

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

HENDERSON GUEVERA AREVALO,

Case No. 1:25-cv-1365

Petitioner,

Hon. Robert J. Jonker  
U.S. District Court Judge

v.

Hon. Maarten Vermaat  
U.S. Magistrate Judge

ROBERT LYNCH, Acting Field Director for  
U.S. Immigration and Customs Enforcement, Detroit  
Field Office, in his official capacity; KRISTI NOEM,  
Secretary, U.S. Department of Homeland Security;  
and PAMELA BONDI, U.S. Attorney General,

Respondents.

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**RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Henderson Guevera Arevalo is an arriving alien who applied for admission at the United States border and is subject to mandatory detention under the plain language of 8 U.S.C. § 1225. His detention pending removal entirely is unrelated to the Board of Immigration Appeals' recent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) or the government policy change alleged in his Petition. Accordingly, the Court should decline to issue a writ of habeas corpus to Petitioner. The Court should also dismiss the Secretary of the Department of Homeland Security and Attorney General as respondents to this action because the Detroit ICE Field Office Director is the only proper respondent in this habeas suit.<sup>1</sup>

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<sup>1</sup> Petitioner named Robert Lynch as a Respondent, as Field Office Director for the Detroit ICE Field Office. Mr. Lynch no longer occupies that position and the current Acting Field Office Director, Kevin Raycraft, should automatically be substituted as the Field Office Director Respondent under Fed. R. Civ. P. 25(d).

## FACTUAL BACKGROUND

Petitioner is a citizen of Venezuela who entered the United States in June 2023. (Ex. A, De Leon Decl. ¶ 4.) He applied for admission into the United States as an arriving alien at the Laredo, Texas Port of Entry on June 30, 2023, without possessing valid immigration documents. (*Id.* ¶ 5.) U.S. Customs and Border Protection (CBP) determined that he was not clearly and beyond a doubt entitled to admission. (*Id.* ¶¶ 5-6; Ex B, Notice to Appear.) CBP Officer Ana L. Mendoza documented that determination on a Notice to Appear on June 30, 2023. (Ex B, Notice to Appear.) The notice states that Petitioner is “an arriving alien” who “applied for admission,” but was not in possession of valid immigration or entry documents and thus was inadmissible under INA § 212(a)(7)(i)(1). (Ex. B, Notice to Appear.) The notice was filed in the San Antonio Immigration Court, and ICE paroled Petitioner from custody pending his removal proceedings. (Ex. A, De Leon Decl. ¶ 5.) Petitioner’s inadmissibility also was documented in a Form I-213, Record of Deportable/Inadmissible Alien. (*Id.* ¶ 6.)

On September 13, 2025, an ICE agent arrested Petitioner for being illegally present in the United States. (*Id.* ¶ 7.) ICE detained Petitioner because he was an applicant for admission to the United States seeking admission, and not clearly and beyond doubt entitled to admission, under 8 U.S.C. § 1225(b). (*Id.*) DHS then transferred him to the North Lake Processing Center in Baldwin, Michigan. (*Id.* ¶ 8.) His removal proceedings are now before the Detroit Immigration Court, where he is scheduled to appear for a master calendar hearing on January 8, 2026. (*Id.* ¶ 9.) He has not requested a bond hearing. (*Id.*)

On November 4, 2025, Petitioner filed a petition in federal court seeking a writ of habeas corpus asking the Court to direct Respondents to release Petitioner or provide him with a bond hearing within three days. Additionally, he asks the Court to issue a declaration that 8 U.S.C. § 1226(a) governs his detention and eligibility for bond. Finally, he asks the Court to prohibit the

Respondents from transferring him from the Western District of Michigan during these proceedings.

### STATUTORY FRAMEWORK

#### I. The Pre-IIRIRA Framework Gave Preferential Treatment to Aliens Unlawfully Present in the United States.

The Immigration and Nationality Act (INA), as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the government is obligated to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether the alien had physically “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); see *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). “Entry” referred to “any coming of an alien into the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) “dictated what type of [removal] proceeding applied” and whether the alien would be detained pending those proceedings, *Hing Sum v. Holder*, 602 F.3d at 1099.

At the time, the INA “provided for two types of removal proceedings: deportation hearing and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). An alien who arrived at a port of entry would be placed in “exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole.” *Hurtado*, 29 I. & N. Dec. at 223; see 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens in deportation proceedings, unlike those in exclusion proceedings, “were

entitled to request release on bond.” *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

The INA’s prior framework distinguishing between aliens based on physical “entry” had the ‘unintended and undesirable consequence’ of having created a statutory scheme where aliens who entered without inspection ‘could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,’ *including the right to request release on bond*, while aliens who had ‘actually presented themselves to authorities for inspection . . . were subject to mandatory custody.

*Hurtado*, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y General of U.S.*, 693 F.3d 408, 413 n.5 (2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“House Rep.”) (“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”).

## **II. IIRIRA Eliminated the Preferential Treatment of Aliens Unlawfully Present in the United States and Mandated Detention of all “Applicants for Admission.”**

Congress discarded the prior regime through enactment of the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, the statute had the goal of “ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

To that end, IIRIRA replaced the prior focus on physical “entry” and instead made lawful “admission” the governing touchstone. IIRIRA defined “admission” to mean “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) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the “pivotal factor in determining an alien’s status” would be

“whether or not the alien has been *lawfully* admitted.” House Rep., *supra*, at 226 (emphasis added); *Hing Sum v. Holder*, 602 F.3d at 1100 (similar). IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into “removal proceedings.” *Hurtado*, 29 I. & N. Dec. at 223.

IIRIRA effected these changes through several provisions codified at 8 U.S.C. § 1225:

**Section 1225(a):** Section 1225(a) codifies Congress’s decision to make lawful “admission,” rather than physical entry, the touchstone. That provision states that an alien “present in the United States who has not been admitted or who arrives in the United States” “shall be deemed . . . an applicant for admission”:

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 and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1) (emphasis added). “All aliens . . . who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States” are required to “be inspected by [an] immigration officer.” *Id.* § 1225(a)(3). The inspection by the immigration officer is designed to determine whether the alien may be lawfully “admitted” to the country or, instead, must be referred to removal proceedings.

**Section 1225(b):** IIRIRA also divided removal proceedings into two tracks—expedited removal and non-expedited “Section 240” proceedings—and mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(1) provides for so-called “expedited removal proceedings.” *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020). Expedited removal proceedings potentially can be applied to a subset of aliens—those who (1) are “arriving in the United States,” or who (2) have “not been admitted or paroled into the United States” and have “not affirmatively shown, to the

satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration officer shall “order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution.” *Id.* § 1225(b)(1)(A)(i). In that event, the alien “shall be detained pending a final determination of credible fear or persecution and, if found not to have such fear, until removed.” *Id.* § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for a form of relief from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

Section 1225(b)(2) is a “catchall provision that applies to all applicants for admission not covered by” subsection (b)(1). *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It requires that those aliens be detained pending § 240 removal proceedings:

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 [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added). *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring § 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that § 1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin”).

While § 1225(b)(2) does not allow for aliens to be released on bond, the INA grants DHS discretion to exercise its parole authority to temporarily release an applicant for admission, but “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). Parole, however, “shall not be regarded as admission of the alien.” *Id.*;

*Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that “the purposes of such parole . . . been served,” the “alien shall . . . be returned to the custody from which he was paroled” and be “dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A).

**Section 1226:** IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas, or are later determined to have been improperly admitted. The statute provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a). Detention under this provision is generally discretionary: The Attorney General “may” either “continue to detain the arrested alien” or release the alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2).

That “default rule,” however, does not apply to certain criminal aliens who are being released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c). Section 1226(c) provides that “[t]he Attorney General shall take into custody” certain classes of criminal aliens—those who are inadmissible or deportable because the alien (1) “committed” certain offenses delineated in 8 U.S.C. §§ 1182 and 1227; or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The government must detain these aliens “when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.” *Id.*

## 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 he is an arriving alien seeking admission. 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 and Attorney General Bondi as respondents to this action.

### **I. Petitioner Has Not Exhausted His Administrative Remedies.**

Petitioner has yet to request a bond hearing. 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); *Rabi v. Sessions*, No. 19-3249, 2018 U.S. App. LEXIS 19661, at \*1-2 (6th Cir. July 16, 2018) (unpublished order). 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)).

The three-factor test weighs in favor of requiring Petitioner to exhaust his administrative remedies. First, although Petitioner alleges 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. “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 Petitioner applies for and the immigration court grants him 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.

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). *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) (“Our analysis begins and ends with the text.”).

### **A. Section 1225(b)(2) mandates detention of arriving aliens like Petitioner.**

Under the plain language of § 1225(b)(2), DHS is required to detain all arriving aliens, like Petitioner, who applied for admission to the United States, pending their removal proceedings—regardless of how long the alien has been in the United States or how far from the border they ventured.

#### *1. Applicant for admission.*

Section 1225(a) defines “applicant for admission” to encompass an alien who either “arrives in the United States” or who is “present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1); *Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at \*3 (E.D. Mo. Nov. 10, 2025). An “arriving alien” is defined 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, 1001.1(q). 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’” under § 1225(a)(1). *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (quoting § 1225(a)(1)). And an arriving alien “remains an arriving alien even if paroled pursuant to section 212(d)(5)” of the INA, “and even after any such parole is terminated

or revoked.” 8 C.F.R. § 1001.1(q). Applicants for admission seeking admission at a port of entry “must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States.” 8 C.F.R. § 235.1(f)(1).

Section 1225(b)(2) in turn provides that “an alien who is an applicant for admission” “shall be detained” pending removal proceedings if the “alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). The statute’s use of the term “shall” makes clear that detention is mandatory, and the statute makes no exception for the duration of the alien’s presence in the country or where in the country he is located. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998). Therefore, the statute’s plain text mandates that DHS detain all “applicants for admission” who do not fall within one of its exceptions.

Petitioner falls squarely within the statutory definition mandating detention. He is “an arriving alien” who “applied for admission” at a port of entry. (Ex. B, Notice to Appear.) He remains “present in the United States,” and there is no dispute that he has “not been admitted.” 8 U.S.C. § 1225(a). He thus remains an arriving alien, despite his parole into the United States. 8 C.F.R. § 1001.1(q). Upon his application for entry to the United States, he did not present documents sufficient to establish that he was not subject to removal, and thus immediately was placed into removal proceedings under § 1229a. (Ex. B, Notice to Appear); *see also* 8 C.F.R. § 235.1(f)(1). He cannot—and did not—establish that he is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Therefore, Petitioner “shall be detained for a proceeding under” 8 U.S.C. § 1229a. 8 U.S.C. § 1225(b)(2)(A).

Section 1225(b)(2) governs Petitioner’s detention even under Petitioner’s own reading of the statute. Petitioner acknowledges that:

the INA provides for mandatory detention of certain recently arrived noncitizens, namely those subject to expedited removal under 8 U.S.C. § 1225(b)(1), *and other recent arrivals seeking admission under § 1225(b)(2)*. See *Jennings*, 583 U.S. at 287, 289 (explaining that § 1225(b)(2)’s mandatory detention scheme applies “at the Nation’s borders and ports of entry” to noncitizens “seeking admission into the United States.”). . . . § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States.

(Pet., ECF No. 1, ¶¶ 28, 43 (emphasis added).)

Petitioner is an arriving alien and applicant for admission subject to mandatory detention under § 1225(b)(2).

2. *Seeking admission.*

Section 1225(b)(2) further requires the detention of an “applicant for admission, if the examining officer determines that [the] alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory text and context show that being an “applicant for admission” is a means of “seeking admission”—no additional affirmative step is necessary. In other words, every “applicant for admission” is inherently and necessarily “seeking admission,” at least absent a choice to pursue voluntary withdrawal or voluntary departure.

Section 1225(a) provides that “[a]ll aliens . . . who are applicants for admission *or otherwise* seeking admission or readmission . . . shall be inspected.” 8 U.S.C. § 1225(a)(3) (emphasis added). The word “[o]therwise” means “in a different way or manner.” *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster’s Third New International Dictionary 1598 (1971)); see also *Att’y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds Tobacco Co.*, 839

F.3d 958, 963-64 (11th Cir. 2016) (en banc) (“or otherwise” means “the first action is a subset of the second action”); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th Cir. 2019). Being an “applicant for admission” thus is a particular “way or manner” of seeking admission, such that an alien who is an “applicant for admission” is “seeking admission” for purposes of Section 1252(b)(2)(A). No separate affirmative act is necessary. See *Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 (BIA 2012) (“[M]any 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”).

This reading is consistent with the everyday meaning of the statutory terms. One may “seek” something without “applying” for it—for example, one who is “seeking” happiness is not “applying” for it. But one *applying* for something is necessarily *seeking* it. Compare Webster’s New World College Dictionary 69 (4th ed.) (“apply” means “To make a formal request (*to* someone *for* something)”), *with id.* at 1299 (“seek” means “to request, ask for”). For example, a person who is “applying” for admission to a college or club is “seeking” admission to the college or club. See *The American Heritage Dictionary of the English Language* 63 (1980) (“American Heritage Dictionary”) (“apply” means “[t]o request or *seek* employment, acceptance, or *admission*”) (emphasis added). Likewise, an alien who is “applying” for admission to the United States (*i.e.*, an “applicant for admission”) is “seeking admission” to the United States. That is true even when the alien has been physically present in the country for many years, as they can “still be an applicant for lawful entry, seeking legal ‘admission.’” *Mejia Olalde*, 2025 WL 3131942, at \*3. “If Congress meant to say that an alien no longer is ‘seeking admission’ after some amount of time in the United States, Congress knew how to do so.” *Id.* at \*4.

Moreover, Congress's use of the present participle—"seeking"—in 8 U.S.C. § 1225(b)(2)(A) should not be ignored. *United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."). By using the present participle "seeking," § 1225(b)(2)(A) "signal[s] present and continuing action." *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). The phrase "seeking admission" "does not include something in the past that has ended or something yet to come." *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019); *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)).

Of course, "seeking admission" also has meaning beyond being an "applicant for admission." As § 1225(a)(3) shows, being an "applicant for admission" is only *one* "way or manner" of "seeking admission"—not the exclusive way. For example, lawful permanent residents returning to the United States are not "applicants for admission" because they are already admitted, but they still may be "seeking admission." *See* 8 U.S.C. § 1103(A)(13)(C). But for purposes of § 1225(b)(2) and its regulation of "applicants for admission," the statute unambiguously provides that an alien who is an "applicant for admission" is "seeking admission," even if the alien is not engaged in some separate, affirmative act to obtain lawful admission. *See Mejia Olalde*, 2025 WL 3131942, at \*1 ("it makes no sense to describe an active applicant for admission as somebody who is not 'seeking' admission"); *Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913, at \*1-2 (D. Mass. July 28, 2025) (because alien did not have lawful status, he remained an applicant for admission subject to mandatory detention under § 1225(b)(2)); *Barrios*

*Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at \*5 (W.D. La. Oct. 31, 2025) (holding that “the plain statutory language of § 1225(a)(1) that defines ‘applicants for admission’ . . . also applies to those who are ‘present in the United States who ha[ve] not been admitted’” (quoting 8 U.S.C. § 1225(a)(1)).

Here, Petitioner is “seeking admission” under § 1225(b)(2) because he is an applicant for admission who is present without admission and is seeking to remain in the United States. He has not agreed to depart, so 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). Nor has he 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; *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). 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 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 his application 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).

Again, Petitioner is seeking admission under his own reading of the statute. He acknowledges that the “entire framework” of § 1225(b) “is premised on inspections at the border

of people who are ‘seeking admission’ to the United States,” and that the statute mandates said aliens’ detention. (Pet., ECF No. 1, ¶ 43 (quoting 8 U.S.C. § 1225(b)(2)(A)). Petitioner sought admission at a port of entry. *See Jennings*, 583 U.S. at 287. And he continues to seek admission to the United States through his removal and asylum proceedings.

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

***B. Petitioner’s remains subject to § 1225(b)(2) despite his prior parole.***

As noted above, the INA grants DHS discretion to release on parole temporarily “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5); *see* 8 C.F.R. § 212.5(b). This discretionary parole is the “specific provision authorizing release from § 1225(b) detention;” “there are no *other* circumstances under which aliens detained under § 1225(b) may be released.” *Jennings*, 583 U.S. at 300. Importantly, however, parole does not constitute a lawful admission or a determination of admissibility, 8 U.S.C. §§ 1101(a)(13)(B), 1182(d)(5)(A), and an alien granted parole remains an applicant for admission, *id.* § 1182(d)(5)(A); *see also* 8 C.F.R. §§ 1.2 (providing that an “arriving alien remains an arriving alien even if paroled pursuant to [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or revoked”), 1001.1(q) (same); *Jennings*, 583 U.S. at 288 (parole under § 1182(d)(5) “shall not be regarded as an admission of the alien” (quoting § 1182(d)(5)(A)). Again, after parole terminates, the “alien shall . . . be returned to the custody from which he was paroled” and be “dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A).

Upon his application for admission at the port of entry, Petitioner was paroled without admission into the United States under § 1182(d)(5)(A). (*See* Ex. A, De Leon Decl. ¶ 5.) But his parole “did not alter [his] status an excluded alien or otherwise bring him ‘within the United

States.” *Leng May Ma v. Barber*, 357 U.S. 185, 186 (1958). Rather, he remained an applicant for admission during his parole, and following his parole, he remains subject to detention under 8 U.S.C. § 1225(b)(2). 8 U.S.C. § 1182(d)(5)(A).

**C. Section 1226(c) does not apply to Petitioner.**

Petitioner argues that his detention instead should be governed § 1226.

As noted above, § 1226(a) provides the detention authority for the significant group of aliens who are *not* “applicants for admission” subject to § 1225(b)(2)(A)—specifically, aliens who have been *admitted* to the United States but are now removable. *See* 8 U.S.C. § 1226(c)(1)(B)-(C); *Jennings*, 583 U.S. at 289 (“§ 1226 applies to aliens already present in the United States”). For example, the detention of any of the millions of aliens who have overstayed their visas is governed by § 1226(a), because those aliens (unlike Petitioner) *were* lawfully admitted to the United States. *See Ojo v. Warden Elizabeth Det. Ctr.*, 808 F. App’x 61, 64 (3d Cir. 2020) (finding visa overstay charge governed by § 1226(a)). Likewise, § 1226(a) applies to aliens who are lawfully present but have committed certain crimes. 8 U.S.C. § 1226(c)(1)(B)-(C). It also covers aliens who are inadmissible but were erroneously admitted. *See* 8 U.S.C. § 1227(a), (a)(1)(A) (providing for the removal of “[a]ny alien . . . in *and admitted* to the United States,” including “[a]ny alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at the time”).

Because Petitioner is not an admitted alien, but rather an arriving alien seeking admission, § 1226(a) does not apply to him.

**D. Section 1225(b)(2) already applied to arriving aliens like Petitioner.**

Petitioner alleges that he is detained due to a new DHS that mandates detention of aliens who initially entered the United States without inspection under § 1225(b)(2)(A). (Pet., ECF No.

1, ¶ 4.) He further states that he is ineligible for bond due to the BIA's decision in *Matter of Yajure Hurtado*, 29 I & N Dec. 216. (*Id.* ¶ 5.)

The policy change alleged in the petition, however, does not apply to Petitioner, because he did not enter the United States without inspection. Rather, he applied for admission at a port of entry. Section 1225(b)(2)(A) therefore already applied to him. *See, e.g., Clark v. Martinez*, 543 U.S. 371, 373 (2005) (discussing the applicability of § 1225(b)(2)(A) to arriving aliens); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at \*5 (E.D. Mich. Sept. 9, 2025) (distinguishing arriving aliens subject to § 1225(b)(2)(A) from those who have “already present” in the United States). Likewise, Petitioner is not in the class of persons defined by *Matter of Yajure Hurtado*. There, the BIA addressed whether aliens “who surreptitiously cross into the United States remain applicants for admission unless and until they are lawfully inspected and admitted by an immigration officer.” *Matter of Yajure Hurtado*, 29 I&N Dec. at 228. The BIA determined that individuals who enter without inspection and reside for years in the United States without lawful status are subject to mandatory detention under § 1225(b)(2). *Id.* at 220. Petitioner, however, did not cross surreptitiously into the United States or enter without inspection; to the contrary, he was inspected and applied for admission at a port of entry. Accordingly, *Matter of Yajure Hurtado*, and any new policies alleging extending from that decision, do not apply here.

Indeed, courts long have applied the “entry fiction” to avoid giving favorable treatment to aliens like Petitioner who have not been lawfully admitted to the United States. Under that doctrine, all “aliens who arrive at a port of entry . . . are treated for due process purposes as if stopped at the border,” even if the alien is “on U.S. soil” or has been “paroled elsewhere in the country for years pending removal.” *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). For example, the Supreme Court held that

an alien who was paroled for nine years into the United States was still “regarded as stopped at the boundary line” and “had gained no foothold in the United States.” *Kaplan v. Tod*, 267 U.S. 228, 230; *see also Mezei*, 345 U.S. at 214-15. Similarly, it found that an alien who was paroled into the United States and remained for more than two years had not affected admission or entry, and remained subject to detention and deportation. *Leng May Ma v. Barber*, 357 U.S. at 186, 188-90. Courts have drawn that distinction for more than a century. *Id.* at 188.

In sum, the text and history of § 1225(b)(2) demonstrate that DHS properly has detained Petitioner under the statute. Nevertheless, Respondents concede that the Court and other district courts have declined to find that § 1225(b)(2) applies to noncitizens who have entered the United States and remained unlawfully for many years. *See, e.g., Delgado Delgado v. Noem*, No. 1:25-CV-1249, 2025 WL 3251144, at \*9, \*9 n.5 (W.D. Mich. Nov. 21, 2025). However, Petitioner has not been present unlawfully for many years; as an arriving alien and applicant for admission, 8 U.S.C. § 1225(b)(2) properly applies to him. *See, e.g., Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at \*1 (E.D. Mo. Nov. 10, 2025) (finding petitioner, as an applicant for admission, “is governed by § 1225(b)(2) and is ineligible to receive a bond hearing” under the “plain language” of the statute); *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)); *Barrios Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at \*5 (W.D. La. Oct. 31, 2025) (same); *Pena v. Hyde*, No. CV 25-11983-NMG, 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)). Consequently, § 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 v. Davis*, 533 U.S. 690, 701 (2001).

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.

In light of this precedent, Petitioner does not present a plausible due process claim. Petitioner has received notice of the charges against him, has access to counsel, is scheduled to attend additional 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 just over two months. (See Ex. A, De Leon Decl. ¶¶ 5-6, 9.) 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, v. Noem*, No. 1:25-CV-1131, 2025 WL 2992222, at \*8-9 (W.D. Mich. Oct. 24, 2025); *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). In the immigration context, that is the ICE Field Office Director. *Id.*

Here, the Secretary of the Department of Homeland Security and Attorney General are not proper respondents to this habeas action. Petitioner acknowledges that he named the Secretary because she “is responsible for the implementation and enforcement of the INA and oversees ICE.” (Pet., ECF No.1, ¶ 18.) He further acknowledges that he named the Attorney General because she “is responsible for the Department of Justice, of which the Executive Office for Immigration Review (EOIR) and the immigration system it operates is a component agency.” (*Id.* ¶ 20.) These are not proper reasons for naming respondents 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”); *Escobar-Ruiz v. Raycraft*, No. 1:25-CV-1232, 2025 WL 3039255, at \*8 (W.D. Mich. Oct. 31, 2025) (dismissing the Attorney General as an improper respondent to a habeas petition). Therefore, Secretary Noem and Attorney General Bondi should be dismissed from this litigation, leaving the Detroit ICE Field Office Director as the proper respondent. *Id.*

### CONCLUSION

Respondents respectfully request that the Court deny Henderson Guevera Arevalo’s 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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