UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JUAN ALBERTO CONTRERAS ALVAREZ,
Petitioner,

v.

Kristi NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security; Robert LYNCH, in his official capacity as Field Office Director, Detroit Field Office, Immigration and Customs Enforcement; KEVIN RAYCRAFT, in his official capacity as Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement,

Respondents.

Case No. 1:25-cv-1313

Hon. Jane M. Beckering

PETITIONER'S REPLY BRIEF
IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Respondents do not dispute that Petitioner has lived in the United States for years. Nor do Respondents dispute that the government itself for decades interpreted the Immigration and Nationality Act (INA) to provide for bond hearings for people like Petitioner, or that dozens of courts have rejected Respondents' new strained interpretation of the INA. Instead, Respondents throw up a smokescreen of hyper-technical arguments that courts have repeatedly rejected.[1]

I. This Court Should Waive Any Prudential Exhaustion Requirement.

For a habeas corpus petition under § 2241, the exhaustion of administrative remedies is not a statutory or jurisdictional requirement, but rather a prudential matter within this Court's discretion. *See Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013). In similar petitions, courts around the country have consistently waived prudential exhaustion requirements. *See, e.g., Marin Garcia v. Noem*, No. 1:25-cv-1271, 2025 WL 3017200, at *5 (W.D. Mich. Oct. 29, 2025) (declining to require exhaustion where petitioner had not requested a bond hearing); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *4 (E.D. Mich. Sept. 9, 2025). This Court should exercise its discretion to do the same here.

There are four primary circumstances when courts waive prudential exhaustion requirements—all of which strongly favor waiver here. First, courts consider whether "pursuit of

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[1] In the overwhelming majority of decisions, federal courts have rejected Respondents' sudden reinterpretation of the statutory scheme, and have held that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *See, e.g., Sanchez Alvarez v. Noem*, No. 1:25-CV-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Gomes v. Hyde*, No. 25-CV-11571, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, --- F. Supp. 3d ---, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, --- F. Supp. 3d ---, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 25-CV-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Leal-Hernandez v. Noem*, No. 25-CV-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos v. Raycraft*, --- F. Supp. 3d ---, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Hasan v. Crawford*, --- F. Supp. 3d ---, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Yumbillo v. Stamper*, No. 25-CV-00479, 2025 WL 2688160 (D. Me. Sept. 19, 2025).

administrative remedies would be a futile gesture." *Shearson*, 725 F.3d at 594. Here, requiring Petitioner to wait for an immigration judge to deny a bond hearing or for the BIA to deny a bond appeal would be futile. Waiver based on futility is especially appropriate when the administrative agency "has predetermined the disputed issue" by having a "clearly stated position" that the petitioner is not eligible for the relief sought. *Cooper v. Zych*, No. 09-CV-11620, 2009 WL 2711957, at *2 (E.D. Mich. Aug. 25, 2009). *See also McCarthy v. Madigan*, 503 U.S. 140, 148 (1992) (same). Because the BIA recently issued a precedential, binding decision holding that all noncitizens who entered without admission or parole are ineligible for § 1226(a) bond hearings, *see Yajure Hurtado*, 29 I&N Dec. 216, 228 (BIA Sept. 5, 2025), the BIA and IJ will undoubtedly deny Petitioner's bond request. Seeking bond is futile because Respondents have "predetermined the disputed issue." *Cooper*, 2009 WL 2711957, at *2. Respondents admit that administrative exhaustion would be futile. Resp. Brf., ECF No. 4, PageID.32 (admitting *Yajure Hurtado* bars administrative relief).

Second, courts waive prudential exhaustion requirements when the "legal question is fit for resolution and delay means hardship." *Shalala v. Illinois Council on Long Term Care*, 529 U.S. 1, 13 (2000) (cleaned up). On average, the BIA took over six months to decide bond appeals in 2024, with hundreds of cases taking a year or longer to resolve. *See Rodriguez*, 779 F. Supp. 3d at 1245 (2025). Here, the "delays inherent in the administrative process . . . would result in the very harm that the bond hearing was designed to prevent: prolonged detention without due process." *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (cleaned up). Meanwhile, "the legal question" of which detention statute properly applies "is 'fit' for resolution." *Shalala*, 529 U.S. at 13. The legality of Petitioner's detention is a pure question of statutory interpretation and constitutional due process analysis. Because the Court can decide these purely legal questions

now, Petitioner "could be released within a few weeks as compared to the anticipated half-year wait through the BIA appeal route." *Pizarro Reyes*, 2025 WL 2609425, at *4.

Third, waiver is appropriate when a petitioner raises "non-frivolous" constitutional questions that cannot be adequately addressed through the administrative process. *Bangura v. Hansen*, 434 F.3d 487, 494 (6th Cir. 2006). Petitioner's due process arguments are far from frivolous. Many courts have already ruled that mandatory detention of similarly situated petitioners violates their due process rights. *See, e.g., Lopez-Campos*, 2025 WL 2496379, at *10. Since the "BIA lacks authority to review constitutional challenges," *Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006), "[n]either an [IJ] nor the [BIA] is positioned to properly adjudicate" Petitioner's due process claim. *Lopez Benitez*, 2025 WL 2371588, at *14.

Fourth, waiver of prudential exhaustion is appropriate because there is no need for IJs or the BIA to "make a factual record" or "apply [their] expertise." *McGee v. United States*, 402 U.S. 479, 484 (1971). There are no factual disputes, obviating any need for factual development. And the immigration courts have no expertise in matters of statutory interpretation, which is "the proper and peculiar province of the courts," *Loper Bright Enters.*, 603 U.S. at 385 (cleaned up), or in analyzing constitutional claims, which IJs wholly "lack[] authority to review," *Sterkaj*, 439 F.3d at 279. Thus, it would not impair agency functions for this Court to promptly address matters the agency is not equipped to handle in the first place.

The need for waiver is amplified in the context of a habeas corpus petition, which demands a "swift" remedy in the face of illegal detention. *Fay v. Noia*, 372 U.S. 391, 400 (1963). *See also* 28 U.S.C. § 2243. Requiring prior administrative exhaustion will serve only to prolong that illegal detention. Indeed, "[w]hen the liberty of a person is at stake, every day that passes is a critical one," thus necessitating habeas petitions to "be met with a sense of urgency." *Lopez-Campos*, 2025

WL 2496379, at *5. This Court should exercise its discretion to waive prudential exhaustion requirements here and proceed to the merits of this petition.

II. Section 1226(a), Not Section 1225(b)(2)(A) Applies to Petitioner.

A. Respondents Ignore Both Section 1226 and the INA's Structure.

Respondents invite this Court to read Section 1225 in isolation, ignoring not just Section 1226, but also the INA's overall structure. Section 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings," while § 1225 authorizes detention of "certain aliens seeking admission into the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). As their titles state, § 1226 relates to "[a]pprehension and detention" of noncitizens living in the U.S., while § 1225 covers procedures at the border, including "[i]nspection by immigration officers" and "expedited removal of inadmissible arriving aliens."[2]

Respondents do not respond to the fact that the plain text of Section 1226(a) applies here: Petitioner was arrested "on a warrant . . . pending a decision on whether [he is] to be removed from the United States." Respondents also cannot explain why Section 1226 does not render bond-eligible most people who reside here but have not been admitted when it specifically carves out "inadmissible" non-citizens charged with or convicted of certain crimes for mandatory detention. 8 U.S.C. § 1226(c)(1)(A), (D)-(E). A "plain reading of this exception implies that the default discretionary bond procedures in section 1226(a) apply to noncitizens who … are 'present in the United States without being admitted or paroled'" unless Section 1226(c) applies. *Rodriguez v. Bostock*, -- F. Supp. 3d --, 2025 WL 2782499, *17 (W.D. Wash., Sept. 30, 2025).

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[2] On Petitioner's Notice to Appear, Respondents checked the box labeled "You are an alien present in the United States who has not been admitted or paroled" rather than checking the box labeled "arriving citizen." This supports the conclusion that § 1226(a) (corresponding to those "present"), as opposed to 1225(b)(2)(A) (correspond to those "arriving"), applies here. *See Lopez-Campos*, 2025 WL 2496379.

Congress just amended Section 1226(c) in the Laken Riley Act. If Respondents' interpretation of Section 1225(b)(2) were correct, that "would render the Laken Riley Act a meaningless amendment, since it would have prescribed mandatory detention for noncitizens already subject to it." *Cordero Pelico v. Kaiser*, 2025 WL 2822876, *12 (N.D. Cal., Oct. 3, 2025). Respondents' only answer to that point is to say the Court should ignore Laken Riley because it does not apply to Petitioner. But the fact that Petitioner cannot be detained under Laken Riley doesn't alter the fact that Respondents' reading renders Laken Riley meaningless.

The government tries to explain away the conflict between their reading of § 1225(b)(2)(A)—that it mandates detention for *all* non-admitted non-citizens—and § 1226—which mandates detention for *some but not all* non-admitted non-citizens—as a mere redundancy. Resp. Brf, ECF No. 4, PageID.27-28. But,

> even allowing for some redundancy in statutory drafting, it is a "cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant." Defendants' expansive reading of section 1225 … would render section 1226(c)(1)(E) "entirely redundant."

Rodriguez, 2025 WL 2782499, *19 (citing *Kungys v. United States*, 485 U.S. 759, 778 (1988)). *See Orellana v. Moniz*, No. 25-cv-12664, 2025 WL 2809996, *6 (D. Mass., Oct. 3, 2025) (Section 1226(c) "implies that there are no other circumstances under which a noncitizen detained under § 1226 is subject to mandatory detention.").

B. Respondents Misunderstand How Section 1225 Works.

Respondents say that § 1225 distinguishes "between recently arrived noncitizens ('arriving aliens') and those like Petitioners who were able to evade apprehension for many years ('applicants for admission')." Resp. Brf, ECF No. 4, PageID.27. Respondents assert that § 1225(b)(1) covers "arriving aliens", while Section 1225(a) and (b)(2) apply to "applicants for admission." Not so.

First, the distinction Respondents invent between "arriving aliens" (i.e. people at the border) and "applicants for admission" (i.e. people already in the U.S.) is entirely divorced from the statutory text. Section 1225(a)(1) defines "applicants for admission" to *include* non-citizens arriving in the U.S. Meanwhile, in describing "arriving aliens," Respondents themselves cite provisions in Section 1225(b)(2) about "crewmen, "stowaways," and people arriving from contiguous territory, even though Respondents contend that Section 1225(b)(2) only concerns "applicants for admission." Resp. Brf, ECF No. 4, PageID.25-27. There is no plausible way to read Section 1225(b)(2) as covering only people who have lived in the U.S. for years.

Second, Respondents misunderstand the structure of § 1225. Section 1225(b)(1) provides for expedited removal and detention of certain non-citizens. Section 1225(b)(2) applies to other "applicants for admission" who are "seeking admission" who are *not* subject to expedited removal but instead are in full removal proceedings. Depending on their circumstances, people arriving at the border may fall under either (b)(1) or (b)(2). *See Jennings*, 583 U.S. at 287 (with (b)(2) serving "as a catchall provision" that applies to those not covered by (b)(1)).

Recognizing that Section 1225 is a border inspection scheme—as dozens of courts have done—does not nullify Section 1225(b)(2), which continues to apply to non-citizens arriving at the border who are not subject to expedited removal. In other words:

> § 1225(b)(2) applies to arriving noncitizens who are inadmissible on grounds other than … the grounds that put an arriving noncitizen on the track for expedited removal[]. The statute governing inadmissibility lists ten grounds for inadmissibility…. There are thus arriving noncitizens inadmissible on these other bases who would fall under Section 1225(b)(2), as opposed to Section 1225(b)(1).

Cordero Pelico, 2025 WL 2822876, at* 13. *See Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *7 (D.N.J., Sept. 26, 2025) (unpublished) (examples of non-citizens at border not subject to expedited removal, such as certain lawful residents returning from abroad who must be

inspected by immigration officials). The argument that Section 1225(b)(2) is meaningless unless applied to Petitioner is wrong.

C. Respondents Misinterpret Section 1225(b)(2).

Even if one reads Section 1225(b)(2) in complete isolation without regard to the statutory structure, it does not support Respondents' reading. Respondents entirely ignore Section 1225(b)(2)'s requirement for a determination by an "examining immigration officer." Petitioner is seeking relief before an immigration judge, not examination by an immigration officer. Instead, Respondents focus on whether Petitioner is an "applicant for admission" who is "seeking admission." Oddly, Respondents point to the definition of "admission"—which is "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." Resp. Brf, ECF No. 4, PageID.22 (citing 8 U.S.C. § 1101(a)(13)(A)). Not only does this definition take us right back to inspections by immigration officers, but "[c]onstruing section 1225(b)(2) to apply to noncitizens already residing in the country would read the word 'entry' out of the definition[]." *Chafla v. Scott*, 2025 WL 2688541, *6 (D. Me., Sept. 22, 2025).

Respondents—constrained by the present tense nature of "seeking admission"—engage in verbal gymnastics to obfuscate the obvious: "the active language implies that the noncitizen is actively engaged in the exercise of being admitted to the United States, rather than currently residing here and seeking to stay." *Id.* Respondents say seeking immigration relief that would allow Petitioner to *remain* is the same as seeking to *enter*. Resp. Brf, ECF No. 4, PageID.23. But Petitioner is not seeking permission to enter from an immigration officer, but rather adjustment of status from an immigration judge. For example, if Petitioner obtains cancellation of removal (which is a form of relief available both to people who were and were not lawfully admitted, 8 U.S.C. § 1229b(a)(1)), that would result in adjustment of their legal status, not an entry into the U.S., which is where Petitioner already is.

D. Respondents Misunderstand the Legislative History.

Respondents ignore the legislative history and contemporaneously issued regulations showing that Section 1226(a) applies here. *See* Pet. Brief, ECF No. 4, PageID.29-33. Instead, they argue that in enacting IIRIRA, Congress wanted to ensure that people seeking to enter lawfully are not treated worse than those who entered without inspection. Resp. Brief, ECF No. 4, PageID.29-30. But the government "err[s] in its analysis by identifying *one* of Congress's concerns in enacting IIRIRA and then treating it as Congress's sole concern driving the statute." *Cordero Pelico*, 2025 WL 2822876 at 13. While Congress was concerned about "placing noncitizens on equal footing in *removal* proceedings" (and IIRIRA thus imposes a greater burden of proof on non-citizens in the U.S. in defending against removal), that "says nothing about detention." *Rodriguez*, 2025 WL 2782499, *24 (cleaned up). Respondents cannot

> enlarge Congress's stated concern that noncitizens living in the United States had an advantage during *removal* proceedings pre-IIRIRA to an unarticulated aim to mandate *detention* for all such noncitizens post-IIRIRA. It is easy to conceive of reasons Congress would distinguish between these concepts; for one, noncitizens who have lived for years in this country are more likely to be working in critical industries, parenting U.S. citizen children, or otherwise serving their communities .... If Congress had wished to enact the transformation of the immigration detention system that Defendants contend it did—requiring the detention of millions of people currently living and working in the United States—then it would have said so more clearly. *Id.*

To adopt Respondents' interpretation would violate the "no-elephants-in-mouseholes canon," which "recognizes that Congress does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions." *Bostock v. Clayton County*, 590 U.S. 644, 680 (2020). If Congress intended to upend its prior scheme and mandate that thousands, if not millions, of people who have lived here for years be held without bond hearings, then (1) Congress would have clearly said so; and (2) it is inconceivable that immigration authorities would have simply carried on for three decades without implementing that Congressional directive. *See Loper Bright*

Enters. v. Raimondo, 603 U.S. 369, 386 (2024) ("longstanding practice of the government" can inform court's interpretation of statutory provisions).

III. Due Process Requires a Bond Hearing.

Respondents do not even try to show a special justification for detaining Petitioner without a bond hearing. Nor weigh the factors of *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). Nor identify a single case where courts have found it constitutional to deprive long-time residents of their liberty without any consideration of flight risk, dangerousness, or criminal history. Rather, Respondents argue that because procedural protections exist in *removal* proceedings (i.e., hearings on immigration relief), Petitioner has no right to due process on *detention*. But Petitioner has a liberty interest in freedom from detention that is distinct from their liberty interest in remaining in the U.S. Deprivation of either requires due process.

Respondents also point to inapposite cases concerning the more limited due process protections for people apprehended upon entry or with significant criminal history. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), concerned the "due process rights of an alien seeking initial entry" and governmental control over who crosses our borders. *Id.* at 107; *see id.* at 139 (discussing the due process rights of "an alien at the threshold of initial entry" who lack "established connections in this country"). Petitioner is not "at the threshold of initial entry," and has "established connections" here. *See Cordero Pelico*, 2025 WL 2822876, at *6 (distinguishing government's cases on exactly this basis).

Respondents' reliance on *Demore v. Kim*, 538 U.S. 510 (2003), is similarly off base. *Demore* rejected a facial challenge to 8 U.S.C. § 1226(c), which requires mandatory detention of certain noncitizens with criminal convictions. Based on the presumption that such people are a danger/flight risk, the Court found the government's interest in detaining them for "a very limited time" outweighed their interest in liberty. *Id.* at 529, n.12. *Demore* does not create an irrebuttable

presumption of dangerousness/flight risk even for people with significant criminal history, much less for people who—as here—have been living law-abiding lives in the community. And *Zadvydas v. Davis*, 533 U.S. 678 (2001), contrary to Respondents' depiction, emphasizes that immigration detention must be tied to the civil purposes of preventing flight and protecting the public. *Zadvydas* held that even where non-citizens (unlike here) had already been ordered removed (such that the government had specific interests around accomplishing removal), there were "serious constitutional problem[s]" with reading the INA to allow for prolonged detention. *Id.* In short, Respondents' cited cases do not support their claim. *Id.*, at 690.

IV. There Are Multiple Proper Respondents.

The parties agree that the ICE field office director is Petitioner's "immediate custodian" and a proper respondent. *See Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). But it does not follow that because the director is *a* proper respondent, he is the *only* proper respondent.

First, Petitioner is not just seeking a writ of habeas corpus, but also declaratory relief, an injunction on transfer, fees and any other just and proper relief. Pet., ECF No. 1, PageID.11-12. This Court has jurisdiction both in habeas (28 U.S.C. § 2241; U.S. Const. art. I, § 9, cl. 2), and over federal questions (28 U.S.C. § 1331). It can grant relief under 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

Second, Petitioner is detained under a new ICE directive issued in coordination with DOJ. If Respondent Noem rescinded the directive, Petitioner could be released, either based on ICE setting bond, 8 C.F.R. § 236.1(8), or through bond hearings.

Third, Secretary Noem is the proper Respondent with respect to the requested injunction on transfer, over which she has ultimate authority.

CONCLUSION

Petitioner requests that the Court grant the relief requested in the Petition.

Date: November 6, 2025

Respectfully submitted,

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