aliens unlawfully present in the United States and mandated detention of all "applicants for admission."

Congress discarded that regime through enactment of IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

To that end, IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the governing touchstone. IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep., *supra*, at 226 (emphasis added); *Hing Sum v. Holder*, 602 F.3d at 1100 (similar). IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Hurtado*, 29 I. & N. Dec. at 223.

IIRIRA effected these changes through several provisions codified in Section 1225 of Title 8:

Section 1225(a): Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. That provision states that an alien "present in the United States who has not been admitted or who arrives in the United States" "shall be deemed … an applicant for admission":

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

8 U.S.C. § 1225(a)(1) (emphasis added). "All aliens … who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States" are required to "be inspected by [an] immigration officer[]." *Id.* § 1225(a)(3). The inspection by the immigration officer is designed to determine whether the alien may be lawfully "admitted" to the country or, instead, must be referred to removal proceedings.

Section 1225(b): IIRIRA also divided removal proceedings into two tracks—expedited removal and non-expedited "Section 240" proceedings—and mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(1) provides for so-called "expedited removal proceedings," *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of aliens—those who (1) are "arriving in the United States," or who (2) have "not been admitted or paroled into the United States" and have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration officer shall "order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum … or a fear of persecution." *Id.* § 1225(b)(1)(A)(i). In that event, the alien "shall be detained pending a final determination of credible fear or persecution and, if found not to have such fear, until removed." *Id.* § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for a form of relief from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

Section 1225(b)(2) is a "catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)]." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It requires that those aliens be detained pending Section 240 removal proceedings:

> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 1229a of this title [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added).[2] *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin").

While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA grants DHS discretion to exercise its parole authority to temporarily release an applicant for admission, but "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Parole, however, "shall not be regarded as admission of the alien." *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that "the purposes of such parole … been served," the "alien shall … be returned to the custody from which he was paroled" and be "dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A).

Section 1226: IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas, or are later determined to have been improperly admitted. The statute provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." *Id.* § 1226(a). Detention under this provision is generally

[2] Subsection (b)(2) does not apply to (1) aliens subject to expedited removal, (2) crewmen, (3) stowaways, or (4) aliens who "arriv[e] on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States." 8 U.S.C. § 1225(b)(2)(B)-(C).

discretionary: The Attorney General "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2).[3]

That "default rule," however, does not apply to certain criminal aliens who are being released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c). Section 1226(c) provides that "[t]he Attorney General shall take into custody" certain classes of criminal aliens—those who are inadmissible or deportable because the alien (1) "committed" certain offenses delineated in 8 U.S.C. §§ 1182 and 1227; or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The Executive must detain these aliens "when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense." *Id.*

Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for) aliens who (1) are inadmissible because they are physically present in the United States without admission or parole, have committed a material misrepresentation or fraud, or lack required documentation; and (2) are "charged with, arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of" certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

III. DHS concluded that Section 1225(b)(2) requires detention of all applicants for admission.

For many years after IIRIRA, immigration judges treated aliens who entered the United States without admission and were later detained away from the border as being subject to

[3] Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

discretionary detention under 8 U.S.C. § 1226(a) rather than mandatory detention under 8 U.S.C. § 1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6.

On July 8, 2025, DHS "revisited its legal position on detention and release authorities" and issued interim guidance that brought the Executive's practices in line with the statute's plain text. Specifically, DHS concluded that all aliens who enter the country without being admitted or who otherwise arrive in the United States without proper documentation are "subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)] and may not be released from ICE custody except by INA § 212(d)(5) parole." As a result, the "only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under the INA § 236(a) [8 U.S.C. § 1226(a)] are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C. § 1127]."

The Board of Immigration Appeals soon adopted this interpretation in *Hurtado*. The Board concluded that Section 1225(b)(2)'s mandatory detention regime applies to *all* aliens who entered the United States without inspection and admission:

> Aliens … who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United State for a lengthy period of time following entry without inspection, by itself, does not constitute an "admission."

29 I. & N. Dec. at 228; *see also id.* at 225 ("Immigration Judges lack authority to hear bond requests or to grant bond to aliens … who are present in the United States without admission").

ARGUMENT

I. Petitioner has not exhausted his administrative remedies.

There is no evidence that Petitioner has requested a bond hearing before the immigration court. Should he request and the immigration court decline to grant his bond, he would have the right to appeal any unfavorable decision to the Board of Immigration Appeals (BIA). *Hernandez Torrealba v. U.S. Dep't of Homeland Sec.*, No. 1:25CV01621, 2025 WL 2444114, at *9 (N.D. Ohio Aug. 25, 2025); *Rabi v. Sessions*, No. 19-3249, 2018 U.S. App. LEXIS 19661, at *1-2 (6th Cir. July 16, 2018) (unpublished order). Accordingly, Petitioner has yet to exhaust his administrative remedies within the immigration courts before seeking a writ of habeas corpus from this Court.

"When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the [habeas] petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted). In *Leonardo*, the petitioner pursued habeas review of an immigration judge's (IJ) adverse bond determination before he appealed to the Board of Immigration Appeals. *Id.* The Ninth Circuit determined that filing a habeas petition in federal district court was "improper" because the petitioner "should have exhausted administrative remedies by appealing to the BIA before asking the federal district court to review the IJ's decision." *Id.* (citing *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003)). The Sixth Circuit has endorsed this procedure for challenging bond determinations. *See Rabi v. Sessions*, No. 19-3249, 2018 U.S. App. LEXIS 19661, at *1-2 (6th Cir. July 16, 2018) (citing *Leonardo*, 646 F.3d at 1160) (unpublished order). Additionally, some lower courts in this circuit have applied a three-factor test for determining whether prudential exhaustion applies. *See, e.g.*, *Hernandez*

Torrealba v. U.S. Dep't of Homeland Sec., No. 1:25CV01621, 2025 WL 2444114, at *9 (N.D. Ohio Aug. 25, 2025). The test considers whether:

> (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.

Id. (quoting *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007)).

Respondents acknowledge that the Court previously declined to require prudential exhaustion for aliens contesting detention under § 1225(b)(2). *See, e.g.*, *Sanchez Alvarez v. Noem*, — F. Supp. 3d —, 2025 WL 2942648, at *3 (W.D. Mich. Oct. 17, 2025). Here, however, the three-factor test weighs in favor of requiring Petitioner to exhaust his administrative remedies. First, although Petitioner alleges that that Respondents violated the INA and the Due Process Clause, the latter claim likewise hinges on the INA and Respondents' allegedly wrongful interpretation of the statute. "In other words, any determination regarding detention here turns on interpretation and application of the governing removal regime," a review that in the first instance "should proceed before the Board of Immigration Appeals to 'apply its experience and expertise without judicial interference.'" *Monroy Villalta v. Greene*, — F. Supp. 3d —, 2025 WL 2472886, at *2 (N.D. Ohio Aug. 5, 2025) (quoting *Khalili v. Holder*, 557 F.3d 429, 435 (6th Cir. 2009) (abrogated on other grounds)); *see also Hernandez*, 2025 WL 2444114, at *10 (applying *Monroy Villalta* to find that the first factor weighs in favor of requiring exhaustion of claims premised on the statutory interpretation of the INA); *Ba v. Dir. of Detroit Field Office, U.S. Immigr. and Customs Enf't*, No. 4:25-CV-02208, 2025 WL 2977712, at *2-3 (N.D. Ohio Oct. 22, 2025) ("Because of the expertise the Board of Immigration Appeals and the immigration courts more generally have in the statutory and administrative regimes governing the admission and removal

of foreigners, many of the purposes for requiring exhaustion may be served by permitting agency review in the first instance." (quotation omitted)).

Second, "relaxing the exhaustion requirement would encourage the deliberate bypass of the administrative scheme in favor of what may be perceived as a potentially more favorable and/or timely reviewing body, i.e., federal court." *Hernandez*, 2025 WL 2444114, at *10. Petitioner has not even begun the process of seeking relief through the administrative process provided by the immigration courts and already seeks the Court's "interference in agency affairs." *Id.* Waiving administrative exhaustion in this context would undermine the authority of the agency and the "important purposes served by exhaustion" in the immigration context, *id.*, including "protecting the authority of administrative agencies" and "developing the factual record to make judicial review more efficient," *Ba*, 2025 WL 2977712, at *3 (quoting *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)).

Third, allowing the immigration court and, if necessary, the BIA to evaluate Petitioner's bond motion "would permit the agency to correct its own mistakes, if any, and preclude the need for judicial review if Petitioner is successful." *Id.* at *10. If Petitioner applies for and the immigration court grants him bond, there will be no need for judicial review of his claims. Likewise, if the immigration court denies his motion, Petitioner may appeal the decision to the BIA, where he may seek a new bond hearing and request release.

Thus, as in *Leonardo*, 646 F.3d at 1160, "prudential principles of exhaustion counsel that Petitioner pursue his administrative remedies before seeking a writ of habeas corpus," *Monroy Villalta*, 2025 WL 2472886, at *2 (requiring administrative exhaustion where habeas petitioner challenged his bond determination based on the statutory interpretation of 8 U.S.C. §§ 1225(b) and 1226(a)); *see also Ba*, 2025 WL 2977712, at *3 (same). Petitioner should continue pursuing his

claims before the immigration court and, if necessary, the Board of Immigration Appeals before seeking relief from this Court.

II. Petitioner is properly detained under § 1225(b)(2).

Petitioner unambiguously meets every element for detention under § 1225(b)(2). Moreover, even if the text of § 1225(b)(2) were ambiguous, its structure and history support the agency's interpretation of the statute.

A. The text of § 1225(b)(2) supports Petitioner's detention under the statute.

Under the plain language of Section 1225(b)(2), DHS is required to detain all aliens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the alien has been in the United States or how far from the border they ventured. That unambiguous language resolves this case. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) ("Our analysis begins and ends with the text.").

Petitioner falls within the plain text of § 1225(b)(2)(A) because he is (1) an applicant for admission, (2) who is seeking admission, and (3) who is not clearly and beyond a doubt entitled to be admitted.

1. Applicant for Admission

Section 1225(a) defines "applicant for admission" to encompass an alien who either "arrives in the United States" or who is "present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). And "admission" under the INA means not physical entry, but lawful entry after inspection by immigration authorities. 8 U.S.C. § 1101(a)(13)(A); *Mejia Olalde v. Noem*, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025). Thus, under the plain terms of the statute, all unadmitted noncitizens present in the United States are "applicants for admission," regardless of

their proximity to the border, the length of time they have been present in the United States, or whether they ever had the subjective intent to properly apply for admission. *See id.*; *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) ("For these purposes, '[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .)' is deemed 'an applicant for admission.'") (quoting § 1225(a)(1)); *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) ("an alien who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission'") (quoting § 1225(a)(1)). "When a statute includes an explicit definition, [courts] must follow that definition, even if it varies from a term's ordinary meaning." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (quotation omitted). Accordingly, Petitioner unambiguously is an "applicant for admission" under the plain text of the statute because he is a noncitizen, he was not admitted to the United States, and he was present in the United States when he was apprehended.

2. Seeking Admission

The statute further 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). Therefore, to seek admission, an alien must seek lawful entry into the United States.

Congress has "defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission, or who have been brought in against their will under certain circumstances." *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (citing 8 U.S.C. § 1225(a)(1)). Thus, "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to

be 'seeking admission' under the immigration laws." *Id.* (emphasis in original); *see also Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913, at *1-2 (D. Mass. July 28, 2025) (finding that, in the absence of the receipt of lawful immigration status, an alien who was unlawfully present in the U.S. for 20 years and had an approved U-130 Petition for Alien Relative "remains an applicant for admission" subject to mandatory detention under § 1225(b)(2)). And that's true even when the alien has been physically present in the country for many years, as that alien can "still be an applicant for *lawful* entry, seeking legal 'admission.'" *Mejia Olalde*, 2025 WL 3131942, at *3. As the geographic and temporal limits in the neighboring provision, Section 1225(b)(1), demonstrate, "[i]f Congress meant to say that an alien no longer is 'seeking admission' after some amount of time in the United States, Congress knew how to do so." *Id.* at *4. Likewise, the principle that many people who long have been present in the United States have not "effected an entry into the United States . . . runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (citing *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) ("despite nine years' presence in the United States, an 'excluded' alien 'was still in theory of law at the boundary line and had gained no foothold in the United States'") and *Leng May Ma v. Barber*, 357 U.S. 185, 188-90 (1958) ("alien 'paroled' into the United States pending admissibility had not effected an 'entry'")).

Petitioner contends that he is not "seeking admission" to the United States. In effect, he argues that because he chose to enter and remain in the United States unlawfully, he therefore is not "seeking" a lawful entry. That is an unreasonable reading of the statute, for three reasons. First, because Petitioner has not agreed immediately to depart, logically he must be seeking to remain—a legal action that requires "admission," i.e., a lawful entry. 8 U.S.C. §§ 1101(a)(13), 1182(a)(6), and 1225(a)(3). Second, Petitioner ignores the legal presumption created by the definition of "applicant for admission," which characterizes all unlawfully present noncitizens as

applying for admission until they are either removed or successfully obtain a lawful entry, regardless of their subjective intent. 8 U.S.C. § 1225(a)(1); *see also Pena*, 2025 WL 2108913, at *1-2 (because alien did not have lawful status, he remained an applicant for admission subject to mandatory detention under § 1225(b)(2)). Nothing in the plain language of the statute exempts noncitizens present in the United States. Finally, Petitioner's reading of the statute would reward him for knowingly violating the law, entitling him to more favorable treatment than a noncitizen who lawfully presented himself at a port of entry. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 228 (BIA Sept. 5, 2025). Nowhere does the INA state that, "after some undefined period of time residing in the interior of the United States without lawful status, . . . an applicant for admission is no longer 'seeking admission,' and has somehow converted to a status that renders him or her eligible for" consideration under 8 U.S.C. § 1226(a). *Id.* at 221.

Moreover, Petitioner is "seeking admission" under § 1225(b)(2) because he has not agreed to depart, and he has not yet conceded his removability and allowed his removal in his administrative immigration proceedings. Noncitizens present in the United States who have not been lawfully admitted and who do not agree to immediately depart must be referred for removal proceedings under § 1229a. *See* 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). In removal proceedings, if an unlawfully admitted noncitizen does not accept removal, he can seek a lawful admission. *See, e.g.*, 8 U.S.C. § 1229b. For instance, if Petitioner does not concede removability and allow his immediate removal at his next master calendar hearing, he may apply to cancel his removal and adjust his status under 8 U.S.C. § 1229b. *See, e.g.*, *Moctezuma-Reyes v. Garland*, 124 F.4th 416, 419 (6th Cir. 2024); *Lopez-Soto v. Garland*, 857 F. App'x 848, 854 (6th Cir. 2021). If he is successful, he will be granted lawful status and the agency "shall record the alien's lawful

admission for permanent residence as of the date of the . . . cancellation of removal." 8 U.S.C. § 1229b(b)(3).

Petitioner is seeking admission to the United States within the meaning of § 1225(b)(2)(A).

3. *Entitled to be Admitted*

It is undisputed that Petitioner is "not clearly and beyond a doubt entitled to be admitted." § 1225(b)(2)(A). No immigration officer has determined that he is clearly and beyond a doubt entitled to be admitted, and Petitioner does not argue otherwise.

The text of § 1225(b)(2) unambiguously applies to Petitioner. Therefore, no further exercise in statutory interpretation is necessary or permissible, and Petitioner's detention under § 1225(b)(2) is lawful.

B. The structure of § 1225 supports Petitioner's detention under the statute.

If the plain language of a statute is ambiguous, a court may turn to the broader structure of the statute to determine its meaning. *See King v. Burwell*, 576 U.S. 473, 492 (2015). The structure of § 1225 demonstrates that Petitioner properly is detained under § 1225(b)(2).

1. Section 1225 distinguishes applicants for admission from other arriving aliens.

As mentioned above, Section 1225 addresses two types of unadmitted noncitizens: "arriving aliens" and "applicants for admission." 8 U.S.C. § 1225(a)(1), (b)(1). The provisions for "arriving aliens" relate to "stowaways," "crewmen," noncitizens "arriving on land . . . from a foreign territory contiguous to the United States," and noncitizens present in the United States for less than two years. *Id.* §§ 1225(a)(2), (b)(1)(A)(i), (b)(1)(A)(iii)(II), (b)(2)(B), (b)(2)(C). The term "arriving alien" similarly is defined by regulation as "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. These noncitizens "arriving" at an international port are not entitled to the procedural protections in the full removal

proceedings described in § 1229a. 8 U.S.C. § 1225(b)(1)(A)(i). Instead, because they only recently arrived, they are subject to "expedited" removal proceedings. *Id.*; *see also Thuraissigiam*, 591 U.S. 103, at 140 (2020) (holding that diminished due process provided in expedited removal proceedings was constitutional for arriving aliens detained under § 1225(b)(1)).

Meanwhile, § 1225(b)(2) applies to all "other aliens" who are "present" in the United States without a lawful admission. 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). Those noncitizens, who may have been present for a long period of time and may no longer be near an international border, may be entitled to greater due process than "arriving aliens." *See Zadvydas*, 533 U.S. at 693. The statute provides them procedural protections available under the nation's immigration laws that satisfy due process, but it still requires detention during removal proceedings. *See* 8 U.S.C. § 1225(b)(2)(A) (requiring detention during full removal proceedings under § 1229a); *Demore v. Kim*, 538 U.S. 510, 523 (2003) (holding that mandatory detention of a noncitizen who was long-term U.S. resident during removal proceedings complied with Due Process Clause).

The structure of § 1225 supports the conclusion that Petitioner properly is detained under § 1225(b)(2). Congress used different words to distinguish recently arrived noncitizens from "applicants for admission" and gave each category of noncitizens different procedural protections, which demonstrates that Congress intended the provisions to apply to different categories of noncitizens and results in a harmonious reading of the statute. 8 U.S.C. §§ 1225(a)(1), (b)(1), (b)(2); *see also Pulsifer v. United States*, 601 U.S. 124, 149 (2024) ("different terms usually have different meanings."); *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 631-32 (1973) ("It is well established that our task in interpreting separate provisions of a single Act is to give the Act 'the most harmonious, comprehensive meaning possible' in light of the legislative policy and purpose."). When a statute defines two groups and assigns them different treatment,

the Court must interpret the statute to give effect to the statutory distinction. *See Polselli v. Internal Revenue Serv.*, 598 U.S. 432, 441 (2023) ("We ordinarily aim to "giv[e] effect to every clause and word of a statute."); *see also Scialabba v. Cuellar de Osorio*, 573 U.S. 41, 57 (2014) (holding that statute required different treatment for principal and derivative immigration beneficiaries).

Petitioner's reading of the statute would require the Court to disregard the clear distinction between recently arrived noncitizens ("arriving aliens") and those like Petitioner who were able to evade apprehension for many years ("applicants for admission"). *Borden v. United States*, 593 U.S. 420, 436 (2021); *Lozano v. Montoya Alvarez*, 572 U.S. 1, 16 (2014) ("Given that the drafters did not adopt that alternative, the natural implication is that they did not intend [it]."). Moreover, his reading of the statute would collapse the definitions of arriving aliens and applicants for admission, effectively erasing Congress's definition of "applicant for admission" and rendering half of the statute meaningless. No canon of statutory interpretation permits this. *See Pulsifer*, 601 U.S. at 143 (rejecting interpretation of statute that would "render[s] an entire subparagraph meaningless").

As an applicant for admission, Petitioner properly is subject to mandatory detention under § 1225(b)(2).

2. Section 1225(b)(2) is not redundant to the Laken Riley Act or § 1226.

Section 1225 is not redundant to § 1226 and to the newly enacted Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), which made a new subcategory of those individuals subject to mandatory detention under § 1226(c).

To begin, there is no colorable argument that the government's interpretation of Section 1225(b)(2)(A) renders Section 1226(a)'s discretionary detention authority superfluous. Section 1226(a) authorizes the Executive to "arrest[] and detain[]" *any* "alien" pending removal

proceedings but provides that the Executive also "may release the alien" on bond or conditional parole. 8 U.S.C. § 1226(a). Section 1226(a) provides the detention authority for the significant group of aliens who are *not* "applicants for admission" subject to Section 1225(b)(2)(A)—specifically, aliens who have been admitted to the United States but are now removable. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("the specific governs the general"). For example, the detention of any of the millions of aliens who have overstayed their visas will be governed by Section 1226(a), because those aliens (unlike Petitioner) *were* lawfully admitted to the United States.

Likewise, the government's reading of Section 1225(b)(2)(A) does not render Section 1226(c) superfluous. As described above, Section 1226(c) is the exception to Section 1226(a)'s discretionary detention regime. It requires the Executive to detain "any alien" who is deportable or inadmissible for having committed specified offenses or engaged in terrorism-related actions "when the alien is released" from another entity's custody. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Like Section 1226(a), subsection (c) applies to significant groups of aliens *not* encompassed by Section 1225(b)(2), such as visa overstayers or aliens who are lawfully present but have committed certain crimes.

Most obvious, Section 1226(c)(1) requires the Executive to detain aliens who *have been admitted* to the United States and are now "deportable." *See* 8 U.S.C. § 1226(c)(1)(B)-(C). By contrast, Section 1225(b)(2) has no application to admitted aliens. Next, Section 1226(c)(1) requires detention of aliens who are "inadmissible" on certain grounds, *see* 8 U.S.C. § 1226(c)(1)(A), (D), (E). Those provisions, too, sweep more broadly than Section 1225(b)(2), because they cover aliens who are inadmissible but were erroneously admitted. *See* 8 U.S.C. § 1227(a), (a)(1)(A) (providing for the removal of "[a]ny alien … in *and admitted to* the United

States," including "[a]ny alien who at the time of entry or adjustment of status was within one or more of the classes of aliens *inadmissible* by the law existing at the time...." (emphasis added)). In this respect, Section 1226(c)(1) applies to admitted aliens, who are not covered by Section 1225(b)(2).

Finally, as noted above, Section 1225(b)(2)(A) does "not apply to an alien ... who is a crewman," "a stowaway," or "is arriving on land ... from a foreign territory contiguous to the United States." 8 U.S.C. 1225(b)(2)(B)-(C). Section 1226(c) would apply to those aliens, too, if they were inadmissible or deportable on one of the specified grounds.

Nor does the Government's reading render superfluous Congress's recent amendment of Section 1226(c) through the Laken Riley Act. That law requires mandatory detention of criminal aliens who are "inadmissible" under 8 U.S.C. § 1182(a)(6)(A), (a)(6)(C), or (a)(7). *See* 8 U.S.C. § 1226(c)(E)(i)-(ii). As with the other grounds of "inadmissibility" listed in Section 1226(c), both (a)(6)(C) and (a)(7) apply to inadmissible aliens who were admitted in error, as well as those never admitted. That means there is no surplusage, as Section 1225(b)(2) has no application to aliens who were admitted in error.

To be sure, the Laken Riley Act's application to aliens who are inadmissible under §1182(a)(6)(A)—for being "present ... without being admitted or paroled"—overlaps with Section 1225(b)(2)(A). Both statutes mandate detention of "applicants for admission" who fall within the specified grounds of inadmissibility. But again, "[r]edundancies are common in statutory drafting," and are "not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Barton v. Barr*, 590 U.S. 222, 223 (2020). And "even assuming there were surplusage, that cannot trump the plain meaning of [Section] 1225(b)(2)." *Mejia Olalde*, 2025 WL 3131942, at *4. That is particularly true here, where this portion of the Laken Riley Act overlaps

with Section 1225(b)(2)(A) even under *Petitioner's* reading, which recognizes that applicants for admission who are "seeking admission" must be detained under Section 1225(b)(2)(A). *See Microsoft Corp. v. I4I Ltd. P'ship*, 564 U.S. 91, 106 (2011) ("[T]he canon against superfluity assists only where a competing interpretation gives effect to every clause and word of a statute").

Besides, Sections 1225(b)(2) and 1226(c) use different language that reflects the distinct obligations each section imposes. Section 1226(c), which applies "when [a criminal] alien is released" from another entity's custody, specifies that the "Attorney General shall take into custody" the alien. That provision therefore directs the Executive to take affirmative steps to apprehend covered aliens when they are released from state or federal custody. *Id.*; *see Nielson v. Preap*, 586 U.S. 392, 414 (2019) (explaining that "the duty to arrest is triggered[] upon release from criminal custody"). Section 1225(b)(2), by contrast, applies "if an examining officer determines" that the alien "is not clearly and beyond a doubt entitled to be admitted," and directs that the alien "shall be detained." That distinct language does not itself impose an obligation on the Executive to apprehend such an alien; it applies once an examining officer has encountered an applicant for admission. *Id.* Each provision thus has independent application—one states that the Executive "shall take into custody" certain aliens in specified circumstances, insisting that the Executive prioritize certain criminal aliens for apprehension; the other states that an alien "shall be detained" once encountered by immigration officials. Because "Section 1226(c) regulates not only *what* the Attorney General must do (take aliens into custody), but also *when* the Attorney General must do so," while Section 1225 "does not specify a timeline," the Government's reading of Section 1225 "does not render the Laken Riley Act superfluous." *Mejia Olalde*, 2025 WL 3131942, at *4.

Moreover, Section 1226(c) does additional independent work, despite any overlap, by narrowing the circumstances under which aliens may be *released* from mandatory detention. Recall that, for aliens subject to mandatory detention under Section 1225(b)(2), IIRIRA allows the Executive to "temporarily" parole them "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(b)(5). Section 1226(c)(1) takes that option off the table for aliens who have also committed the offenses or engaged in the conduct specified in Section 1226(c)(1)(A)-(E). As to those aliens, Section 1226(c) *prohibits* their parole and authorizes their release only if "necessary to provide protection to" a witness or similar person "and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." 8 U.S.C. § 1226(c)(4). So even as to aliens who are already subject to mandatory detention under Section 1225(b)(2), Section 1226(c) is not superfluous: It significantly narrows the Executive's parole power with respect to those aliens.

In fact, Congress's desire to further limit the parole power with respect to criminal aliens was one of the principal reasons that it enacted the Laken Riley Act. The Act was adopted in the wake of a heinous murder committed by an inadmissible alien who was "paroled into this country through a shocking abuse of that power," 171 Cong. Rec. at H278 (daily ed. Jan. 22, 2025) (Rep. McClintock), and an abdication of the Executive's "fundamental duty under the Constitution to defend its citizens," 171 Cong. Rec. at H269 (Rep. Roy). The Act thus reflects a "congressional effort to be double sure," *Barton*, 590 U.S. at 239, that unadmitted criminal aliens are not paroled into the country through an abuse of the Secretary's exceptionally narrow parole authority. It does not suggest congressional uncertainty about Section 1225(b)(2)(A)'s detention mandate, but rather

congressional desire to shut down a parole loophole that allowed the government to circumvent that mandate.

The specter of a potential redundancy with § 1226 and the Laken Rily Act cannot support Petitioner's attempt to avoid the plain application of § 1225.

C. The history of § 1225(b)(2) supports Petitioner's detention under the statute.

Both the legislative history of the INA and the agency's historical practice support the agency's application of § 1225(b)(2).

1. The legislative history of § 1225 supports Petitioner's detention under the statute.

Petitioner's reading of the statute is not only textually baseless; it also subverts IIRIRA's express goal of eliminating preferential treatment for aliens who enter the country unlawfully. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to result "that Congress designed the Act to avoid"); *New York State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes.").

One of IIRIRA's express objectives was to dispense with the perverse pre-1996 regime under which aliens who entered the United States unlawfully were given "equities and privileges in immigration proceedings that [were] not available to aliens who present[ed] themselves for inspection" at the border, including the right to secure release on bond. House Rep., *supra*, at 225. *See also Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc); *Wilson v. Zeithern*, 265 F. Supp. 2d 628, 631 (E.D. Va. 2003) (The "IIRIRA amendments sought to ensure sensibly enough, that those who enter the country illegally, without proper inspection, are not treated more favorably under the INA than those who seek admission through proper channels, but are denied access.")

Petitioner's interpretation would restore the regime Congress sought to discard: It would require detention for those who present themselves for inspection at the border in compliance with

law, yet grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years or even decades until an involuntary encounter with immigration authorities. That is *exactly* the "perverse incentive to enter" unlawfully, *Thuraissigiam*, 591 U.S. at 140, that IIRIRA sought to eradicate. This Court should reject any interpretation that is so transparently subversive of Congress's stated objective. *King*, 576 U.S. at 492.

The government's reading, by contrast, not only adheres to the statute's text and congressional intent, but it also brings the statute in line with the longstanding "entry fiction" that courts have employed for well over a century to avoid giving favorable treatment to aliens who have not been lawfully admitted. Under that doctrine, all "aliens who arrive at a port of entry … are treated for due process purposes as if stopped at the border," and that also includes aliens "paroled elsewhere in the country for years pending removal" who have developed significant ties to the country. *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). For example, *Kaplan v. Tod*, 267 U.S. 228 (1925), held that an alien who was paroled for nine years into the United States was still "regarded as stopped at the boundary line" and "had gained no foothold in the United States." *Id.* at 230; *see also Mezei*, 345 U.S. at 214-15. The "entry fiction" thus prevents favorable treatment of aliens who have not been admitted—including those who have "entered the country clandestinely." *The Yamataya v. Fisher*, 189 U.S. 86, 100 (1903). IIRIRA sought to implement that same principle with respect to detention. The government's reading is true to that purpose; the Petitioner's reading subverts it.

Accordingly, the legislative history of the INA supports Petitioner's detention under the statute.

2. The agency's practice supports Petitioner's detention under the statute.

Petitioner argues that it was the prior policy of DHS to apply § 1226 to all noncitizens "already in the country," and that DHS is bound by its past action. However, pursuant to the Supreme Court's decision in *Loper Bright*, courts "must exercise their independent judgment" when interpreting ambiguous statutes relating to an agency's statutory authority. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). An agency's prior practice cannot bind the courts' statutory interpretation; "every statute's meaning is fixed at the time of enactment." *Id.* at 400 (quoting *Wisconsin Central Ltd. v. United States*, 585 U.S. 274, 284 (2018)).

Regardless, as stated above, the agency has not changed its interpretation of § 1225(b)(2), only how it applies its discretion to enforce the statute. Moreover, Petitioner cannot prevent immigration officials from exercising their valid statutory authority simply because they pursued a different path in the past. A federal agency is entitled to a presumption that it acts in good faith and in accordance with law. *United States v. Martin*, 438 F.3d 621, 634 (6th Cir. 2006). A party therefore generally cannot estop the government from changing its legal position without proving "affirmative misconduct," *Michigan Exp., Inc. v. United States*, 374 F.3d 424, 427-28 (6th Cir. 2004), a high standard that Petitioner could not meet in this case, *see Elia v. Gonzales*, 431 F.3d 268, 276 (6th Cir. 2005) (holding that an estoppel claim requires "an act by the government that either intentionally or recklessly misleads the claimant") (citation omitted).

The agency's alleged prior practice is insufficient to support Petitioner's claims.

In sum, the text, structure, and history of § 1225(b)(2) demonstrate that DHS properly has detained Petitioner under the statute. Nevertheless, the government concedes that the Court and other district courts have declined to find that § 1225(b)(2) applies to noncitizens who have already entered the United States unlawfully. *See, e.g., Hernandez Garcia*, 2025 WL 3122800, at *5;

Sanchez Alvarez v. Noem, Case No. 1:25-cv-1090, 2025 WL 2942648, at *6 n.1, *10 (W.D. Mich. Oct. 17, 2025); *Rodriguez Carmona*, v. *Noem*, No. 1:25-cv-1131, 2025 WL 2992222, at *6 (W.D. Mich. Oct. 24, 2025); *Delgado Delgado v. Noem*, No. 1:25-cv-1249, 2025 WL 3251144, at *9 (W.D. Mich. Nov. 21, 2025). However, not all decisions have been resolved against the government on the issue of properly interpreting 8 U.S.C. § 1225(b)(2). *See Barrios Sandoval v. Acuna*, No. 6:25-cv-1467, 2025 WL 3048926, at *5 (W.D. La. Oct. 31, 2025) (holding that "§ 1225(b)(2)'s plain language and the 'all applicants for admission' language of *Jennings*" permit DHS to detain similarly-situated aliens under § 1225(b)(2)); *Vargas Lopez v. Trump*, — F. Supp. 3d —, 2025 WL 2780351, at *10 (D. Neb. Sept. 30, 2025) (same); *Silva Oliveira v. Patterson*, No. 6:25-cv-1463, 2025 WL 3095972, at *5 (W.D. La. Nov. 4, 2025) (same); *Chavez v. Noem*, — F. Supp. 3d —, 2025 WL 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025); *Nchuo Kum v. Ross*, No. 6:25-cv-00451, 2025 WL 3113646, at *1-2 (W.D. La. Oct. 22, 2025) (Report and Recommendation), *adopted*, 2025 WL 3113644; *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025); *Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at *2-3 (E.D. Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, No. 1:25-cv-00177-H, (N.D. Tex. Oct. 24, 2025) (Dkt. 9); *Pena*, 2025 WL 2108913, at *2 ("Because petitioner remains an applicant for admission, his detention is authorized so long as he is 'not clearly and beyond doubt entitled to be admitted' to the United States." (quoting 8 U.S.C. § 1225(b)(2)(A))). Moreover, none of the decisions Petitioner cites are controlling on this Court. No circuit court, including the Sixth Circuit, has considered whether DHS properly is construing § 1225(b)(2) to apply to aliens like Petitioner. Consequently, this Court is left to apply "all relevant interpretive tools" to conclude not which interpretation of the statute is permissible, but which one is best. *Loper Bright*, 603 U.S. at 400.

The best interpretation of § 1225(b)(2) permits Petitioner's detention under the statute, for the reasons stated above.

III. Petitioner's detention comports with due process.

The Fifth Amendment's Due Process Clause protects against the deprivation of life, liberty, or property "without due process of law." U.S. const. amend. V. That includes freedom from government detention unless "adequate procedural protections" are applied. *Zadvydas*, 533 U.S. at 690.

In the immigration context, the Supreme Court has held that the process due under the constitution is coextensive with the removal procedures provided by Congress. *Thuraissigiam*, 591 U.S. at 138-40. *See also United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process[.]"). It has confirmed that statutory provisions denying bond during administrative removal proceedings do not violate the due process clause. *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."). And it has held that even after a noncitizen is ordered removed, detention for up to six months is presumptively valid under the due process clause. *Zadvydas*, 533 U.S. at 701.

Supreme Court precedents indicate that foreign nationals who entered illegally by evading detection while crossing the border should be treated the same as those who were stopped at the border in the first place. *See Thuraissigiam*, 591 U.S. at 138–40. While foreign nationals who have been *admitted* may claim due-process protections beyond what Congress has provided even when their legal status changes (such as a foreign national who overstays a visa, or is later determined to have been admitted in error), *see Wong Yang Sung v. McGrath*, 339 U.S. 33, 49–50 (1950), the Supreme Court has never held that foreign nationals who have "entered the country

clandestinely" are entitled to such additional rights, *see Yamataya v. Fisher*, 189 U.S. 86, 100 (1903). Congress has instead codified this distinction by treating all foreign nationals who have not been admitted—including unlawful entrants who have evaded detection for years—as "applicant[s] for admission." 8 U.S.C. § 1225(a)(1). In line with these cases, Congress created a detention system where applicants for admission, including those who entered the country unlawfully, are detained for removal proceedings under § 1225 and foreign nationals who have been admitted to the country are detained under § 1226.

In light of this precedent, Petitioner does not present a plausible due process claim. Petitioner received notice of the charges against him, has access to counsel, may attend hearings with an immigration judge, can request bond at that time, has the right to appeal the denial of any request for bond, and has been detained by ICE for less than a month. No further due process is due to him at this time. *Thuraissigiam,* 591 U.S. at 138-40. Because Petitioner has received the due process to which he is entitled, he cannot assert a viable claim under the Due Process Clause.

IV. A prohibition on Petitioner's transfer is unnecessary.

Petitioner asks the Court to restrict his transfer out of Michigan during the pendency of his habeas proceedings to preserve jurisdiction. A restriction is unnecessary, however, because the Court will maintain jurisdiction regardless of where DHS holds him in custody.

Petitioner named his immediate custodian, the ICE Field Office Director, as a respondent to this action. *Rumsfeld v. Padilla*, 542 U.S. 426, 440 (2004); *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). It is well established that "when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release." *Padilla*, 542 U.S. at 440. Accordingly, the Court need not

restrict Petitioner's movement to maintain jurisdiction over his petition. *Id.*; *see also Pablo Sequen v. Kaiser*, No. 25-CV-06487-PCP, 2025 WL 2650637, at *4 n.3 (N.D. Cal. Sept. 16, 2025) (declining to grant alien's request for an order that she remain within the district where she filed her habeas petition in order for the court to preserve jurisdiction over her petition); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *3 (S.D.N.Y. Aug. 26, 2025) (retaining jurisdiction over alien's habeas proceedings after he had been moved to another district).

The Court already will retain jurisdiction over Petitioner during the pendency of his habeas proceedings and should deny his request for an unnecessary order.

V. The Detroit ICE Field Office Director is the only proper respondent.

A writ of habeas corpus may only be issued "to the person having custody of the person detained." 28 U.S.C. § 2243. Except in extraordinary circumstances, the only proper respondent in a habeas corpus case is the detainee's immediate custodian. *See Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). In the immigration context, that is the ICE Field Office Director. *Roman*, 340 F.3d at 320.

Here, Petitioner names the Secretary of the Department of Homeland Security andthe U.S. Department of Homeland Security as respondents, but they are not proper respondents to this habeas action. *See Roman*, 340 F.3d at 322 (reasoning that "adopting a broader definition of 'custodian'" that encompasses any official with control over an alien's detention and release "would complicate and extend the duration of habeas corpus proceedings"); *Escobar-Ruiz v. Raycraft*, No. 1:25-CV-1232, 2025 WL 3039255, at *8 (W.D. Mich. Oct. 31, 2025) (dismissing the Attorney General as an improper respondent to a habeas petition). Therefore, the Court should dismiss Secretary Noem, and the U.S. Department of Homeland Security from this litigation.

CONCLUSION

Federal Respondents respectfully request that the Court deny Jose Castro Nila's petition for a writ of habeas corpus because he is not detained in violation of federal law or the Constitution.

Respectfully submitted,

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Dated: January 26, 2026

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