UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Yanier Hernandez Capote,

Petitioner,

v.

Kristi Noem, Secretary, U.S. Department of Homeland Security, et al.,

Respondents.
_____/

Civil No. 25-13128

Honorable David M. Lawson
Mag. Judge Anthony P. Patti

RESPONSE IN OPPOSITION TO PETITIONER'S AMENDED PETITION FOR WRIT OF HABEAS CORPUS

Respondents submit this response to Petitioner's amended petition for a writ of habeas corpus. (ECF No. 6). As described in the attached brief, Respondents respectfully request that the Court deny the petition because Petitioner fails to establish a violation of the constitution or federal law.

Respectfully submitted,

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Dated: October 15, 2025

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BRIEF IN SUPPORT OF RESPONSE IN OPPOSITION TO PETITIONER'S AMENDED PETITION FOR WRIT OF HABEAS CORPUS

STATEMENT OF THE ISSUES PRESENTED

1. Should the Court dismiss all respondents except Kevin Raycraft, the Acting ICE Field Office Director for Detroit because they are not proper parties to this action?

2. Should the Court dismiss Petitioner's claim for failure to exhaust administrative remedies where Capote has a pending motion for bond and can appeal the denial of bond?

3. Should the Court deny habeas relief where Petitioner is properly detained under the plain terms of 8 U.S.C. § 1225(b)(2)?

4. Should the Court deny habeas relief premised on Petitioner's due process claim where he fails to identify any unlawful deprivation of a protected liberty or property interest?

5. Should the Court deny habeas relief premised on Petitioner's Fourth Amendment claim where he fails to allege facts showing unlawful arrest?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Demore v. Kim, 538 U.S. 510 (2003)

DHS v. Thuraissigiam, 591 U.S. 103, 114 (2020)

Jennings v. Rodriguez, 583 U.S. 281 (2018)

Matter of Yajure Hurtado, 29 I. & N. Dec. 216, 2025 WL 2674169 (BIA Sept. 5, 2025)

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INTRODUCTION

Petitioner Yanier Hernandez Capote is not entitled to release from mandatory immigration detention under 8 U.S.C. § 1225(b)(2). Until recently, Capote did not deny that he is subject to detention under § 1225(b)(2) because he wishes to use that fact to support his application for adjustment of status under the Cuban Adjustment Act. *See Capote, et al., v. Noem, et al.*, Case No. 25-12782 (E.D. Mich.), ECF No. 1.

However, Capote now argues that at some undefined point he was no longer subject to mandatory detention under § 1225(b)(2) because he was no longer a "recent arrival." He further claims that because U.S. Immigration and Customs Enforcement (ICE) issued a warrant before his arrest it intended to arrest him under 8 U.S.C. § 1226(a), which requires a bond hearing. Capote's arguments fail. Section 1225(b)(2) does not have an escape hatch for non-citizens who manage to remain unlawfully in the United States longer than others. Nor does the issuance of a non-descript form warrant determine the authority under which ICE detained him. Capote was detained under § 1225(b)(2) and he fails to establish that the statute is inapplicable to him. His habeas petition should be denied where he does not demonstrate that his detention is unlawful.

BACKGROUND

A. Capote is an "applicant for admission" who ICE believed it had discretion to release under 8 U.S.C. § 1226(a).

Petitioner Yanier Hernandez Capote is a Cuban citizen who entered the United States illegally. (Am. Pet., ECF No. 6, PageID.51; Pinson Dec., Ex. 1, ¶ 4). He was encountered by a Border Patrol Agent in Arizona a few miles from the border in January 2022. (Am. Pet., ECF No. 6-4, PageID.74; Pinson Dec., Ex. 1, ¶ 5). Capote admitted he lacked permission to enter or remain in the United States and he was charged as being inadmissible. (Am. Pet., ECF No. 6-4, PageID.74); *see also* 8 U.S.C. § 1182(a)(6)(A) ("An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.").

At that time, ICE believed it had discretion to apply the detention authority in one of two statutes, 8 U.S.C. §§ 1225(b) or 1226(a), as it related to detention of noncitizens, like Capote, who were physically present for removal proceedings but who had not been lawfully admitted to the United States. *See Florida v. United States*, 660 F.Supp.3d 1239, 1273–74 (N.D. Fla. 2023) (demonstrating ICE's belief it had discretion); *Rabelo-Rodriguez v. Mayorkas*, No. 21-23213, 2021 WL 5746478, *7 (S.D. Fla. Dec. 2, 2021) (same).

Under § 1225(b)(2), subject to exceptions not relevant here, "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 1229a(a)(1) requires that "[a]n immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien." Alternatively, for applicants for admission who have been in the United States for less than two years, the Attorney General may remove them "without further hearing or review," *i.e.* expedited removal. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

In a separate provision addressing detention pending removal, 8 U.S.C. § 1226(a), the Attorney General may issue a warrant for a noncitizen for "arrest[] and det[ention] pending a decision on whether the alien is to be removed from the United States." Pursuant to § 1226(a), the Attorney General has discretion to release the alien on bond or on "conditional parole" pending a decision on their removal. *Id.* The Attorney General can "at any time…revoke a bond or parole authorized under subsection (a)." *See* 8 U.S.C. § 1226(b).

In January 2022, Capote was given a notice to appear in immigration court for removal proceedings. (Am. Pet., ECF No. 6-3, PageID.72). Finding that he did not appear to be a threat to national security or public safety, Capote was released under an Order of Release on Recognizance. (Am. Pet., ECF No. 6-4, PageID.75). He was released pursuant to § 1226(a) pending removal. (Am. Pet., ECF No. 6-5, PageID.77; Pinson Dec., Ex. 1, ¶ 5).

B. The Board of Immigration Appeals determined ICE did not have discretion to release noncitizens under 8 U.S.C. § 1226(a) where they were subject to mandatory detention under 8 U.S.C. § 1225(b).

The Board of Immigration Appeals (BIA) ruled in May 2025 that ICE does not have discretion to disregard the mandatory detention provisions of § 1225(b). *See Matter of Q. Li*, 29 I. & N. Dec. 66, 2025 WL 1442892 (BIA 2025). BIA decisions are generally binding on ICE. *See* 8 C.F.R. § 1003.1(g)(1) ("Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States.").

In July 2025, ICE released internal interim guidance that revised its position on detention and release authority. (Am. Pet., ECF No. 6-2, PageID.70–71). In the memo, ICE advised that an "applicant for admission" is, consistent with § 1225(a)(1), an alien present in the United States who has not been admitted or who arrives in the United States. (*Id.*). Further, ICE stated that aliens falling within that description are subject to detention under § 1225(b) and cannot be released other than by parole under 8 U.S.C. § 1182(d)(5)(A).[1] (*Id.*). ICE clarified that bond or release on recognizance under § 1226(a) is limited to aliens admitted to the United States and chargeable with deportability. (*Id.*). The BIA recently issued a decision that comports with ICE's understanding. *See Matter of Yajure Hurtado*,

[1] Parole under § 1182(d)(5)(A) is discretionary and temporary and may be awarded by the Secretary of Homeland Security only where there is a finding that parole would serve "urgent humanitarian reasons or significant public benefit."

29 I. & N. Dec. 216, 2025 WL 2674169 (BIA Sept. 5, 2025).

C. Capote seeks adjustment of status based on his classification under 8 U.S.C. § 1225(b).

Capote seeks adjustment of status to lawful permanent resident under the Cuban Adjustment Act. *See Capote, et al. v. Noem, et al.*, Case No. 25-12782 (E.D. Mich) (Pet., ECF No. 1, PageID.15, 20). The Cuban Adjustment Act provides that a Cuban citizen who meets certain requirements, including that they were "inspected and admitted or paroled into the United States," may apply for permanent resident status. https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-a-cuban-native-or-citizen (relying on 8 U.S.C. § 1255, notes following). *See also Castillo v. Holder*, 541 F. App'x 542, 544 (6th Cir. 2013) (listing requirements under Cuban Adjustment Act).

Capote was previously unable to obtain adjustment of his status under the Cuban Adjustment Act because he was released under § 1226(a), which meant he was neither admitted nor paroled into the United States for purposes of the Act. *See Cruz-Miguel v. Holder*, 650 F.3d 189, 193 (2nd Cir. 2011) (citing cases); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 747, 2023 WL 5932854 (BIA 2023); *Matter of Castillo-Padilla*, 25 I. & N. Dec. 257, 260, 2010 WL 2505265 (BIA 2010).

In his prior habeas case filed last month, Capote expressly admitted he is subject to § 1225(b), and thus, is subject to mandatory detention. *See Capote, et al.*

v. Noem, et al., Case No. 25-12782 (E.D. Mich.) Pet., ECF No. 1, PageID.15, 20, 23 ("Yanier is an applicant for admission…[a]ll of the Petitioners are now subject to mandatory detention under INA § 235…[t]he regulations also show that a person who seeks entry like the Petitioners are subject to INA § 235(b)."); Mot., ECF No. 4, PageID.64 (Petitioners argued "that they are applicants for admission" pursuant to § 1225(a)(1). Capote agreed with the applicability of § 1225(b) to his circumstances because he seeks to argue to the immigration court that because he fell within § 1225(b), his initial release should be deemed parole under 8 U.S.C. 1182(d)(5)(A) rather than bond under § 1226(a) as that would entitle him to seek adjustment of status under the Cuban Adjustment Act. *See Capote, et al. v. Noem, et al.*, Case No. 25-12782 (E.D. Mich.) Pet., ECF No. 1; Mot., ECF No. 4.

D. Capote seeks habeas relief from mandatory detention.

To avoid mandatory detention, Capote now argues that he is no longer subject to § 1225(b) because he is no longer a "recent arrival." (Am. Pet., ECF No. 6, PageID.56). He asserts that because he was not "apprehended upon arrival" but managed to remain in the United States for several years unlawfully, he is no longer subject to § 1225(b)(2). (*Id.* at PageID.63). Capote also argues that because ICE issued a warrant when it detained him his detention is under § 1226(a) which entitles him to a bond hearing. (*Id.* at PageID.54).

The immigration court denied Capote bond because detention is mandatory

under § 1225(b)(2). (*Id.*). On September 25, 2025, Capote filed a request for a second bond hearing in immigration court to assert that his detention is under § 1226(a) and he is entitled to a bond hearing. (*Id.* at PageID.55). The motion remains pending. Capote has a hearing in immigration court scheduled for November 10, 2025, to seek relief from removal and adjustment of status. (Pinson Dec., Ex. 1, ¶ 15).

On October 4, 2025, Capote filed a habeas petition. He filed an amended petition on October 9, 2025, asserting: (1) violation of the Fifth Amendment due process clause; (2) violation of the Fourth Amendment; and (3) violation of the Immigration and Nationality Act. (Am. Pet., ECF No. 6). He seeks release from detention or a bond hearing, and a finding that "Respondents" acted in bad faith in violating the U.S. Constitution and the INA. Respondents oppose the petition.

STANDARD OF REVIEW

A district court may grant a writ of habeas corpus if a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C.A. § 2241. The party seeking habeas relief has the "burden of sustaining his allegations by a preponderance of evidence." *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

LAW AND ANALYSIS

I. The Court should dismiss all respondents except the ICE District Director.

A party "'must demonstrate standing for each claim that they press' against *each defendant*, 'and for each form of relief that they seek.'" *Murthy v. Missouri*, 603 U.S. 43, 61 (2024) (emphasis added) (quoting *TransUnion v. Ramirez*, 594 U.S. 413, 431 (2021)). A writ of habeas corpus may only be properly issued "to the person having custody of the person detained." 28 U.S.C. § 2243. Therefore, except in extraordinary circumstances, the only proper respondent on a petition for a writ of habeas corpus is the detainee's immediate custodian. *See Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). In the immigration context, only "the [ICE] District Director for the district where a detention facility is located 'has power over' alien habeas corpus petitioners" and, therefore, only the ICE District Director is a noncitizen's custodian for habeas corpus purposes. *See id.*

Here, Capote alleges that he is detained in immigration detention by the ICE Detroit Field Office at the North Lake detention facility in Baldwin, Michigan. (Am. Pet., ECF No. 6, PageID.49–50, 53). Acting ICE Field Office Director for Detroit Kevin Raycraft is Capote's "immediate custodian" and the only proper respondent to his habeas claim. (*Id.*). The remaining Respondents should be dismissed.

II. The Court should require that Capote exhaust his administrative remedies before issuing habeas relief.

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.* Therefore, the Sixth Circuit usually requires administrative exhaustion, even when not statutorily required. *See, e.g., id.* Congress provided a robust administrative hearing and appeal process for aliens in removal proceedings that includes evidentiary hearings, motion practice, and appeals. *See* 8 U.S.C. § 1229a. Capote fails to explain why he should not be required to await a decision on his pending motion for a second bond hearing and appeal an adverse decision to the BIA and ultimately the Sixth Circuit before seeking habeas relief in federal district court.

III. The Court should deny habeas relief because Capote is properly detained under 8 U.S.C. § 1225(b)(2).

Capote is properly detained under § 1225(b)(2) because he unambiguously meets every element in the text of the statute and, even if the text were ambiguous, the structure and history of the statute support Respondents' interpretation. The statute here, 8 U.S.C. § 1225(b)(2)(A), is simple and unambiguous:

> Subject to subparagraphs (B) and (C) [not relevant here], 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). The first relevant term is "applicant for admission,"

which is statutorily defined. *See* 8 U.S.C. § 1225(a)(1). The statute deems any alien "present in the United States who has not been admitted" to be an "applicant for admission." 8 U.S.C. § 1225(a)(1). Contrary to Capote's suggestion, the statute does not provide that it only applies to "recent arrivals." (Am. Pet., ECF No. 6, PageID.56). Nor does the statute or any other authority identified by Capote, define what constitutes a "recent arrival" under § 1225(b)(2) such that Capote can argue that he is not a recent arrival where he has only been in the United States for less than four years. Not only is a "recent arrival" standard absent from the statute—it would be impossibly vague to apply.

Thus, under its plain terms, all unadmitted aliens in the United States are "applicants for admission," regardless of their proximity to the border, the length of time they have been present here, 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) (cleaned up). Under the plain text of the statute, Capote is unambiguously an "applicant for admission" because he is an alien, he was not admitted, and he was present in the United States when he was apprehended by ICE. (Am. Pet., ECF No. 6, PageID.51; Pinson Dec., Ex. 1, ¶¶ 4–5).

The next relevant portion of the statute is whether Capote was "seeking admission." *See* 8 U.S.C. § 1225(b)(2)(A). The INA defines "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Therefore, the inquiry is whether an immigration officer determined that Capote was seeking a "lawful entry." *See id.* The element of "lawful entry" is important here for two reasons. First, a non-citizen cannot legally be admitted into the United States without a lawful entry. *See* 8 U.S.C. §§ 1101(a)(13), 1225(a)(3); *see also Sanchez v. Mayorkas*, 593 U.S. 409, 411–12 (2021). Second, a non-citizen cannot remain in the United States without a lawful entry because a non-citizen is removable if he did not enter lawfully. *See* 8 U.S.C. § 1182(a)(6). Unless Capote obtains a lawful admission, he will be subject to removal in perpetuity regardless of how long he manages to stay physically present in the United States unlawfully. *See* 8 U.S.C. §§ 1101(a)(13), 1182(a)(6).

The INA provides two examples of non-citizens who are not "seeking admission." The first is someone who withdraws his application for admission and "depart[s] immediately from the United States." 8 U.S.C. § 1225(a)(4). The second is someone who agrees 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). This means even in removal proceedings, a non-citizen can

concede removability and accept removal, in which case he will no longer be "seeking admission." 8 U.S.C. § 1229a(d). Non-citizens present in the United States who have not been lawfully admitted and who do not agree to immediately depart are necessarily 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 a non-citizen does not accept removal, he can seek a lawful admission. *See, e.g.*, 8 U.S.C. § 1229b.

Capote is still "seeking admission" under § 1225(b)(2) because he has not agreed to depart or conceded his removability. He cannot assert otherwise where he is currently seeking to be admitted via his removal proceedings based on asylum or adjustment of status. (Pinson Dec., Ex. 1, ¶ 15). *See Thuraissigiam*, 591 U.S. at 108–09 (discussing how 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)" is deemed "an applicant for admission"). Capote is seeking admission because he has not agreed to immediately depart, so logically he must be seeking to remain in this country, which (for him) requires an "admission" (which is, as discussed above, a lawful entry).

The final textual requirement here is that Capote "be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Capote is in full removal proceedings where he will receive the benefits of the procedures

(motions, hearings, testimony, evidence, and appeals) provided in § 1229a. Therefore, he also meets this element within § 1225(b)(2)(A)'s text. "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 where a petitioner contends that the plain application of the statute would lead to a harsh result. *See, e.g., 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 Capote's detention under § 1225(b)(2) is lawful.

To the extent the Court finds § 1225(b)(2)(A)'s text potentially ambiguous the result is the same. First, not all decisions have been resolved against the government on the issue of properly interpreting 8 U.S.C. § 1225(b)(2). *See Chavez v. Noem*, — F. Supp. 3d —, 2025 WL 2730228, at *4–5 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) ("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)); *see also Florida v. United States*, 660 F. Supp. 3d at 1274–75.

As the Supreme Court itself has previously explained, applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (plurality opinion). "Read most naturally, §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain proceedings have concluded." *Id.* at 297. Despite the clear direction from the Supreme Court, Capote argues that there is some third category of applicants for admission who are no longer subject to mandatory detention based on how long they have been in the United States unlawfully. (Am. Pet., ECF No. 6, PageID.56). He does not cite any support for this position. The Court in *Jennings* recognized that § 1225(b)(2) mandates detention. *Jennings*, 583 U.S. at 297; *see also Matter of Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) ("[A]n applicant for admission . . . whether or not at a port of entry, and subsequently placed in removal proceedings is detained under . . . 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond.").

Any argument that "seeking admission" limits the scope of § 1225(b)(2)(A) is unpersuasive. Courts "interpret the relevant words not in a vacuum, but with reference to the statutory context, 'structure, history and purpose.'" *Abramski v. United States*, 573 U.S. 169, 179 (2014) (quoting *Maracich v. Spears*, 570 U.S. 48, 76 (2013)). The BIA has long recognized that "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 immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012). Statutory language "is known by the company it keeps." *McDonnell v. United States*, 579 U.S. 550, 569 (2016). The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of "applicant for admission" in § 1225(a)(1). Applicants for admission includes arriving aliens and aliens present without admission. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under §1225(a)(1). *See Lemus-Losa*, 25 I. & N. at 743. Congress made clear that all aliens "who are applicants for admission or otherwise seeking admission" are to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive–a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *See United States v. Woods*, 571 U.S. 31, 45 (2013).

Capote's preferred interpretation reads "applicant for admission" out of 1225(b)(2)(A) in favor of "recent arrival." "[O]ne of the most basic interpretive canons" instructs that a "statute should be construed so that effect is given to all its provisions." *Corley v. United States*, 556 U.S. 303, 314 (2009). "Applicant" is defined as "[s]omeone who requests something; a petitioner, such as a person who applies for letters of administration." Black's Law Dictionary (12th ed. 2024). Applying the definition of "applicant" to "applicant for admission," an applicant

for admission is an alien "requesting" admission, defined by statute as "the lawful entry of the alien into the United States after inspection." 8 U.S.C. § 1101(a)(13)(A). With this definition in mind, "seeking admission" does not have a different meaning from applicant for admission ("requesting admission"); the terms within § 1225(b)(2)(A) are thus synonymous.

This reading also comports with one of the central purposes behind the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) which enacted § 1225—to stop treating non-citizens who had evaded immigration authorities better than non-citizens who correctly applied for admission at ports of entry. *See, e.g., Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010). 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." *Wilson v. Zeithern*, 265 F. Supp. 2d 628, 631 (E.D. Va. 2003).

Capote's reading of the statute ignores the context and purpose of IIRIRA in the treatment of non-citizens present without inspection. *See Norfolk & W. Ry. Co. v. Am. Train Dispatchers Ass'n*, 499 U.S. 117, 129 (1991) (noting that interpretive canons must yield "when the whole context dictates a different conclusion); *see also U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993) ("In expounding a statute, we must not be guided by a single sentence or

member of a sentence, but look to the provisions of the whole law, and to its object and policy."). Capote should not be treated better by avoiding mandatory detention because he managed to remain in the United States unlawfully longer than someone who presented for inspection and was denied or who was apprehended shortly after arrival.

The petition also references the recent passage of the Laken Riley Act, Pub. L. No. 119-1, January 29, 2025, 139 Stat. 3 (2025) ("LRA"). Nothing in the LRA changes the analysis outlined above. To the extent it creates any redundancy, redundancies in statutory drafting are "common . . . sometimes in a congressional effort to be doubly sure." *Barton v. Barr*, 590 U.S. 222, 239 (2020). The LRA arose after an inadmissible alien "was paroled into this country through a shocking abuse of that power." 171 Cong. Rec. H278 (daily ed. Jan 22, 2025) (statement of Rep. McClintock). Congress passed it out of a specific concern that the executive branch "ignore[d] its fundamental duty under the Constitution to defend its citizens." 171 Cong. Rec. at H269 (statement of Rep. Roy). Based on this concern, "Congress . . . simply intended to remove any doubt" as to the propriety of mandatory detention pending removal proceedings. *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 226 (2008).

Indeed, one member of Congress even expressed frustration that "every illegal alien is currently required to be detained by current law throughout the

pendency of their asylum claims," but nothing was being done by the Executive to give effect to the statutory language. 171 Cong. Rec. at H278 (statement of Rep. McClintock). The LRA thus reflects a "congressional effort to be doubly sure" that such unlawful aliens are detained. *Barton*, 590 U.S. at 239. And the LRA does not change what Congress intended in IIRIRA. *See Almendarez-Torres v. United States*, 523 U.S. 224, 237 (1998) ("These later-enacted laws, however, are beside the point. They do not declare the meaning of earlier law. . . . or a change in the meaning of an earlier statute."); *see also S. Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 355 (1998) ("'[T]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.'" (quoting *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 348–349 (1963))). In short, nothing in the LRA requires that a foreign national who falls under § 1225(b)(2) be treated as if they are detained under § 1226(a). *Yajure-Hurtado*, 29 I. & N. Dec. at 221–22.

Further, any argument that prior agency practice applying § 1226(a) to Capote is unavailing because under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the plain language of the statute and not prior practice controls, *cf. Yajure-Hurtado*, 29 I. & N. Dec. at 225–26. *Loper Bright* recognized that courts often change precedents and "correct[their] own mistakes," 603 U.S. at 411 (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)), and overturned a decades-old agency interpretation of the Magnuson-

Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years, *id.* at 380. This means that longstanding agency practice is not determinative under *Loper Bright*. The weight given to agency interpretations "must always 'depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.'" *Id.* at 432–33 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)).

The BIA's recent precedential decision in *Yajure-Hurtado* includes thorough reasoning. 29 I. & N. Dec. at 221–22. In that case, the BIA analyzed the statutory text and legislative history. *Id.* at 223–25. It highlighted congressional intent that non-citizens present without inspection be considered "seeking admission." *Id.* at 224. The BIA concluded that rewarding non-citizens who entered unlawfully with bond hearings while subjecting those presenting themselves at the border to mandatory detention would be an "incongruous result" unsupported by the plain language "or any reasonable interpretation of the INA." *Id.* at 228.

To be sure, "when the best reading of the statute is that it delegates discretionary authority to an agency," courts must "independently interpret the statute and effectuate the will of Congress." *Loper Bright*, 603 U.S. at 395. But "read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297

(cleaned up). No amount of policy argument or agency prior practice changes the plain language of the statute.

IV. Capote's detention does not violate due process.

Capote's due process claim fails because he admittedly never effected a lawful entry regardless of how long he has unlawfully remained in the United States, *see Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (holding that, despite nine years of physical presence on parole, a non-citizen "was still in theory of law at the boundary line and had gained no foothold in the United States"). Without a lawful entry or admission, Capote has no more due process rights than what processes Congress chooses to provide him. *See DHS v. Thuraissigiam*, 591 U.S. 103, 114, 139–40 (2020); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative"); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process[.]").

To this end, the Supreme Court has also long applied the so-called "entry fiction" that all "aliens who arrive at ports of entry . . . are treated for due process purposes as if stopped at the border." *Thuraissigiam*, 591 U.S. at 139. Indeed, that is so "even [for] those paroled elsewhere in the country for years pending

removal." *Id.* The Supreme Court has applied the entry fiction to non-citizens with highly sympathetic claims to having "entered" and developed significant ties to this country. *See, e.g.*, *Kaplan*, 267 U.S. at 230 (holding that a mentally disabled girl paroled into the care of U.S. citizen relatives for nine years should be "regarded as stopped at the boundary line" and "had gained no foothold in the United States"); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 214–215 (1953) (holding that a non-citizen with 25 years' of lawful residence who sought to reenter enjoyed "no additional rights" beyond those granted by "legislative grace"). With these cases in mind, it follows that Congress intended for an unlawful entrant like Capote, even if he managed to remain in the United States for several years, to be "treated as if stopped at the border." *See Mezei*, 345 U.S. at 215.

Indeed, Supreme Court precedents indicate that non-citizens 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 non-citizens who have been *admitted* may claim due-process protections beyond what Congress has provided even when their legal status changes (such as a non-citizen 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 non-citizens who have "entered the

country clandestinely" are entitled to such additional rights, *see Yamataya v. Fisher*, 189 U.S. 86, 1000 (1903).

Instead, Congress codified this distinction by treating all non-citizens who have not been admitted—including unlawful entrants who have evaded detection for years—as "applicants for admission." 8 U.S.C. § 1225(a)(1). The Supreme Court in *Jennings*, 583 U.S. at 287, expressly held that § 1225(b) requires mandatory detention without a bond hearing. In *Demore v. Kim*, 538 U.S. 510, 527–28 (2003), the Court held that mandatory detention without a bond hearing in the context of § 1226(c) did not violate due process where—like § 1225(b)—detention was limited to the pendency of removal proceedings; *see also Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (even after non-citizen is ordered removed and detention may be indefinite, detaining him for up to 180 days is presumptively valid). Because, as discussed above, Capote is subject to § 1225(b)(2) which provides for mandatory detention, the Court should decline to award habeas relief on the basis that his detention without bond violates due process.

V. Capote's arrest and mandatory detention do not violate the Fourth Amendment.

The Fourth Amendment guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "[T]he 'touchstone of the Fourth Amendment is reasonableness.'" *Ohio v. Robinette*, 519 U.S. 33, 39 (1996) (citation omitted).

Capote is not entitled to release on the basis that his arrest violated the Fourth Amendment because "Respondents lacked any information of changed or exigent circumstances that would justify such sudden detention." (Am. Pet., ECF No. 6, PageID.62). Capote was released under § 1226(a). (Am. Pet., ECF No. 6-5, PageID.77). His release was subject to revocation "at any time." 8 U.S.C. § 1226(b). The Court is without jurisdiction to review a challenge to such revocation. *See* 8 U.S.C. § 1226(e).

Even though Capote does not point to any authority providing that a "change in circumstances" is required before an arrest is lawful under § 1226(a) or § 1225(b)(2), even if it were, there was a significant change. Capote was released under § 1226(a). (Am. Pet., ECF No. 6-5, PageID.77). The BIA issued decisions that non-citizens who fell within § 1225(b) are subject to mandatory detention and ICE did not have the discretion to release them under § 1226(a). *See Matter of Q. Li*, 29 I. & N. Dec. 66, 2025 WL 1442892; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 2025 WL 2674169. Further, mandatory detention under Capote's circumstances has been upheld by some federal courts. *See Chavez v. Noem*, — F. Supp. 3d —, 2025 WL 2730228, at *4–5 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025); *see also Florida v. United States*, 660 F. Supp. 3d at 1274–75. Capote's habeas claim premised on a Fourth Amendment violation should be dismissed.

VI. Capote cannot estop ICE from detaining him under § 1225(b)(2).

Capote cannot rely on the issuance of a non-descript form warrant to force ICE to convert his detention from § 1225(b)(2) to § 1226(a). ICE has always maintained that Capote's detention in August 2025 was under § 1225(b)(2). Capote admits that he was not told his detention was under § 1226(a) at the time he was detained in August 2025. (Am. Pet., ECF No. 6, PageID.53) (claiming he "was never given any information as to why [he] was detained"). He further admits that in the immigration court the attorney representing ICE stated that Capote "was detained pursuant to 8 U.S.C. § 1225." (*Id.* at PageID.54). Capote himself understood his detention to be "pursuant to INA § 235" when he filed his habeas petition last month. *See Capote, et al. v. Noem, et al.*, Case No. 25-12782 (E.D. Mich.) Pet., ECF No. 1, PageID.15, 20, 23 ("Yanier is an applicant for admission…[a]ll of the Petitioners are now subject to mandatory detention under INA § 235…[t]he regulations also show that a person who seeks entry like the Petitioners are subject to INA § 235(b)."); Mot., ECF No. 4, PageID.64 (Petitioners argued "that they are applicants for admission" pursuant to § 1225(a)(1)). Despite Capote's misrepresentation, ICE filed a declaration in the prior habeas action stating that although a warrant was issued, "ICE ERO detained Hernandez Capote under INA § 235 because [he] is an applicant for admission to the United States seeking admission." *See Capote, et al. v. Noem, et al.*, Case No.

25-12782 (E.D. Mich) (ECF No. 6-2, PageID.141).

Nonetheless, because Capote received a non-descript form warrant at the time of his arrest he now apparently seeks a ruling that he is detained under § 1226(a) despite ICE's contention that it is currently detaining him under § 1225(b)(2). (Am. Pet., ECF No. 6, PageID.54–55). Capote cannot estop ICE from using their valid statutory authority to detain him under § 1225(b)(2) even if it pursued a different path initially as he claims.

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, Capote's arguments regarding ICE's issuance of a warrant is insufficient to overcome the text, statutory structure, and legislative history of the text, all of which demonstrate that he is subject to detention under § 1225(b)(2) as ICE has consistently asserted in immigration court and before this Court.

CONCLUSION

Respondents respectfully request that the Court deny Capote's amended 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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CERTIFICATE OF SERVICE

I hereby certify that on October 15, 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/ Jennifer L. Newby
Jennifer L. Newby
Assistant United States Attorney