IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FRANCISCA HERNANDEZ HERNANDEZ, Petitioner, v. KEVIN RAYCRAFT, Acting Director of Detroit Field Office, U.S. Immigration and Customs Enforcement, et al., Respondents.	CASE NO.: 3:26-CV-00907 JUDGE PATRICIA A. GAUGHAN RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Undersigned counsel represents federal respondents (the "government")[1] in this habeas corpus action, in which petitioner Francisca Hernandez ("Petitioner") challenges her detention by U.S. Immigration and Customs Enforcement ("ICE"). On April 16, 2026, Petitioner filed a petition for habeas corpus pursuant to 28 U.S.C. § 2241. On April 20, 2026, the Court ordered the government to show cause why the petition should not be granted, with a response due by April 23, 2026. (Order, Dkt. # 3, PageID # 36).

The government has carefully reviewed this petition and determined that the legal issues presented concern the statutory authority for ICE's detention of Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a), and whether Petitioner is entitled to a bond hearing. (*See* Pet., Dkt. # 1, PageID # 2-4, ¶¶ 2, 7-12.) While reserving all rights, including the right to appeal, the government respectfully submits this abbreviated response in lieu of a formal responsive

[1] A writ of habeas corpus may only be issued by the person having custody of the detainee. In the ICE habeas context, that person is the Field Office Director for ICE. *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). *Mendoza v. Raycraft, et al.*, No. 4:25cv2183, 2025 WL 3157796, *8 (N.D. Ohio Nov. 12, 2025). Kevin Raycraft, Robert Lynch's successor, is the Acting Director of the Detroit Field Office for ICE. Federal Rule Civ. Pro. 25(d) permits Robert Lynch's successor to be automatically substituted as a party.

memorandum of law to preserve the legal issues, to conserve judicial and party resources, and to expedite the Court's consideration of this matter.

It is the government's position that Petitioner is subject to mandatory detention under § 1225(b), because she was present in the United States without being admitted or paroled. *Buenrostro-Mendez v. Bondi, et al.*, 166 F.4th 494 (5th Cir. Feb. 6, 2026); *Avila v. Bondi,* 170 F.4th 1128 (8th Cir. 2026). *see also Higareda-Cano v. Noem*, No. 1:25-CV0225-H, 2026 WL 274495, *1 (N.D. Tex. Jan. 30, 2026); *Lopez v. Dir. of Enf't and Removal Operations*, __ F. Supp. 3d __, 2026 WL 261938, *1 (M.D. Fla. Jan. 26, 2026); *Phurtskhvanidze v. Field Off. Dir. of Enf't and Removal Operations*, No. 1:25-cv-827, 2026 WL 160833 (S.D. Ohio Jan. 21, 2026); *Yinxiao Chen v. Almodovar*, 25-CV09670, 2026 WL 100761, at *6–13 (S.D.N.Y. Jan. 14, 2026); *Lucero v. Field Office Dir. Of Enf't and Removal Op.,* Case No. 1:25-cv-823, 2025 WL 3718730, at *4 (S.D. Ohio Dec. 23, 2025); *Coronado v. Sec'y, Dep't of Homeland Sec.,* Case No. 1:25-cv-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025); *Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855, at *3–8 (S.D.N.Y. Dec. 4, 2025).

Applicants for admission, such as Petitioner, whom DHS places in § 1229a removal proceedings are subject to detention and ineligible for a custody redetermination hearing before an IJ. Specifically, aliens present without admission placed in 8 U.S.C. § 1229a removal proceedings are both applicants for admission as defined in 8 U.S.C. § 1225(a)(1) and aliens "seeking admission," as contemplated in 8 U.S.C. § 1225(b)(2)(A). Such aliens are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and thus ineligible for a bond redetermination hearing.

No additional step is necessary for an applicant for admission to be seeking admission. *Buenrostro-Mendez*, 2026 WL 323330, at *4 ("[A]n applicant for admission to the United States is 'seeking admission' to the same, regardless of whether the person actively engages in further affirmative acts to gain admission."). As a Court in the Southern District of Ohio recently

explained, "the phrase 'alien seeking admission' in § 1225(b)(2)(A) is merely another way to refer to 'applicant[s] for admission,' and thus the same 'deeming' that makes someone an applicant for admission also makes them an 'alien seeking admission,' whether that is so as a matter of fact or not." *Lucero*, 2025 WL 3718730, at *1.

Furthermore, 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). Section 1225(a) provides that "[a]ll aliens . . . who are applicants for admission *or otherwise* seeking admission or readmission . . . shall be inspected." 8 U.S.C. § 1225(a)(3) (emphasis added). The word "'[o]therwise' means 'in a different way or manner . . . .'" *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *see also Buenrostro-Mendez*, 2026 WL 323330, at *5 (the use of "otherwise" means that "an 'applicant for admission' is necessarily someone who is 'seeking admission.'").

Given 8 U.S.C. § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien was initially processed for expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or placed directly into removal proceedings under 8 U.S.C. § 1229a —and "[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention . . . throughout the completion of applicable proceedings," *Jennings v. Rodriguez*, 583 U.S. 281, 301–03 (2018), IJs do not have authority to redetermine the custody status of an alien present without admission.

However, the government acknowledges that this Court recently reached the opposite conclusion in *Lopez v. Noem*, No. 3:26 CV128, 2025 WL 395202 (N.D. Ohio Feb. 12, 2026)

(Gaughan, J.). In *Lopez*, this Court found that "Petitioner [an unadmitted immigrant] is subject to detention under 8 U.S.C. § 1226(a) – not 8 U.S.C. § 1225(b)" and therefore, entitled to a bond hearing. *Id.* at *10.

On the legal issue of which statute governs Petitioner's detention here—whether it is 8 U.S.C. § 1226(a), or 8 U.S.C. § 1225(b)—the government acknowledges that this Court's decision in *Lopez* would control the result here if the Court adheres to that decision, since the facts are not materially distinguishable for purposes of the Court's decision on the legal issue of which statutory provision authorizes Petitioner's detention.

Thus, while the government does not consent to issuance of the writ and reserves all rights, including the right to appeal, and to conserve judicial and party resources while expediting the Court's consideration of this case, the government submits this abbreviated response setting forth its position that the Petitioner is lawfully detained. Finally, the government believes that this matter can be decided without a hearing. If, however, the Court determines that a hearing would be helpful, the government will attend and present Respondents' position.

Respectfully submitted,

DAVID M. TOEPFER
United States Attorney

By: */s/Elizabeth A. Deucher*

Elizabeth A. Deucher (OH: 0095524)
Assistant U.S. Attorney
801 W. Superior Ave., Suite 400
Cleveland, Ohio 44113
(216) 622-3712
(216) 522-4982 (Facsimile)
Elizabeth.Deucher@usdoj.gov

CERTIFICATE OF COMPLIANCE WITH RULE 7.1(f)

I certify that this Response to Petition for Writ of Habeas Corpus comports with the page limitations identified in Local Rule 7.1(f). This case is unassigned, and the Response is under twenty pages in length.

/s/ Elizabeth A. Deucher
Elizabeth A. Deucher