

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JORGE HERNANDEZ QUINTERO

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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-1394

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

Hon. Ray Kent
U.S. Magistrate Judge

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

Petitioner Jorge Hernandez Quintero 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 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.

The Court must deny the Petition for several reasons. First, the Court lacks jurisdiction because Petitioner's claims are barred under 8 U.S.C. §§ 1252(e)(3), 1252(g), and 1252(b)(9). Second, Petitioner has failed to exhaust administrative remedies, as he has not requested a bond hearing with an immigration judge or pursued it in an appeal to the Board of Immigration Appeals (BIA). Third, Petitioner is properly detained under 8 U.S.C. § 1225(b)(2)(A). 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. Lastly, Petitioner’s detention does not violate the Due Process Clause. 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 from this action because the Detroit ICE Field Office Director is the only proper respondent in this habeas suit.¹

BACKGROUND

I. Statutory Framework.

A. Prior to 1996, United States immigration statutes 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 Executive 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.

¹ Petitioner named Robert Lynch as a Respondent, as Field Office Director for ICE’s Detroit Field Office in his official capacity. Mr. Lynch no longer occupies that position and the current Field Office Director, Kevin Raycraft, should automatically be substituted as the Field Office Director Respondent under Fed. R. Civ. P. 25(d).

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)).

Thus, 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”).

B. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) eliminated the preferential treatment of aliens unlawfully present in the United States and mandated detention of all “applicants for admission.”

Congress discarded that regime through enactment of IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that law 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 in Section 1225 of Title 8:

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

While Section 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

² Subsection (b)(2) does not apply to (1) aliens subject to expedited removal, (2) crewman, (3) stowaways, or (4) aliens who “arriv[e] on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States.” 8 U.S.C. § 1225(b)(2)(B)-(C).

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).³

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 Executive 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 against for the same offense.” *Id.*

Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for) aliens who (1) are inadmissible because they are physically present in the United States without admission or parole, have committed a material misrepresentation or fraud, or lack required documentation; and (2) are “charged with, arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of” certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

³ Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

C. DHS concluded that Section 1225(b)(2) requires detention of all applicants for admission.

For many years after IIRIRA, immigration judges treated aliens who entered the United States without admission and were later detained away from the border as being subject to discretionary detention under 8 U.S.C. § 1226(a) rather than mandatory detention under 8 U.S.C. § 1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6.

On July 8, 2025, DHS “revisited its legal position on detention and release authorities” and issued interim guidance that brought the Executive’s practices in line with the statute’s plain text. Specifically, DHS concluded that all aliens who enter the country without being admitted or who otherwise arrive in the United States are “subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)] and may not be released from ICE custody except by INA § 212(d)(5) parole.” As a result, the “only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under the INA § 236(a) are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C. § 1127].”

The Board of Immigration Appeals soon adopted this interpretation in *Hurtado*. The Board concluded that Section 1225(b)(2)’s mandatory detention regime applies to *all* aliens who entered the United States without inspection and admission:

Aliens ... who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United State for a lengthy period of time following entry without inspection, by itself, does not constitute an “admission.”

29 I. & N. Dec. at 228; *see also id.* at 225 (“Immigration Judges lack authority to hear bond requests or to grant bond to aliens ... who are present in the United States without admission”).

II. Factual and Procedural History.

Petitioner is a citizen of Mexico who unlawfully entered the United States in 2000. (Pet., ECF No. 1, PageID.1, ¶ 2; Ex. A, Cooper Decl. ¶ 4.) He has a pending Form I-360, Petition for

Amerasian, Widow(er), or Special Immigrant, as the parent of an abusive U.S. citizen, under the Violence Against Women Act (VAWA), which has been pending with U.S. Citizenship and Immigration Services (USCIS) since approximately 2023. (Pet., ECF No. 1, PageID.1-2, ¶ 4.) On October 27, 2025, a U.S. Border Patrol agent encountered and arrested Petitioner for being illegally present in the United States and placed him into removal proceedings. (Ex. A, Cooper Decl. ¶¶ 5-6.) Upon his detention, DHS determined that Petitioner 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)(2). (*Id.* ¶ 7.)

Petitioner is currently detained at the North Lake Processing Center in Baldwin, Michigan. (*Id.* ¶ 3; Pet., ECF No. 1, PageID.1, ¶ 1.) He is in removal proceedings on the detained docket before the Detroit immigration court, where he is scheduled for a master calendar hearing on November 21, 2025. (Ex. A, Cooper Decl. ¶ 8.) He has not requested a bond hearing. (*Id.* ¶ 7.)

On November 7, 2025, Petitioner filed a petition in federal court asking the Court to issue a writ of habeas corpus requiring Respondents to release him or provide him with a bond hearing within five days. Petitioner also asks the Court to declare that his detention violates the Due Process Clause of the Fifth Amendment and the INA.

ARGUMENT

I. The Court lacks jurisdiction over Petitioner's claims under Rule 12(b)(1).

A federal court must dismiss a case under Rule 12(b)(1) if it lacks subject-matter jurisdiction to adjudicate a party's claim. Fed. R. Civ. P. 12(b)(1); *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Moir v. Greater Cleveland Reg'l Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990). It must presume that a cause lies outside of its jurisdiction, and the party opposing a motion to dismiss for lack of jurisdiction under Rule 12(b)(1) bears the burden to establish jurisdiction. *Kokkonen*, 511 U.S. at 377. A challenge to subject-matter jurisdiction under

Rule 12(b)(1) may be a facial attack, which challenges the sufficiency of the plaintiff's factual allegations, or a factual attack, which challenges the fact of subject-matter jurisdiction. *Kokkonen*, 511 U.S. at 377; *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994). In considering a factual attack on subject matter jurisdiction (i.e., failure to exhaust administrative remedies), the court can consider affidavits and other evidence outside the pleadings to resolve factual disputes regarding jurisdiction. *Rogers v. Stratton Indus., Inc.*, 798 F.2d 913, 916 (6th Cir. 1986). Public records may also be considered without converting a motion to dismiss into a motion for summary judgment. *Universal Express, Inc. v. U.S. S.E.C.*, 177 F. App'x 52, 53 (11th Cir. 2006).

A. 8 U.S.C. § 1252(e)(3) bars review of Petitioner's claims.

Section 1252(e)(3) deprives this court of jurisdiction, including habeas corpus jurisdiction, over Petitioner's challenge to detention of noncitizens under § 1225(b)(2)(A). Section 1252(e)(3) limits judicial review of "determinations under section 1225(b) of this title and its implementation" to the District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3). Paragraph (e)(3) further confines this limited review to (1) whether § 1225(b) or an implementing regulation is constitutional or (2) whether a regulation or other written policy directive, guideline, or procedure implementing the section violates the law. *See* 8 U.S.C. § 1252(e)(3)(A)(i)-(ii); *see also M.M.V. v. Garland*, 1 F.4th 1100, 1109 (D.C. Cir. 2021). Unlike other provisions within 1252(e), section 1252(e)(3) applies broadly to judicial review of section 1225(b), not just determinations under section 1225(b)(1). *Compare* 8 U.S.C. § 1252(e)(1)(A), (e)(2), *with* 8 U.S.C. § 1252(e)(3)(A). *See Russello v. United States*, 464 U.S. 16, 23 (1983) (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972)) (presuming Congress acted intentionally where it "includes particular language in one section of a statute but omits it in another section of the same Act").

Here, Petitioner broadly challenges the determination, set forth in writing by DHS, that aliens who entered the United States without inspection are subject to mandatory detention under § 1225(b)(2). Petitioner thus seeks judicial review of a written policy or guideline implementing § 1225(b), which is covered by § 1252(e)(3)(A)(ii) and he cannot do in this Court.

B. 8 U.S.C. § 1252(g) bars review of Petitioner’s claims.

Section 1252(g) categorically bars jurisdiction over “*any* cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] to *commence proceedings*, adjudicate cases, or execute removal orders against any alien.” 8 U.S.C. § 1252(g) (emphasis added). The Secretary of Homeland Security’s decision to *commence removal proceedings*, including the decision to detain an alien pending such removal proceedings, squarely falls within this jurisdictional bar. In other words, Petitioner’s detention here clearly “aris[es] from” the decision to commence removal proceedings against an alien. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal” and also to review “ICE’s decision to take [plaintiff] into custody and to detain him during his removal proceedings”); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) (“The text of § 1252(g) . . . strips us of jurisdiction to review . . . [T]o perform or complete a removal, the [Secretary of Homeland Security] must exercise [her] discretionary power to detain an alien for a few days. That detention does not fall within some other part of the deportation process.”) (cleaned up) (internal quotations and citations omitted). Put in the Supreme Court’s words, detention pending removal is a “specification” of the decision to commence proceedings. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 n.9 (1999) (“§ 1252(g) covers” a “specification of the decision to ‘commence proceedings’”). As

such, judicial review of the Petitioner's claim[s] should be barred by § 1252(g) because his detention without bond is part and parcel of the commencement of proceedings against him.

Respondents acknowledge that language from some Sixth Circuit cases has been interpreted to allow habeas petitions challenging ongoing detention despite § 1252(g). See *Hamama v. Adducci*, 912 F.3d 869, 877 (6th Cir. 2018) (“the district court’s jurisdiction over the detention-based claims is independent of its jurisdiction over the removal-based claims”); *Elgharib v. Napolitano*, 600 F.3d 597, 605-06 (6th Cir. 2010) (noting that if the petition’s challenge did not address merits of removal, the district court may have jurisdiction over the habeas claims); *Moussa v. Jenifer*, 389 F.3d 550, 554 (6th Cir. 2004) (noting that “there are instances where § 1252(g) does not suspend habeas review,” such as challenges to indefinite detention following execution of a removal order); *Mustata v. U.S. Dep’t of Justice*, 179 F.3d 1017, 1020 (6th Cir. 1999) (concluding that 1252(g) only applies to the discrete actions of commencing proceedings, adjudicating cases, or executing removal orders). But these Sixth Circuit decisions did not involve § 1225 detention for commencement of proceedings or a Petitioner who directly challenged the decision to detain him in the first instance. In *Hamama*, the petitioners were not “seeking habeas relief in the first instance,” 912 F.3d at 875; they had already been ordered removed or had reopened orders of removal but were being detained due to criminal history or terrorist activities, *id.* at 873; the parties did not contest the court’s jurisdiction over detention-based claims and the primary focus was on whether the court could issue class-wide injunctive relief, *id.* at 877; and the Sixth Circuit determined that the district court lacked jurisdiction relating to challenges to the removal order and well as class action detention relief, *id.* at 877, 880. *Moussa* involved a request for a stay of deportation, not a detention claim, and concluded that the agency’s discretionary decision on whether to stay deportation was not subject to judicial review and was not separate from the

decision to execute the deportation order. 389 F.3d at 552, 554. *Elgharib* concluded that the district court lacked jurisdiction where the petitioner filed a petition for writ of prohibition after failing to appeal a motion to reopen her removal proceedings. 600 F.3d at 599, 606. And *Mustata* involved an ineffective assistance of counsel claim relating to withdrawal of an asylum claim and the petitioners were not detained. 178 F.3d at 1019. In contrast, here ICE detained Petitioner to commence removal proceedings and Petitioner claims that very act was unlawful. Therefore, these opinions do not favor jurisdiction here. *But see Puerto-Hernandez v. Lynch*, — F. Supp.3d —, 2025 WL 3012033, at *4 (W.D. Mich. Oct. 28, 2025) (concluding that habeas petition seeking a bond hearing was not in the scope of § 1252(g). Even if they did, Respondents disagree with such a reading of Section 1252(g) for reasons expressed in other Circuits, as indicated above, and are preserving this argument for appeal.

C. 8 U.S.C. § 1252(b)(9) bars review of Petitioner’s claims.

Under § 1252(b)(9), “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno*, 525 U.S. at 483. Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.*; *Hamdi v. Napolitano*, 620 F.3d 615, 626 (6th Cir. 2010); *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *Hamdi*, 620 F.3d at 626; *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. §

1252(a)(2)(D) provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.” *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]”).

Here, Petitioner challenges the decision and action to detain him, which arises from DHS’s decision to commence removal proceedings, and is thus an “action taken . . . to remove [him] from the United States.” *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95. While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294–95. In this case, the Petitioner *does* challenge the government’s decision to detain him in the first place. Though the Petitioner also frames his challenge as relating to detention authority, not just a challenge to DHS’s decision to detain him in the first instance, this additional framing does not evade the preclusive effect of § 1252(b)(9).

The fact that the Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention *is* an ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petitioner’s claims for lack of jurisdiction under § 1252(b)(9). The Petitioner must present his claims before the appropriate court of appeals because he challenges the government’s decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

II. Petitioner has not exhausted his administrative remedies.

The Court should dismiss the petition for writ of habeas corpus for lack of jurisdiction as Petitioner has failed to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement “aims to provide the agency with a chance to correct its own errors, ‘protect[] the authority of administrative agencies,’ and otherwise conserve judicial resources by ‘limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary.’” *Beharry v. Ashcroft*, 329 F.3d 51, 62 ((Sotomayor, J.)).

Here, Petitioner has not attempted to avail himself of the administrative remedies available to him. Petitioner has not requested a bond hearing before the immigration court. (Ex. A, Cooper Decl. ¶ 7.) Should he request and the court grant a hearing, he would have the right to appeal any unfavorable decision to the BIA. *Hernandez Torrealba v. U.S. Dep’t of Homeland Sec.*, No. 1:25-cv-01621, 2025 WL 2444114, at *9 (N.D. Ohio Aug. 25, 2025); *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)). Accordingly, Petitioner has yet to exhaust his administrative remedies within the immigration courts before seeking a writ of habeas corpus from this Court.

III. Petitioner is properly 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.

Under the plain language of Section 1225(b)(2), DHS is required to detain all aliens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the alien has been in the United States or how far from the border they ventured. That unambiguous language resolves this case. *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.”).

Petitioner falls within the plain text of § 1225(b)(2)(A) 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

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). And “admission” under the INA means not physical entry, but lawful entry after inspection by immigration authorities. 8 U.S.C. § 1101(a)(13)(A). 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.

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. 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). In fact, Petitioner has taken affirmative steps to try to remain in the United States—he filed a VAWA Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, as the parent of an abusive U.S. citizen, which has been pending with USCIS since approximately 2023. (Pet., ECF No. 1, PageID.1-2.) 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 INA 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 next master calendar hearing, 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 clearly and beyond a doubt entitled to be admitted, and Petitioner does not argue otherwise. (*See* Ex. A, Cooper Decl. ¶¶ 6-7.)

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.*

As mentioned above, 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. 103, 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.

To begin, there is no colorable argument that the Government’s interpretation of Section 1225(b)(2)(A) renders Section 1226(a)’s discretionary detention authority superfluous. Section 1226(a) authorizes the Executive to “arrest[] and detain[]” *any* “alien” pending removal proceedings but provides that the Executive also “may release the alien” on bond or conditional

parole. 8 U.S.C. § 1226(a). Section 1226(a) provides the detention authority for the significant group of aliens who are *not* “applicants for admission” subject to Section 1225(b)(2)(A)—specifically, aliens who have been admitted to the United States but are now removable. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (“the specific governs the general”). For example, the detention of any of the millions of alien who have overstayed their visas will be governed by Section 1226(a), because those aliens (unlike Petitioner) *were* lawfully admitted to the United States.

Likewise, the Government’s reading of Section 1225(b)(2)(A) does not render Section 1226(c) superfluous. As described above, Section 1226(c) is the exception to Section 1226(a)’s discretionary detention regime. It requires the Executive to detain “any alien” who is deportable or inadmissible for having committed specified offenses or engaged in terrorism-related actions. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Like Section 1226(a), subsection (c) applies to significant groups of aliens *not* encompassed by Section 1225(b)(2), such as visa overstayers.

Most obvious, Section 1226(c)(1) requires the Executive to detain aliens who *have been admitted* to the United States and are now “deportable.” *See* 8 U.S.C. § 1226(c)(1)(B)-(C). By contrast, Section 1225(b)(2) has no application to admitted aliens. Next, Section 1226(c)(1) requires detention of aliens who are “inadmissible” on certain grounds, *see* 8 U.S.C. § 1226(c)(1)(A), (D), (E). Those provisions, too, sweep more broadly than Section 1225(b)(2), because they cover 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....” (emphasis added)).

In this respect, Section 1226(c)(1) applies to admitted aliens, who are not covered by Section 1225(b)(2).

Finally, as noted above, Section 1225(b)(2)(A) does “not apply to an alien ... who is a crewman,” “a stowaway,” or “is arriving on land ... from a foreign territory contiguous to the United States.” 8 U.S.C. 1225(b)(2)(B)-(C). Section 1226(c) would apply to those aliens, too, if they were inadmissible or deportable on one of the specified grounds.

Nor does the Government’s reading render superfluous Congress’s recent amendment of Section 1226(c) through the Laken Riley Act. Congress enacted the Laken Riley 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, PageID.1, ¶ 2).

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.

Both the legislative history of the INA 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.

Petitioner’s reading of the statute is not only textually baseless; it also subverts IIRIRA’s express goal of eliminating preferential treatment for aliens who enter the country unlawfully. *See*

King v. Burwell, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to result “that Congress designed the Act to avoid”); *New York State Dep’t of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) (“We cannot interpret federal statutes to negate their own stated purposes.”).

One of IIRIRA’s express objectives was to dispense with the perverse pre-1996 regime under which aliens who entered the United States unlawfully were given “equities and privileges in immigration proceedings that [were] not available to aliens who present[ed] themselves for inspection” at the border, including the right to secure release on bond. House Rep., *supra*, at 225. *See also Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc); *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.”)

Petitioner’s interpretation would restore the regime Congress sought to discard: It would require detention for those who present themselves for inspection at the border in compliance with law, yet grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years or even decades until an involuntary encounter with immigration authorities. That is *exactly* the perverse preferential treatment for illegal entrants that IIRIRA sought to eradicate. This Court should reject any interpretation that is so transparently subversive of Congress’s stated objective. *King*, 576 U.S. at 492.

The Government’s reading, by contrast, not only adheres to the statute’s text and congressional intent, but it also brings the statute in line with the longstanding “entry fiction” that courts have employed for well over a century to avoid giving favorable treatment to aliens who have not been lawfully admitted. Under that doctrine, all “aliens who arrive at a port of entry ... are treated for due process purposes as if stopped at the border,” and that also includes aliens

“paroled elsewhere in the country for years pending removal” who have developed significant ties to the country. *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). For example, *Kaplan v. Tod*, 267 U.S. 228 (1925), 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.” *Id.* at 230; *see also Mezei*, 345 U.S. at 214-15. The “entry fiction” thus prevents favorable treatment of aliens who have not been admitted—including those who have “entered the country clandestinely.” *The Yamataya v. Fisher*, 189 U.S. 86, 100 (1903). IIRIRA sought to implement that same principle with respect to detention. The Government’s reading is true to that purpose; the Petitioner’s reading subverts it.

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, as stated above, the agency has not changed its interpretation of § 1225(b)(2), only how it applies its discretion to enforce the statute. Moreover, 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 concedes 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. *See, e.g., Rodriguez Carmona*, 2025 WL 2992222, at *6; *Sanchez Alvarez v. Noem*, No. 1:25-cv-1090, 2025 WL 2942648, at *6 n.1, *10 (W.D. Mich. Oct. 17, 2025); *Hernandez Garcia v. Raycraft*, No. 1:25-cv-1281, 2025 WL 3122800, at *5 (W.D. Mich. Nov. 7, 2025). However, not all decisions have been resolved against the government on the issue of properly interpreting 8 U.S.C. § 1225(b)(2). *See Barrios Sandoval v. Acuna*, No. 6:25-cv-1467, 2025 WL 3048926, at *5 (W.D. La. Oct. 31, 2025) (holding that “§ 1225(b)(2)’s plain language and the ‘all applicants for admission’ language of *Jennings*” permit DHS to detain similarly-situated aliens under § 1225(b)(2)); *Vargas Lopez v. Trump*, — F. Supp. 3d —, 2025 WL 2780351, at *10 (D. Neb. Sept. 30, 2025) (same); *Silva Oliveira v. Patterson*, No. 6:25-cv-1463, 2025 WL 3095972, at *5 (W.D. La. Nov. 4, 2025) (same); *Chavez v. Noem*, — F. Supp. 3d —, 2025 WL 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025); *Nchuo Kum v. Ross*, No. 6:25-cv-00451, 2025 WL 3113646, at *1-2 (W.D. La. Oct. 22, 2025) (Report and Recommendation), *adopted*, 2025 WL 3113644; *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30,

2025); *Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at *2-3 (E.D. Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, No. 1:25-cv-00177-H, (N.D. Tex. Oct. 24, 2025) (Dkt. 9); *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, none of the decisions Petitioner cites are controlling on this Court. 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.

IV. 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.

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. Petitioner received notice of the charges against him, has access to counsel, may attend hearings with an immigration judge, can request bond at that time, has the right to appeal the denial of any request for bond, and has been detained by ICE for just three weeks. (*See* Ex. A, Cooper Decl. ¶¶ 5-8.) 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.

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. *Roman*, 340 F.3d at 320. Therefore, the Secretary of the Department of Homeland Security is not a proper respondent to this habeas action and should be dismissed from this litigation. *Id.* at 322.

CONCLUSION

Respondents respectfully request that the Court deny Jorge Hernandez Quintero’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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Dated: November 17, 2025

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