UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ARNULFO GINEZ HERNANDEZ,

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security; and ROBERT LYNCH, Field Office Director, Detroit Field Office, Immigration and Customs Enforcement,

Respondents.
_____/

Case No. 1:25-cv-1307

Hon. Paul L. Maloney
U.S. District Court Judge

Hon. Phillip J. Green
U.S. Magistrate Judge

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF

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

Respondents acknowledge that the Court recently concluded that 8 U.S.C. § 1226(a), and not § 1225(b)(2)(A), "governs noncitizens . . . who have resided in the United States and were already within the United States when apprehended and arrested." *Rodriguez Carmona*, v. *Noem*, No. 1:25-CV-1131, 2025 WL 2992222, at *6 (W.D. Mich. Oct. 24, 2025). However, Respondents respectfully disagree with the Court's analysis and maintain that aliens like Petitioner properly are detained under 8 U.S.C. § 1225(b)(2). Respondents further maintain that Petitioner's detention

does not violate the Due Process Clause, and that Petitioner has not exhausted his administrative remedies. Accordingly, the Court should decline to issue a writ of habeas corpus to Petitioner. Furthermore, the Court should dismiss the Secretary of the Department of Homeland Security as a respondent to this action because the Detroit ICE Field Office Director is the only proper respondent in this habeas suit.

FACTUAL BACKGROUND

Petitioner is a citizen of Mexico who unlawfully entered the United States in 1999. (Pet., ECF No. 1, ¶¶ 2-3, 17, 19.) On October 22, 2025, an ICE agent arrested Petitioner for being illegally present in the United States. (Ex. A, Hughley Decl. ¶ 6.) Upon his detention, DHS determined that Petitioner was an applicant for admission seeking admission, and not clearly and beyond doubt entitled to admission, under 8 U.S.C. § 1225. (*Id.* ¶¶ 6-7.) DHS detained Petitioner at the North Lake Processing Center in Baldwin, Michigan. (*Id.* ¶ 3.)

Petitioner currently is in removal proceedings on the detained docket before the Detroit immigration court. (*Id.* ¶ 8.) He is scheduled to appear for a master calendar hearing on November 17, 2025. (*Id.* ¶ #.) He has not filed a motion for bond. (*Id.*)

On October 27, 2025, Petitioner filed a petition in federal court seeking a writ of habeas corpus asking the Court to issue a temporary restraining order directing Respondents to release Petitioner or provide him with a bond hearing within five days. Additionally, he asks the Court to issue a declaration that his detention violates the Due Process Clause of the Fifth Amendment and the Immigration and Nationality Act (INA). Finally, Petitioner asks the Court to restrict his transfer out of the Western District of Michigan during the pendency of his habeas proceedings to preserve jurisdiction and access to counsel.

ARGUMENT

The Court should deny Petitioner's request for a writ of habeas corpus. Petitioner has not exhausted his administrative remedies. Even if that failure is excused, he is properly detained under § 1225(b)(2) because the text, structure, and history of the statute demonstrate that it applies to him. His detention also comports with the Constitution because he has been provided the due process required by law. Because the Court already will maintain jurisdiction over Petitioner's habeas proceedings, it need not restrict his transfer out of this district. And because the petition may only be directed to the ICE Field Office Director, the Court should dismiss Secretary Noem as a respondent to this action.

I. Petitioner has not exhausted his administrative remedies.

Petitioner has yet to request a bond hearing. (Ex. A, Hughley Decl. ¶ 8.) Should he request and the immigration court decline to grant his bond, he would have the right to appeal any unfavorable decision to the Board of Immigration Appeals (BIA). *Hernandez Torrealba v. U.S. Dep't of Homeland Sec.*, No. 1:25CV01621, 2025 WL 2444114, at *9 (N.D. Ohio Aug. 25, 2025). Accordingly, Petitioner has yet to exhaust his administrative remedies within the immigration courts before seeking a writ of habeas corpus from this Court.

"When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the [habeas] petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted). In *Leonardo*, the petitioner pursued habeas review of an immigration judge's (IJ) adverse bond determination before he appealed to the Board of Immigration Appeals. *Id.* The Ninth Circuit determined that filing a habeas petition in federal district court was "improper" because the petitioner "should have exhausted administrative remedies by appealing to the BIA before asking the federal district court to review the IJ's

decision." *Id.* (citing *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003)). The Sixth Circuit has endorsed this procedure for challenging bond determinations. *See Rabi v. Sessions*, No. 19-3249, 2018 U.S. App. LEXIS 19661, at *1-2 (6th Cir. July 16, 2018) (citing *Leonardo*, 646 F.3d at 1160) (unpublished order). Additionally, some lower courts in this circuit have applied a three-factor test for determining whether prudential exhaustion applies. *See, e.g.*, *Hernandez Torrealba v. U.S. Dep't of Homeland Sec.*, No. 1:25CV01621, 2025 WL 2444114, at *9 (N.D. Ohio Aug. 25, 2025). The test considers whether:

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

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

Respondents acknowledge that the Court previously has declined to require prudential exhaustion for aliens contesting detention under § 1225(b)(2). *Rodriguez Carmona*, 2025 WL 2992222, at *4; *Puerto-Hernandez v. Lynch*, No. 1:25-CV-1097, 2025 WL 3012033, at *7 (W.D. Mich. Oct. 28, 2025). Here, however, the three-factor test weighs in favor of requiring Petitioner to exhaust his administrative remedies. First, although Petitioner alleges that that Respondents violated the INA and the Due Process Clause, the latter claim likewise hinges on the INA and Respondents' allegedly wrongful interpretation of the statute. (*See* Pet., ECF No. 1, ¶ 54 (alleging that the government "wrongly interprets the Immigration and Nationality Act").) "In other words, any determination regarding detention here turns on interpretation and application of the governing removal regime," a review that in the first instance "should proceed before the Board of Immigration Appeals to 'apply its experience and expertise without judicial interference.'" *Monroy Villalta v. Greene*, --- F. Supp. 3d ---, 2025 WL 2472886, at *2 (N.D. Ohio Aug. 5, 2025)

(quoting *Khalili v. Holder*, 557 F.3d 429, 435 (6th Cir. 2009) (abrogated on other grounds)); *see also Hernandez*, 2025 WL 2444114, at *10 (applying *Monroy Villalta* to find that the first factor weighs in favor of requiring exhaustion of claims premised on the statutory interpretation of the INA); *Ba v. Dir. of Detroit Field Office, U.S. Immigr. and Customs Enf't*, No. 4:25-CV-02208, 2025 WL 2977712, at *2-3 (N.D. Ohio Oct. 22, 2025) ("Because of the expertise the Board of Immigration Appeals and the immigration courts more generally have in the statutory and administrative regimes governing the admission and removal of foreigners, many of the purposes for requiring exhaustion may be served by permitting agency review in the first instance." (quotation omitted)).

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

Third, allowing the immigration court and, if necessary, the BIA to evaluate Petitioner's bond motion "would permit the agency to correct its own mistakes, if any, and preclude the need for judicial review if Petitioner is successful." *Id.* at *10. If the immigration court grants Petitioner bond, there will be no need for judicial review of his claims. Likewise, if the immigration court

denies his motion, Petitioner may appeal the decision to the BIA, where he may seek a new bond hearing and request release. Indeed, a bond hearing is the very relief Petitioner seeks here. (Pet., ECF No. 1, ¶ 6.)

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

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

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

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

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)—states that:

> 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). The relevant statutory definitions are provided at 8 U.S.C. §§ 1101(a)(13)(A), 1225(a)(1), and (b)(2)(A). Petitioner falls within the plain text of the statute because he is (1) an applicant for admission, (2) who is seeking admission, and (3) who is not clearly and beyond a doubt entitled to be admitted.

1. Applicant for Admission

The statute defines "applicant for admission" as any noncitizen "present in the United States who has not been admitted." 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.*; *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) ("For these purposes, '[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .)' is deemed 'an applicant for admission.'") (quoting § 1225(a)(1)); *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) ("an alien who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission'") (quoting § 1225(a)(1)). "When a statute includes an explicit definition, [courts] must follow that definition, even if it varies from a term's ordinary meaning." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (quotation omitted). Accordingly, Petitioner unambiguously is an "applicant for admission" under the plain text of the statute because he is a noncitizen, he was not admitted to the United States, and he was present in the United States when he was apprehended. (*See* Pet., ECF No. 1, ¶¶ 17, 19; Ex. A, Hughley Decl. ¶¶ 6-7.)

2. Seeking Admission

The statute further defines "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Therefore, to seek admission, an alien must seek lawful entry into the United States.

Congress has "defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission, or who have been brought in against their will under certain circumstances." *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (citing 8 U.S.C. § 1225(a)(1)). Thus, "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Id.* (emphasis in original); *see also Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913, at *1-2 (D. Mass. July 28, 2025) (finding that, in the absence of the receipt of lawful immigration status, an alien who was unlawfully present in the U.S. for 20 years and had an approved U-130 Petition for Alien Relative "remains an applicant for admission" subject to mandatory detention under § 1225(b)(2)). Likewise, the principle that many people who long have been present in the United States have not "effected an entry into the United States . . . runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (citing *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) ("despite nine years' presence in the United States, an 'excluded' alien 'was still in theory of law at the boundary line and had gained no foothold in the United States'") and *Leng May Ma v. Barber*, 357 U.S. 185, 188-90 (1958) ("alien 'paroled' into the United States pending admissibility had not effected an 'entry'")).

Petitioner contends that he is not "seeking admission" to the United States. In effect, he argues that because he chose to enter and remain in the United States unlawfully, he therefore is

not "seeking" a lawful entry. (*See* Pet., ECF No. 1, ¶¶ 41-43.) That is an unreasonable reading of the statute, for three reasons. First, because Petitioner has not agreed immediately to depart, logically he must be seeking to remain—a legal action that requires "admission," i.e., a lawful entry. 8 U.S.C. §§ 1101(a)(13), 1182(a)(6), and 1225(a)(3). Second, Petitioner ignores the legal presumption created by the definition of "applicant for admission," which characterizes all unlawfully present noncitizens as applying for admission until they are either removed or successfully obtain a lawful entry, regardless of their subjective intent. 8 U.S.C. § 1225(a)(1); *see also Pena*, 2025 WL 2108913, at *1-2 (because alien did not have lawful status, he remained an applicant for admission subject to mandatory detention under § 1225(b)(2)). Nothing in the plain language of the statute exempts noncitizens present in the United States. Finally, Petitioner's reading of the statute would reward him for knowingly violating the law, entitling him to more favorable treatment than a noncitizen who lawfully presented himself at a port of entry. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 228 (BIA Sept. 5, 2025). Nowhere does the Immigration and Nationality Act state that, "after some undefined period of time residing in the interior of the United States without lawful status, . . . an applicant for admission is no longer 'seeking admission,' and has somehow converted to a status that renders him or her eligible for" consideration under 8 U.S.C. § 1226(a). *Id.* at 221.

Moreover, Petitioner is "seeking admission" under § 1225(b)(2) because he has not agreed to depart, and he has not yet conceded his removability and allowed his removal in his administrative immigration proceedings. Noncitizens present in the United States who have not been lawfully admitted and who do not agree to immediately depart must be referred for removal proceedings under § 1229a. *See* 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). In removal proceedings, if an unlawfully admitted noncitizen does not accept removal, he can seek a lawful admission. *See,*

e.g., 8 U.S.C. § 1229b. For instance, if Petitioner does not concede removability and allow his immediate removal at his upcoming hearing in immigration court, he may apply to cancel his removal and adjust his status under 8 U.S.C. § 1229b. *See, e.g.*, *Moctezuma-Reyes v. Garland*, 124 F.4th 416, 419 (6th Cir. 2024); *Lopez-Soto v. Garland*, 857 F. App'x 848, 854 (6th Cir. 2021). If he is successful, he will be granted lawful status and the agency "shall record the alien's lawful admission for permanent residence as of the date of the . . . cancellation of removal." 8 U.S.C. § 1229b(b)(3).

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

3. *Entitled to be Admitted*

It is undisputed that Petitioner is "not clearly and beyond a doubt entitled to be admitted." § 1225(b)(2)(A). No immigration officer has determined that he is, and Petitioner does not argue otherwise. (*See* Pet., ECF No. 1, ¶¶ 17, 19, 41-48.)

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

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

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

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

Section 1225 addresses two types of unadmitted noncitizens: "arriving aliens" and "applicants for admission." 8 U.S.C. § 1225(a)(1), (b)(1). The provisions for "arriving aliens" relate to "stowaways," "crewmen," noncitizens "arriving on land . . . from a foreign territory contiguous to the United States," and noncitizens present in the United States for less than two years. *Id.* §§ 1225(a)(2), (b)(1)(A)(i), (b)(1)(A)(iii)(II), (b)(2)(B), (b)(2)(C). The term "arriving alien" similarly is defined by regulation as "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. These noncitizens "arriving" at an international port are not entitled to the procedural protections in the full removal proceedings described in § 1229a. 8 U.S.C. § 1225(b)(1)(A)(i). Instead, because they only recently arrived, they are subject to "expedited" removal proceedings. *Id.*; *see also Thuraissigiam*, 591 U.S. at 140 (2020) (holding that diminished due process provided in expedited removal proceedings was constitutional for arriving aliens detained under § 1225(b)(1)).

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

The structure of § 1225 supports the conclusion that Petitioner properly is detained under § 1225(b)(2). Congress used different words to distinguish recently arrived noncitizens from "applicants for admission" and gave each category of noncitizens different procedural protections, which demonstrates that Congress intended the provisions to apply to different categories of noncitizens and results in a harmonious reading of the statute. 8 U.S.C. §§ 1225(a)(1), (b)(1), (b)(2); *see also Pulsifer v. United States*, 601 U.S. 124, 149 (2024) ("different terms usually have different meanings."); *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 631-32 (1973) ("It is well established that our task in interpreting separate provisions of a single Act is to give the Act 'the most harmonious, comprehensive meaning possible' in light of the legislative policy and purpose."). When a statute defines two groups and assigns them different treatment, the Court must interpret the statute to give effect to the statutory distinction. *See Polselli v. Internal Revenue Serv.*, 598 U.S. 432, 441 (2023) ("We ordinarily aim to "giv[e] effect to every clause and word of a statute."); *see also Scialabba v. Cuellar de Osorio*, 573 U.S. 41, 57 (2014) (holding that statute required different treatment for principal and derivative immigration beneficiaries).

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

601 U.S. at 143 (rejecting interpretation of statute that would "render[s] an entire subparagraph meaningless").

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

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

Petitioner argues that § 1225 cannot apply to noncitizens already present in the United States because it is redundant to § 1226 and to the newly enacted Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), which made a new subcategory of those individuals subject to mandatory detention under § 1226(c). Petitioner's argument fails.

"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); *see also Barton v. Barr*, 590 U.S. 222, 239 (2020) ("redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure"); *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). Section 1226(a) is similar to § 1225(b)(2), but it reaches noncitizens who 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). 8 U.S.C. § 1226(a). Likewise, some

noncitizens have their lawful status revoked when they commit certain crimes. 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. *Id.*

Further, while some noncitizens may fall facially within the scope of both statutes, the statutes do not overlap in practice, because § 1225(b)(2) takes priority when it applies. An "applicant for admission" must be detained under § 1225(b)(2), because § 1225(b)(2) requires mandatory detention for noncitizens who fall within its terms until the conclusion of their administrative proceedings. 8 U.S.C. § 1225(b)(2)(A); *see also 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."). Detaining a noncitizen instead under § 1226(a), which allows release on bond, would nullify the mandatory detention required by § 1225(b)(2). *Id.*; *Jennings*, 583 U.S. at 300 (finding that the mandatory detention requirement in § 1225(b) permits no discretion); *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (finding that, because "§ 1226 does not contain language limiting its application 'to aliens already present in the United States' . . . the references to 'aliens' in § 1226 must be read to mean 'alien[s] present in the United States who ha[ve] not been admitted' within the meaning of § 1225(a)(1) and within at least the 'catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)' in § 1225(b)(2)" (quoting *Jennings*, 538 U.S. at 287)). Interpreting provisions of § 1226 as rendering sections of § 1225 null and void thus would go against the "cardinal principle of statutory construction" that courts "give effect, if possible, to every word of a statute, rather an to emasculate an entire section." *United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (citations omitted). Therefore, § 1226(a) and § 1225(b)(2) are not redundant.

Similarly, § 1225(b)(2) is not redundant to the Laken Riley Act. Congress enacted the Act in January 2025 to prevent noncitizens with criminal records from committing additional crimes. *Laken Riley Act*, Pub. L. 119-1, 139 Stat 3 (Jan. 29, 2025). Consistent with that purpose, under the Act, if an unadmitted noncitizen has committed certain crimes, the agency must detain them during their administrative removal proceedings. 8 U.S.C. § 1226(c)(1)(E). Nothing in the text of the Act purports to alter or undermine § 1225(b)(2)(A) in any way. Moreover, because Petitioner has not committed any of the crimes listed in the Laken Riley Act, the statute simply does not apply to him. *See id.*; (Pet., ECF No. 1, ¶ 20).

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

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

"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); *see also Bostock v. Clayton Cnty.*, 590 U.S. 644, 674 (2020) (Legislative history "is meant to clear up ambiguity, not create it."). Therefore, even if the legislative history supported Petitioner's argument, it would not overcome the plain text of the statute. Nevertheless, both the legislative history of the Immigration and Nationality Act and the agency's historical practice support the agency's application of § 1225(b)(2).

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

Section 1225(b)(2)(A) was added to the INA 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 Wilson v. Zeithern*, 265 F. Supp. 2d 628, 631 (E.D. Va. 2003) (The "IIRIRA amendments sought to ensure sensibly enough, that those who enter the country illegally, without proper inspection, are not treated more favorably under the INA than those who seek admission through proper channels, but are denied access.") IIRIRA therefore 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 Petitioner 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. *Id.* As Congress stated, IIRIRA's statutory scheme was:

> intended to replace certain aspects of the current "entry doctrine," under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry. Hence, the pivotal factor in determining an alien's status will be whether or not the alien has been lawfully admitted . . . . Currently, aliens who have entered without inspection are deportable under section 241(a)(1)(B). Under the new "admission" doctrine, such aliens will not be considered to have been admitted, and thus, must be subject to a ground of inadmissibility, rather than a ground of deportation, based on their presence without admission. (Deportation grounds will be reserved for aliens who have been admitted to the United States.).

H.R. Rep. No. 104-469, pt. 1, at 225-26 (1996).

Petitioner's reading of the statute ignores the context and purpose of IIRIRA in the treatment of foreign nationals 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.").

The legislative purpose of IIRIRA is consistent with applying § 1225(b)(2) to Petitioner. Although Petitioner physically entered the country, Congress intended that noncitizens present in the United States be treated for legal purposes as if they were still at the border. Accordingly, the legislative history of the INA supports Petitioner's detention under the statute.

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

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

Regardless, the agency has not changed its interpretation of § 1225(b)(2), only how it applies its discretion to enforce the statute. Prior to May 2025, the agency believed it had the discretion to detain noncitizens like Petitioner under either § 1225(b)(2) or under § 1226(a) and primarily detained them under § 1226(a). *See generally Matter of Yajure Hurtado*, 29 I &N at 224-26. However, in May 2025, the BIA 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). *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025). Because the BIA's decision was binding on the agency and affected its application of § 1225(b)(2), the agency issued a new policy instructing its employees to comply with the new

binding authority. (*See* Pet., ECF No. 1, ¶ 24.) Neither *Matter of Q. Li* nor the agency's interim guidance indicates that the agency's interpretation of the scope of § 1225(b)(2) has changed.

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

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

In sum, the text, structure, and history of § 1225(b)(2) demonstrate that DHS properly has detained Petitioner under the statute. Nevertheless, the government respondents concede that the Court and other district courts have declined to find that § 1225(b)(2) applies to noncitizens who have already entered the United States unlawfully. *Rodriguez Carmona*, 2025 WL 2992222, at *6; *Puerto-Hernandez*, 2025 WL 3012033, at *9, n.2. However, not all decisions have been resolved against the government on the issue of properly interpreting 8 U.S.C. § 1225(b)(2). *See Vargas Lopez v. Trump*, — F. Supp. 3d —, 2025 WL 2780351, at *10 (D. Neb. Sept. 30, 2025) (holding that "the plain language of § 1225(b)(2) and the 'all applicants for admission' language of *Jennings*" permit DHS to detain similarly-situated aliens § 1225(b)(2)); *Chavez v. Noem*, — F. Supp. 3d —, 2025 WL 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025); *Pena*, 2025 WL 2108913, at *2 ("Because petitioner remains an applicant for admission, his detention is authorized so long as

he is 'not clearly and beyond doubt entitled to be admitted' to the United States." (quoting 8 U.S.C. § 1225(b)(2)(A))). Moreover, no circuit court, including the Sixth Circuit, has considered whether DHS properly is construing § 1225(b)(2) to apply to aliens like Petitioner. Consequently, this Court is left to apply "all relevant interpretive tools" to conclude not which interpretation of the statute is permissible, but which one is best. *Loper Bright*, 603 U.S. at 400. The best interpretation of § 1225(b)(2) permits Petitioner's detention under the statute, for the reasons stated above.

III. Petitioner's detention comports with due process.

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

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

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 (internal quotation and citation omitted). 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 foreign nationals with highly sympathetic claims to having "entered" and developed significant ties to this country. *See, e.g.*, *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (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 foreign national with 25 years of lawful residence who sought to reenter enjoyed "no additional rights" beyond those granted by "legislative grace"). It follows that Congress intended for an unlawful entrant who violates immigration laws and evades detection must, once found, be "treated as if stopped at the border." *See Mezei*, 345 U.S. at 215.

Indeed, Supreme Court precedents indicate that foreign nationals who entered illegally by evading detection while crossing the border should be treated the same as those who were stopped at the border in the first place. *See Thuraissigiam*, 591 U.S. at 138–40. While foreign nationals who have been *admitted* may claim due-process protections beyond what Congress has provided even when their legal status changes (such as a foreign national who overstays a visa, or is later determined to have been admitted in error), *see Wong Yang Sung v. McGrath*, 339 U.S. 33, 49–50 (1950), the Supreme Court has never held that foreign nationals who have "entered the country clandestinely" are entitled to such additional rights, *see Yamataya v. Fisher*, 189 U.S. 86, 100 (1903). Congress has instead codified this distinction by treating all foreign nationals who have not been admitted—including unlawful entrants who have evaded detection for years—as "applicant[s] for admission." 8 U.S.C. § 1225(a)(1). In line with these cases, Congress created a detention system where applicants for admission, including those who entered the country

unlawfully, are detained for removal proceedings under § 1225 and foreign nationals who have been admitted to the country are detained under § 1226.

In light of this precedent, Petitioner does not present a plausible due process claim. He admits that he entered the country without inspection and evaded detection for more than two decades. (Pet., ECF No. 1, ¶¶ 17, 19.) At this point, Petitioner received notice of the charges against him, has access to counsel, is scheduled to attend hearings with an immigration judge, may request bond, has the right to appeal the denial of any request for bond, and has been detained by ICE for less than two weeks. (*See* Ex. A, Hughley Decl. ¶¶ 6, 8.) No further due process is due to him at this time. *Thuraissigiam,* 591 U.S. at 138-40.

Because Petitioner has received the due process to which he is entitled, he cannot assert a viable claim under the Due Process Clause.

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

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

Petitioner named his immediate custodian, the ICE Field Office Director, as a respondent to this action. *Rumsfeld v. Padilla*, 542 U.S. 426, 440 (2004); *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). It is well established that "when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release." *Padilla*, 542 U.S. at 440. Accordingly, the Court need not restrict Petitioner's movement to maintain jurisdiction over his petition. *Id.*; *see also Rodriguez Carmona*, 2025 WL 2992222, at *8-9 (declining to grant alien's request for an order that he remain

within the district where he filed his habeas petition); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *3 (S.D.N.Y. Aug. 26, 2025) (retaining jurisdiction over alien's habeas proceedings after he had been moved to another district).

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

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

A writ of habeas corpus may only be issued "to the person having custody of the person detained." 28 U.S.C. § 2243. Except in extraordinary circumstances, the only proper respondent in a habeas corpus case is the detainee's immediate custodian. *See Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). *Cf. Rodriguez Carmona*, 2025 WL 2992222, at *8-9 (applying an exception to decline to dismiss the Secretary of Homeland Security as a respondent to a habeas action). In the immigration context, that is the ICE Field Office Director. *Id.*

Here, the Secretary of the Department of Homeland Security is not a proper respondent to this habeas action. Petitioner acknowledges that he named the Secretary because she has "broad authority over the operation and enforcement of the immigration laws." (Pet., ECF No.1, ¶ 14.) That is not a proper reason for naming the Secretary as a respondent to this action. *See Roman*, 340 F.3d at 322 (reasoning that "adopting a broader definition of 'custodian'" that encompasses any official with control over an alien's detention and release "would complicate and extend the duration of habeas corpus proceedings"). Therefore, Secretary Noem should be dismissed from this litigation, leaving the Detroit ICE Field Office Director as the proper respondent. *Id.*

CONCLUSION

The government respondents respectfully request that the Court deny Arnulfo Ginez Hernandez's petition for a writ of habeas corpus because he is not detained in violation of federal law or the Constitution.

Respectfully submitted,

TIMOTHY VERHEY
United States Attorney

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/s/ *Kalen Pruss*
KALEN PRUSS
Assistant United States Attorney
Post Office Box 208
Grand Rapids, MI 49501-0208
(616) 456-2404
Kalen.Pruss@usdoj.gov
Attorney for Respondents