United States District Court
Eastern District of Michigan

Jose Daniel Contreras-Cervantes, Fredy De Los Angeles-Flores, Mariela Virginia Ocando-Leon, Luis Felipe Jarquin-Jarquin, Debbie Vasquez-Cruz, Jairo Manuel Godoy-Perez, Marifer Diaz-Alcantar, and Miguel Angel Reyes-Sanchez,

Petitioners,

v.

Kevin Raycraft, in his official capacity as Acting Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security; Pamela Bondi, in her official capacity as U.S. Attorney General; Executive Office for Immigration Review,

Respondents.

Civil No. 25-13073

Honorable Laurie J. Michelson
Magistrate Judge Curtis Ivy, Jr.

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## Response to Petition for a Writ of Habeas Corpus

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Respondents submit this response to petitioners' request for a writ of habeas corpus, (ECF No. 1). As described in the attached brief, respondents respectfully

request that the Court deny the petition because petitioners' detention does not violate the constitution or federal law.

Respectfully submitted,

Jerome F. Gorgon Jr.
United States Attorney

*/s/ Zak Toomey*
Zak Toomey (MO61618)
Assistant U.S. Attorney
211 W. Fort Street, Suite 2001
Detroit, Michigan 48226
(313) 226-9617
zak.toomey@usdoj.gov

Dated: October 3, 2025

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# Respondents' Brief in Support of Their Response to Petition for a Writ of Habeas Corpus

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## Issues Presented

I. Should the Court dismiss all respondents except the ICE Field Office Director?

II. Is petitioners' detention consistent with the due process clause when their detention is limited to a finite period, they received a hearing regarding their detention in immigration court, they have the right to appeal their detention administratively, and controlling law establishes that they are not due any more process under the Constitution?

III. Should the Court require that petitioners exhaust their administrative remedies before pursuing this suit?

IV. Are petitioners properly detained under 8 U.S.C. § 1225(b)(2)(A) when they unambiguously meet every element in the text of the statute and the structure and history of the statute support its application to petitioners?

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## Introduction

Petitioners are noncitizens who entered the United States unlawfully and have no lawful immigration status. They are currently detained by ICE while the agency pursues administrative removal proceedings against them. Petitioners do not challenge the agency's decision to initiate removal proceedings against them or detain them in the first instance. Instead, petitioners only challenge the agency's decision to detain them under a statutory provision that does not entitle them to release on bond during their administrative immigration proceedings. The Court should reject this challenge for several reasons. First, the Court should dismiss all respondents except the ICE Field Office Director because he is the only proper respondent in this habeas suit. Second, the Court should reject petitioners' due process claim because administrative immigration proceedings define a noncitizen's constitutional due process rights and petitioners have received all process available in those proceedings. Third, the Court should require that petitioners address this challenge with the Board of Immigration Appeals before addressing it in this Court. Fourth, the text, structure, and history of 8 U.S.C. § 1225(b)(2) demonstrate that ICE properly detained petitioners under that provision.

## Background

The petitioners in this case are noncitizens detained by ICE during administrative removal proceedings under 8 U.S.C. § 1225(b)(2). (*See, e.g.*, Exhibit 1 - Contreras-Cervantes Decl. ¶¶ 5, 7). Petitioners Contreras-Cervantes, De Los Angeles-Flores, and Jarquin-Jarquin requested a bond hearing in immigration court and were denied bond because noncitizens detained under § 1225(b)(2) are statutorily ineligible for release on bond. (*See id.* ¶ 7; Exhibit 2 - De Los Angeles-Flores Decl. ¶ 9; Exhibit 4 - Jarquin-Jarquin Decl. ¶ 11). Petitioners Vasquez-Cruz, Godoy-Perez, Diaz-Alcantar, and Reyes-Sanchez did not request release on bond in immigration court. (*See* Pet., ECF No. 1, PageID.8–9). Petitioner Ocando-Leon did not request a bond hearing and she is not currently detained by ICE. (Exhibit 3 - Ocando-Leon Decl. ¶¶ 11–12).

**Contreras-Cervantes**

Jose Daniel Contreras-Cervantes is a citizen of Mexico who unlawfully entered the United States in 2006 without inspection or admission by an immigration official. (Exhibit 1 – Contreras-Cervantes Decl. ¶ 4). Local police arrested Contreras-Cervantes after a traffic stop on August 5, 2025, and contacted ICE. (*Id.* at ¶ 5). ICE officials charged Contreras-Cervantes with inadmissibility under 8 U.S.C. § 1182(a)(6) and (a)(7) because he had entered the United States unlawfully and he did not possess a valid immigration document. (*Id.*). At a hearing in

immigration court on September 24, 2025, Contreras-Cervantes, through his counsel, admitted that he was inadmissible and conceded his removability. (*Id.* at ¶ 9). On October 1, 2025, Contreras-Cervantes applied for cancellation of removal and adjustment of status under 8 U.S.C. § 1229b(b). (*Id.* at ¶ 10). The immigration court has scheduled a merits hearing on his application for January 15, 2026. (*Id.* at ¶ 11).

**De Los Angeles-Flores**

Fredy De Los Angeles-Flores is a citizen of Mexico who unlawfully entered the United States at an unknown location at some time after March of 2010 without inspection or admission by an immigration official. (Exhibit 2 - De Los Angeles-Flores Decl. ¶ 4, 5). ICE officials arrested De Los Angeles-Flores in July 2025 and subsequently charged him with inadmissibility under 8 U.S.C. § 1182(a)(6) and (a)(7) because he had entered the United States unlawfully and he did not possess a valid immigration document. (*Id.* at ¶¶ 6, 8). At hearings in immigration court in July and August 2025, De Los Angeles-Flores, through counsel, admitted that he was inadmissible and conceded his removability. (*Id.* at ¶¶ 7, 10). On September 30, 2025, De Los Angeles-Flores filed an application for cancellation of removal and adjustment of status under 8 U.S.C. § 1229b(b). (*Id.* at ¶ 11). The immigration court has scheduled a hearing on that application for December 5, 2025. (*Id.* at ¶ 12).

**Ocando-Leon**

Mariela Virginia Ocando-Leon is a citizen of Venezuela who unlawfully

entered the United States at an unknown time and location. (Exhibit 3 – Ocando-Leon Decl. ¶ 4). Ocando-Leon was detained by ICE on July 15, 2025, but released on October 1, 2025, for reasons unrelated to this habeas suit and she is no longer in ICE custody. (*Id.* ¶¶ 6, 12).

**Jarquin-Jarquin**

Luis Felipe Jarquin-Jarquin is a citizen of Nicaragua who unlawfully entered the United States in Texas in 2022 without inspection or admission by an immigration official. (Exhibit 4 – Jarquin-Jarquin Decl. ¶ 3). He was encountered by immigration officials shortly after he entered the United States, briefly detained, then released on parole. (*Id.* at ¶ 3). ICE charged him with inadmissibility under 8 U.S.C. § 1182(a)(6) and (a)(7) because he had entered the United States unlawfully and he did not possess a valid immigration document. (*Id.* at ¶¶ 5, 9). Jarquin-Jarquin, through counsel, admitted that he was inadmissible because he entered unlawfully and conceded his removability on that ground, but denied he lacked a valid immigration document and an immigration judge did not sustain that ground for his removal. (*Id.* at ¶¶ 7, 10). In his removal proceedings, Jarquin-Jarquin has applied for asylum and the immigration court has scheduled a hearing on his application for October 29, 2025. (*Id.* at ¶¶ 6, 12).

**Vasquez Cruz**

Debbie Vasquez Cruz is a citizen Mexico who unlawfully entered the United

States at an unknown location without inspection or admission by an immigration official. (Exhibit 5 – Vasquez Cruz Decl. ¶ 4). She claims she entered the United States in 2016. (*Id.*). ICE officials arrested Vasquez Cruz in August 2025 and charged her with inadmissibility under 8 U.S.C. § 1182(a)(6) and (a)(7) because she entered the United States unlawfully and she did not possess a valid immigration document. (*Id.* at ¶ 5). At a hearing in immigration court, Vasquez Cruz, through counsel, admitted that she was inadmissible and conceded her removability. (*Id.* at ¶ 8). In her removal proceedings, Vasquez Cruz has applied for asylum and the immigration court has scheduled a hearing on her application for November 13, 2025. (*Id.* at ¶¶ 9, 10).

**Godoy-Perez**

Jairo Godoy-Perez is a citizen Guatemala who unlawfully entered the United States at an unknown location without inspection or admission by an immigration official. (Exhibit 6 – Godoy-Perez Decl. ¶ 4, 5). He claims he entered the United States in 2018. (*Id.*). ICE officials arrested Godoy-Perez in July 2025 and charged him with inadmissibility under 8 U.S.C. § 1182(a)(6) and (a)(7) because he entered the United States unlawfully and he did not possess a valid immigration document. (*Id.* at ¶ 5). At a hearing in immigration court, Godoy-Perez, through counsel, admitted that he was inadmissible on those grounds and conceded his removability. (*Id.* at ¶ 9). In his removal proceedings, Vasquez Cruz has applied for asylum and

the immigration court has scheduled a hearing on his application for October 27, 2025. (*Id.* at ¶¶ 9, 11).

**Diaz-Alcantar**

Marifer Diaz-Alcantar is a citizen Mexico who unlawfully entered the United States at an unknown location without inspection or admission by an immigration official. (Exhibit 7 – Diaz-Alcantar Decl. ¶ 4). In 2021, Diaz-Alcantar applied to USCIS for Deferred Action for Children Arrivals (DACA) and that application remains pending. (*Id.* at ¶ 5). Immigration officials arrested Vasquez Cruz in July 2025 and charged her with inadmissibility under 8 U.S.C. § 1182(a)(6) and (a)(7) because she entered the United States unlawfully and she did not possess a valid immigration document. (*Id.* at ¶ 6). Diaz-Alcantar's initial hearing in immigration court is scheduled for October 21, 2025. (*Id.* at ¶ 8).

**Reyes-Sanchez**

Miguel Angel Reyes-Sanchez is a is a citizen Mexico who unlawfully entered the United States at an unknown location without inspection or admission by an immigration official. (Exhibit 8 – Reyes-Sanchez Decl. ¶ 4). Immigration officials arrested Reyes-Sanchez in June 2017 and charged him with inadmissibility under 8 U.S.C. § 1182(a)(6) because he entered the United States unlawfully. (*Id.* at ¶ 5). He was not detained at that time. (*Id.*). At immigration hearings after his initial charge, through counsel, he admitted inadmissibility and conceded his removability but

applied for cancellation of removal and adjustment of status. (*Id.* at ¶¶ 6, 7). In 2024, Reyes-Sanchez's wife petitioned USCIS to designate him as an immediate relative (by filing an I-130 petition), which, if granted, would allow him to apply for an adjustment to lawful immigration status. (*Id.* at ¶ 8); *see* 8 U.S.C. § 1154(a)(1)(A); 8 C.F.R. §§ 204.2, 245.1(a), 245.2. The immigration court has scheduled a hearing on his application for cancellation of removal and adjustment of status for October 17, 2025. (*Id.* at ¶ 11).

**Petitioners' Suit**

On September 29, 2025, Petitioners filed suit in federal court seeking a writ of habeas corpus. (*See* Pet., ECF No. 1). In their petition, they named several respondents including Kevin Raycraft, the Acting ICE Field Office Director, the Secretary of the Department of Homeland Security, the Attorney General, and the Executive Office for Immigration Review. (*See* Pet., ECF No. 1, PageID.9–10).

Petitioners do not challenge the agency's initiation of removal proceedings against them, nor could they. (Pet., ECF No. 1, PageID.1–41). Petitioners were not lawfully admitted, and they have no legal status. (*See, e.g.*, Exhibit 1 – Contreras-Cervantes Decl. ¶¶ 4, 9). And, even if Petitioners wished to challenge their removability, they could not do so in this Court because challenges to any aspect of removal proceedings must be filed in the Sixth Circuit in the first instance. *See* 8 U.S.C. §§ 1252(a)(5), (g); *Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018).

Similarly, petitioners do not challenge the agency's initial decision to detain them. (*See* Pet., ECF No. 1, PageID.16). ICE detained petitioners under 8 U.S.C. § 1225(b)(2)(A). (*See, e.g.*, Exhibit 1 – Contreras-Cervantes Decl. ¶ 7). Petitioners argue that ICE did not have the authority to detain them under § 1225(b)(2)(A), but concede that, even if § 1225(b)(2)(A) were not a proper basis for their detention, ICE still would have had the lawful authority to detain them under a similar statute, 8 U.S.C. § 1226(a). (*See* Pet., ECF No. 1, PageID.4).

## Standard of Review

A district court may grant a writ of habeas corpus if a petitioner is in federal custody in violation of the Constitution or a federal law. 28 U.S.C. § 2241.

## Argument

The Court should deny petitioners' request for a writ of habeas corpus. First, the Court should dismiss all respondents except the ICE Field Office Director. Second, the Court should reject petitioners' due process argument because they have received all process due under the Constitution. Third, the Court should require that petitioners pursue this issue in the Board of Immigration Appeals. Fourth, the Court should find that petitioners are properly detained under § 1225(b)(2) because the text, structure, and history of the statute demonstrate that it applies to petitioners.

### I. The Court Should Dismiss All Respondents Except the ICE Field Office Director

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. *See id.*

Here, the Secretary of the Department of Homeland Security, the Attorney General, and the Executive Office for Immigration Review are not proper respondents. Petitioners allege that Acting ICE Field Office Director Kevin Raycraft is their "immediate custodian" at that facility. (Pet., ECF No. 1, PageID.7). Therefore, only the ICE Field Office Director is a proper respondent in this case and the remaining respondents should be dismissed. *See Roman*, 340 F.3d at 320.

## II. Petitioners' Detention Does Not Violate the Due Process Clause

To succeed on a due process claim, a plaintiff must show that they "have a property interest that entitles them to due process protection" and, if so, the "court must then determine 'what process is due.'" *Leary v. Daeschner*, 228 F.3d 729, 741 (6th Cir. 2000). In the immigration context, the Supreme Court has frequently held that the process due under the constitution is coextensive with the removal procedures provided by Congress, *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138–140 (2020), it has confirmed that statutory provisions denying bond during administrative removal proceedings do not violate the due process clause because those proceedings have a definite end point, *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 and detention may have an indefinite end point, detention up to six months is presumptively valid under the due process clause, *see Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Here, petitioners do not present a plausible due process claim. Petitioners were given notice of the charges against them, they have access to counsel, they have attended a hearing with an immigration judge, they have requested bond, they have the right to appeal the denial of their request for bond, they have been detained by ICE for less than two months, and they are all scheduled for another hearing in immigration court on the expedited docket for detained noncitizens. (*See* Exhibit 8 – Reyes-Sanchez Decl. ¶ 12 (indicating that Reyes-Sanchez' final hearing in immigration court is scheduled for two weeks from today)). The fact that they do not want to appeal the immigration judge's bond order through the procedures provided by Congress does not make those procedures constitutionally deficient. *See Thuraissigiam*, 591 U.S. at 138–140. Instead, petitioners' only plausible challenge to their detention is that they are detained under the wrong statute, which, even if true, would make their detention unlawful, but it would not make it unconstitutional. *See id.*; *see also Al-Shabee v. Gonzales*, 188 F. App'x 333, 339 (6th Cir. 2006) ("Shabee's disagreement with the Immigration Judge's order, however, does not

constitute a violation of the Due Process Clause."). Therefore, the Court should reject petitioners' due process claim.

## III. The Court Should Require Administrative Exhaustion

When Congress has not imposed a statutory administrative exhaustion requirement, "sound judicial discretion governs whether or not exhaustion should be required." *Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013) (quotations omitted). The exhaustion doctrine both allows agencies to "apply [their] special expertise in interpreting relevant statutes and promotes judicial efficiency." *Id.* (quotation omitted).

Here, the Court may require that petitioners appeal the immigration judge's denial of bond before considering the merits of their claim. Congress provided a robust administrative hearing and appeal process for noncitizens in removal proceedings that includes bond hearings, evidentiary hearings, motion practice, and appeals. *See* 8 U.S.C. § 1229a; 8 C.F.R. § 236.1(d)(3). And requiring petitioners to exhaust that process before seeking review in federal court may reduce the number of similar cases filed in this Court, especially for the petitioners in this case who have not even requested an initial bond hearing, during which they could have challenged the factual basis for the government's conclusion that they are "applicants for admission" and, therefore, ineligible for release on bond. (*See* Pet., ECF No. 1, PageID.8–9). However, the agency acknowledges that petitioners are

generally unlikely to obtain the relief they seek through the administrative process based on a recent decision by the Board of Immigration Appeals in *Matter of Yajure Hurtado*, 29 I &N Dec. 216 (BIA 2025), which is binding on the agency and the immigration courts, and which conclusively rejects petitioners' arguments in this case. *See Shawnee Coal Co. v. Andrus*, 661 F.2d 1083, 1093 (6th Cir. 1981) (recognizing that administrative exhaustion may be excused if it would be futile).

## IV. Petitioners are properly detained under § 1225(b)(2)

The Court should find that petitioners are properly detained under § 1225(b)(2) because they unambiguously meet every element in the text of the statute and, even if the text were ambiguous, the structure and history of the statute support the agency's interpretation.

### *A. The text of § 1225(b)(2) supports petitioners' detention under the statute*

A court's "inquiry begins with the statutory text, and ends there as well if the text is unambiguous." *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004). That is, when the text of a statute is unambiguous in the context of the facts of the case, "[t]hat is the only 'step' [of interpretation] proper for a court of law." *McGirt v. Oklahoma*, 591 U.S. 894, 914 (2020).

The statute at issue in this case—8 U.S.C. § 1225(b)(2)(A)—is simple and unambiguous. Including its statutory definitions, it is only three sentences long. *See* 8 U.S.C. §§ 1101(a)(13)(A), 1225(a)(1), (b)(2)(A). It states:

> 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.

8 U.S.C. § 1225(b)(2)(A).[1] The first relevant term is "applicant for admission," which is statutorily defined. *See* 8 U.S.C. § 1225(a)(1). The statute deems any noncitizen "present in the United States who has not been admitted" to be an "applicant for admission." 8 U.S.C. § 1225(a)(1). 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.* While this may seem like a counterintuitive way to define an "applicant for admission," "[w]hen 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, based on the plain text of the statute, petitioners are unambiguously "applicants for admission" because they are noncitizens, they were not admitted, and they were present in the United States when they were apprehended. (*See* Exhibit 1 – Conteras-Cervantes Decl. ¶¶ 4, 5, 9); *see also Chavez*

[1] The first clause referencing subparagraphs (B) and (C) is not relevant in this case.

*v. Noem*, —F. Supp. 3d—, 2025 WL 2730228, at *4–5 (S.D. Cal. Sept. 24, 2025) (concluding that § 1225(b)(2) applies to noncitizens present in the United States under plain meaning of the statute); *Vargas Lopez v. Trump*, Civil No. 25-526 (D. Neb.), ECF No. 35, PageID.195–200 (Sept. 30, 2025) (same).

The next relevant portion of the statute is whether an examining immigration officer determined that petitioners were "seeking admission." *See* 8 U.S.C. § 1225(b)(2)(A). The statute 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, the inquiry is whether an immigration officer determined that petitioners are seeking a "lawful entry." *See id.* A noncitizen's previous unlawful *physical* entry has no bearing on this analysis. *See id.*

A "lawful entry" is important to a noncitizen for two reasons. First, a noncitizen cannot legally enter the United States without a lawful entry. *See* 8 U.S.C. §§ 1101(a)(13), 1225(a)(3). Second, a noncitizen cannot *remain* in the United States without a lawful entry because a noncitizen is removable if he or she did not enter lawfully. *See* 8 U.S.C. § 1182(a)(6). Indeed, all of the petitioners are charged with removal because of their unlawful entry. (*See* Exhibit 1 – Contreras-Cervantes Decl. ¶ 5). So, unless petitioners obtain a lawful admission in the future, they will be subject to removal in perpetuity. *See* 8 U.S.C. §§ 1101(a)(13), 1182(a)(6).

The Act provides two examples of noncitizens who are not "seeking

admission." The first are those who withdraw their application for admission and "depart immediately from the United States." 8 U.S.C. § 1225(a)(4). The second are those who agree to voluntarily depart "in lieu of being subject to proceedings under § 1229a . . . or prior to the completion of such proceedings." 8 U.S.C. § 1229c(a)(1). Even in removal proceedings, a noncitizen can concede removability and accept removal, in which case they will no longer be "seeking admission." *See* 8 U.S.C. § 1229a(d).

Noncitizens present in the United States who have not been lawfully admitted and who do not agree to immediately depart are seeking lawful entry and 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 or she can seek a lawful admission. *See, e.g.*, 8 U.S.C. § 1229b. For instance, most of the petitioners have conceded their removability, but applied to cancel their removal and adjust their status under 8 U.S.C. § 1229b. (Exhibit 9 – Form EOIR-42B – App. for Cancellation of Removal and Adjustment of Status). If they are successful, they 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) (emphasis added). Accordingly, petitioners are "seeking admission" under § 1225(b)(2) because they are pursuing a lawful admission through their removal proceedings. (Exhibit 1 – Contreras-

Cervantes Decl. ¶ 10).

The Court should reject petitioners' argument that they are not "seeking admission" because it is not a reasonable interpretation of the text. According to petitioners, they chose to enter and remain in the United States unlawfully, therefore, they are not "seeking" a lawful entry. (*See* Pet., ECF No. 1). This interpretation is not reasonable because it ignores the fact that they have not agreed to immediately depart, so logically they must be seeking to remain, which requires an "admission" *i.e.*, a lawful entry. (Exhibit 1 – Contreras-Cervantes Decl. ¶¶ 5–11); 8 U.S.C. § 1182(a)(6)(A)(i). It also defies 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. *See* 8 U.S.C. § 1225(a)(1). Further, it would reward petitioners for knowingly violating the law, entitle them to better treatment than noncitizens who lawfully presented themselves at a port of entry, and would encourage others to enter unlawfully, which defies the intent reflected in the plain text of the statute. *See* 8 U.S.C. § 1225; *see also Guzman v. U.S. Dep't of Homeland Sec.*, 679 F.3d 425, 432 (6th Cir. 2012) ("Interpretations of a statute which would produce absurd results are to be avoided . . . .") (citation omitted). Accordingly, petitioners' interpretation of "seeking admission" does not create an ambiguity in the statutory text because their proposed alternative is not reasonable.

The final textual requirement is that petitioners "be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Here, petitioners are not in expedited removal but rather have been placed in full removal proceedings where they will receive the benefits of the procedures (representation by counsel, motions, hearings, testimony, evidence, and appeals) provided in § 1229a. (*See* Exhibit 1 – Contreras-Cervantes Decl. ¶¶ 5–11). Therefore, they also meet this element in the text.

In sum, the text of § 1225(b)(2) unambiguously applies to petitioners. "Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion." *Caminetti v. United States*, 242 U.S. 470, 485 (1917). This principle applies, even if petitioners contend that the plain application of the statute would lead to a harsh result. *See Jay v. Boyd*, 351 U.S. 345, 357 (1956) (courts "must adopt the plain meaning of a statute, however severe the consequences."). Therefore, no further exercise in statutory interpretation is necessary or permissible in this case and the Court should conclude that petitioners' detention under § 1225(b)(2) is lawful.

*B. The structure § 1225 supports petitioners' 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 petitioners are properly detained under § 1225(b)(2).

1. The structure of § 1225(b)(2) demonstrates that it applies to petitioners

Section 1225 addresses two types of unadmitted noncitizens: "arriving aliens" and "applicants for admission." *See* 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. *See id.* §§ 1225(a)(2), (b)(1)(A)(i), (b)(1)(A)(iii)(II), (b)(2)(B), (b)(2)(C). The term "arriving alien" is similarly 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. *See* 8 U.S.C. § 1225(b)(1)(A)(i). Instead, because they only recently arrived, they are subject to "expedited" removal proceedings. *See id.*; *Thuraissigiam*, 591 U.S. at 140 (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. *See* 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 v. Davis*, 533 U.S. 678, 693 (2001). Therefore, the statute provides them the maximum procedural protections available under the nation's immigration laws, which satisfies the due process clause. *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 noncitizen who was long-term U.S. resident during removal proceedings complied with Due Process Clause).

Given this, the structure of § 1225 supports the conclusion that petitioners are properly detained under § 1225(b)(2). Congress used different words to differentiate recently arrived noncitizens from "applicants for admission" and gave each category of noncitizens different procedural protections, *see* 8 U.S.C. §§ 1225(a)(1), (b)(1), (b)(2), which demonstrates that Congress intended the provisions to apply to different categories of noncitizens and results in a harmonious reading of the statute. *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."). Therefore, the structure of the statute also supports petitioners' detention under § 1225(b)(2).

2. Petitioners cannot import provisions related to arriving aliens into § 1225(b)(2)

"A court does not get to delete inconvenient language and insert convenient language to yield the court's preferred meaning." *Borden v. United States*, 593 U.S. 420, 436 (2021); *see also Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 309 (2025) (rejecting court-imposed element in Title VII case because statute did not require it). And 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).

The Court should reject petitioners' argument that it should alter § 1225(b)(2) to include the limitations relevant to arriving aliens, so that it no longer applies to them. As noted above, this argument has no support in the text of the statute, which does not limit its application to the border or to recently arrived noncitizens and, instead, explicitly includes noncitizens already present in the United States like petitioners. *See* 8 U.S.C. § 1225(a)(1), (b)(2). And, the Court is not free to disregard the clear distinction between recently arrived noncitizens ("arriving aliens") and those like petitioners who were successfully able to evade apprehension for many years ("applicants for admission"). *Borden*, 593 U.S. at 436; *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, petitioners' reading of the statute, which would collapse the definitions of arriving aliens and applicants for admission, would effectively erase Congress's definition of "applicant for admission" and render half of the statute meaningless, which no canon of statutory interpretation would allow. *See Pulsifer*, 601 U.S. at 143 (rejecting interpretation of statute that "render[s] an entire subparagraph meaningless").

3. Section 1225(b)(2) is not redundant

"Redundancies across statutes are not unusual events in drafting, and so long as there is no 'positive repugnancy' between two laws, a court must give effect to both." *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (citation omitted); *Barton v. Barr*, 590 U.S. 222, 239 (2020) ("redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure . . ."); *see also Jennings v. Rodriguez*, 583 U.S. 281, 305–06 (2018) (rejecting the argument that the scope of 8 U.S.C. § 1226(c) must be limited because it overlapped with a provision of the Patriot Act).

Here, there is no "positive repugnancy" between § 1225(b)(2) and § 1226(a) or the Laken Riley Act. Section 1226(a) is similar to § 1225(b)(2), but it reaches noncitizens that are not covered by § 1225(b)(2). For instance, some noncitizens lawfully enter the United States on a visa but then overstay the visa. *See, e.g.*, 8

U.S.C. § 1227(a); *Wilkinson v. Garland*, 601 U.S. 209, 213 (2024). Noncitizens who overstay a visa do not fall within § 1225(b)(2) because they were admitted and inspected before entering the United States. *See* 8 U.S.C. §§ 1225(a)(1), 1227(a). However, noncitizens who overstay a visa may be detained under § 1226(a). *See* 8 U.S.C. § 1226(a). Similarly, some noncitizens have their lawful status revoked when they commit certain crimes. *See* 8 U.S.C. § 1227(a); *Jennings*, 583 U.S. at 289–90. Those noncitizens usually cannot be detained under § 1225(b)(2), but they can be detained under § 1226. *See id.*

Further, while some noncitizens may facially fall within the scope of both statutes, the statutes do not overlap at all in practice. An "applicant for admission" must be detained under § 1225(b)(2) and cannot be detained under § 1226(a). *See* 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded."). This is because § 1225(b)(2) requires mandatory detention for noncitizens who fall within its terms until the conclusion of their administrative proceedings and detaining a noncitizen under § 1226(a), which allows release on bond, would nullify the mandatory detention required by § 1225(b)(2). *See* 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 300. Therefore, § 1226(a) and § 1225(b)(2) are not redundant because § 1225(b)(2) always takes priority when it applies. *See Jennings*, 583 U.S. at 297; *Matter of Yajure Hurtado*,

29 I &N Dec. at 220.

Similarly, § 1225(b)(2)'s overlap with the Laken Riley Act is not "positively repugnant." Congress enacted the Laken Riley Act in January 2025 to prevent noncitizens with criminal records from committing additional crimes. *See* Laken Riley Act, PL 119-1, 139 Stat 3 (Jan. 29, 2025). Consistent with that purpose, under the Laken Riley Act, if an unadmitted noncitizen has committed certain crimes, the agency must detain them during their administrative removal proceedings. *See* 8 U.S.C. § 1226(c)(1)(E). However, petitioners have not committed any of the crimes listed in the Laken Riley Act. *See id.*; (*see e.g.*, Exhibit 1 – Contreras-Cervantes Decl. ¶¶ 4–11). Therefore, the Laken Riley Act does not apply to them and it is not redundant with respect to them. And, in any event, as noted above, petitioners' interpretation would effectively eviscerate all of the provisions in § 1225 relating to arriving aliens, so the specter of a potential redundancy with § 1226(c) cannot support their attempt to avoid the plain application of the statute. *See Microsoft Corp. v. I4I Ltd. P'ship*, 564 U.S. 91, 106 (2011) ("the canon against superfluity assists only where a competing interpretation gives effect 'to every clause and word of a statute.'"). Therefore, the Court should reject petitioners' argument that § 1225(b)(2) does not apply to them because it could be redundant with other statutes enacted at different times for different reasons and which do not actually apply to them.

4. *Jennings* does not support petitioners' interpretation

Petitioners argue that the Supreme Court held that § 1225(b)(2) only applies to noncitizens at the border and, in support, relies on *Jennings*, 583 U.S. 281. (*See* Pet., ECF No. 1, PageID.12–13). However, *Jennings* did nothing of the sort.

In *Jennings*, the Supreme Court considered whether three statutes mandating detention during administrative proceedings—8 U.S.C. §§ 1225(b)(1), 1225(b)(2), and § 1226(c)—allowed detention without a bond hearing. *See Jennings*, 583 U.S. at 291. In describing § 1225(b)(2), the Court characterized it as a broad "catchall" provision that applied to "applicants for admission" or "aliens seeking admission," which are the exact words used in § 1225(b)(2). *See id.* at 287, 297. The Court further characterized § 1226 as applying to noncitizens "present" in the United States but made it clear that this category of noncitizens only included those that were admitted (unlike Petitioners, who was not admitted). *See Jennings*, 583 U.S. at 288 (citing only § 1227(a), which only applies to noncitizens "in and admitted to the United States"). Ultimately, the Court concluded that § 1225(b)(1), § 1225(b)(2), and § 1226(c) mandated detention without parole during administrative immigration proceedings because the plain text of the statutes did not permit release on bond during administrative proceedings. *See Jennings*, 583 U.S. at 302–303. Therefore, *Jennings* does not add any meaningful information about the scope of § 1225(b)(2)(A) because *Jennings* was only interested in its effect, not the precise

contours of who fell within each statute. *See id.* at 287, 297. And it certainly did not hold that noncitizens like petitioners were beyond the scope of § 1225(b)(2) or that the statute only applied at the border. *See id.*

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

"Legislative history is not the law" and "no amount of guesswork about the purposes behind legislation can displace what the law's terms clearly direct." *Martin v. United States*, 145 S. Ct. 1689, 1699–700 (2025). Therefore, even if the legislative history supported petitioners' argument, it would not overcome the plain text of the statute and, as noted above, there is no serious dispute that they fall within the text. Nevertheless, even if the Court considered the legislative history or the agency's historical practice it would not support petitioners' argument.

1. The legislative history supports the agency's interpretation

When a statute is ambiguous, courts may consider relevant legislative history, but even when legislative history is consulted it "is meant to clear up ambiguity, not create it." *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 674 (2020). The only remotely ambiguous term in § 1225(b)(2) is "seeking admission" and there does not appear to be any relevant legislative history related to that term. However, the statute's general legislative history supports the agency's application of the statute.

Section 1225(b)(2)(A) was added to the Immigration and Nationality Act as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996

(IIRIRA), Pub. L. No. 104-208, § 302, 110 Stat. 3009-546. Congress enacted IIRIRA to eliminate "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc); *see also Matter of Yajure Hurtado*, 29 I &N 216, 223–25 (BIA 2025). Therefore, IIRIRA created the legal fiction that noncitizens who had already entered the United States illegally were deemed "applicants for admission" and treated as if they were still on the threshold. *See Torres*, 976 F.3d at 928; *Matter of Yajure Hurtado*, 29 I &N at 223–25. This legal fiction was intended to deter individuals like petitioners from unlawfully entering the United States and to level the playing field between noncitizens who properly applied for entry at the border and those who knowingly violated the law. *See Torres*, 976 F.3d at 928; *Matter of Yajure Hurtado*, 29 I &N at 223–25.

This legislative purpose is consistent with applying § 1225(b)(2) to petitioners because it would treat them for legal purposes as if they were still at the border, even though they have, in fact, physically entered the country. And petitioners do not cite any evidence from IIRIRA's legislative history prior to its enactment that specifically or even generally supports their argument that they are beyond the scope of § 1225(b)(2). *Gustafson v. Alloyd Co.*, 513 U.S. 561, 579 (1995) ("Material not available to the lawmakers is not considered . . . to be legislative history.").

2. The agency's practice does not undermine its interpretation.

When interpreting an ambiguous statute relating to an agency's statutory authority, courts "must exercise their independent judgment" and they are not bound by the agency's practice. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Therefore, the agency's previous interpretation of the statute is not relevant.

Even if it were, there is no evidence indicating that the agency interpreted the scope of § 1225(b)(2) differently in the past, although it has recently changed its interpretation regarding its discretion to apply it. Prior to May 2025, the agency believed it had discretion to detain noncitizens like Petitioners under either § 1225(b)(2) or under § 1226(a) and primarily detained noncitizens like them under § 1226(a). *See Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025). However, in May 2025, the Board of Immigration Appeals concluded that noncitizens who fall within the scope of 8 U.S.C. § 1225(b)(1) (arriving aliens) must be detained under that section and are "ineligible for any subsequent release on bond under . . . § 1226(a)." *See id.* Because the BIA's decision in *Matter of Q. Li* was binding on the agency and would naturally extend to § 1225(b)(2), the agency issued a new policy instructing its employees to comply with the new binding authority. (*See* Pet., ECF No. 1, PageID.9). Neither *Matter of Q. Li* nor the agency's new policy indicates that it changes the agency's interpretation of the scope of § 1225(b)(2) (*i.e.*, who falls within the statute) in any way. (*See id.*). Instead, the agency has interpreted §

1225(b)(2) to apply to noncitizens like Petitioners for at least several years. (*See* Exhibit 10 – BIA Dec.).

In addition, even if ICE's reliance on § 1225(b)(2) were entirely new, petitioners could not prevent immigration officials from using 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. *See United States v. Martin*, 438 F.3d 621, 634 (6th Cir. 2006). And a party generally cannot estop the government from changing its legal position without proving "affirmative misconduct," *see Michigan Exp., Inc. v. United States*, 374 F.3d 424, 427–28 (6th Cir. 2004), and it is doubtful that the government may *ever* be estopped in the immigration context, *see Elia v. Gonzales*, 431 F.3d 268, 276 (6th Cir. 2005). None of the evidence in this case could meet that high standard. Therefore, petitioners' argument regarding ICE's recent change in policy is insufficient to overcome the text, statutory structure, and legislative history of the text, all of which demonstrate that they are subject to detention under § 1225(b)(2).

## Conclusion

Respondents respectfully request that the Court deny petitioners' request for a writ of habeas corpus because they are not detained in violation of federal law or the Constitution.

Respectfully submitted,

Jerome F. Gorgon Jr.
United States Attorney

*/s/ Zak Toomey*
Zak Toomey (MO61618)
Assistant U.S. Attorney
U.S. Attorney's Office
Eastern District of Michigan
211 W. Fort Street, Ste. 2001
Detroit, Michigan 48226
(313) 226-9617
zak.toomey@usdoj.gov

Date: October 3, 2025

## Certificate of Service

I hereby certify that on October 3, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

*/s/ Zak Toomey*
**Zak Toomey**
Assistant U.S. Attorney