UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EVANGELINA MORALES,
Individually and on behalf of all others
Similarly situated,

Petitioner,

v.

PAMELA BONDI, in her official capacity as Attorney General of the United States;
SIRCE E. OWEN, in her official capacity as Acting Director of the Executive Office for Immigration Review;
KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security;
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; and
KEVIN RAYCRAFT, in his official capacity as Acting Field Office Director of Enforcement and Removal Operations, Detroit Field Office, U.S. Immigration and Customs Enforcement,

Respondents.
_____/

Case No. 1:25-cv-01472

Hon. Hala Y. Jarbou
Chief U.S. District Judge

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

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Evangelina Morales, is a noncitizen who was not lawfully admitted to the United States and has no lawful immigration status. She seeks the grant of a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of her detention by the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE).

The Court must deny the petition. First, Petitioner failed to exhaust administrative remedies by not seeking a bond hearing or appealing to the Board of Immigration Appeals (BIA), contrary

to principles of agency expertise and judicial efficiency. Second, Petitioner is detained under § 1225(b)(2)(A) and cannot seek release under § 1226(a); her detention properly falls within § 1225(b)(2)(A)'s scope. Third, Petitioner's detention does not violate the Due Process Clause. She received notice of the charges against her, has access to counsel, may attend hearings with an immigration judge, may request a bond hearing and determination, and has the right to appeal the denial of any request for bond. Fourth, Petitioner's APA claims fail because she challenges detention itself, not a final agency action, and because habeas provides an adequate remedy, rendering APA review unavailable under 5 U.S.C. § 704. Fifth, the Suspension Clause does not apply to Petitioner's immigration removal claim because it protects only "core" habeas claims seeking release from custody, and Petitioner does not seek this core form of habeas relief. Finally, only a detainee's immediate custodian—the acting Detroit ICE Field Office Director—is the proper respondent in this habeas case and the remaining federal respondents should be dismissed.

Accordingly, the Court should decline to issue a writ of habeas corpus to Petitioner.

FACTUAL BACKGROUND

Petitioner is a citizen of Mexico, who entered the United States in 2001. (Pet. ¶ 18, PageID.44.) ICE encountered and detained Petitioner on October 28, 2025. (Pet. ¶ 20, PageID.45.) ICE issued Petitioner a Form I-862, Notice to Appear (NTA) on the same day, charging her as an alien present in the United States who has not been admitted or paroled. (Ex. A, NTA.) ICE served Petitioner with a Form I-261, Additional Charges of Inadmissibility/Deportability, on October 22, 2025, charging her as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). (Pet. ¶ 21, PageID.45; Ex. B, I-213.)

Petitioner is currently detained at the North Lake Correctional Facility in Baldwin, Michigan. (Pet. ¶ 21, PageID.45.) She is in removal proceedings on the detained docket at the

Detroit Immigration Court. (Ex. A, NTA.) Petitioner is scheduled for a hearing on November 21, 2025. (Pet. ¶ 21, PageID.45.) She has not requested a bond hearing.

On November 17, 2025, Petitioner filed a petition in federal court seeking a writ of habeas corpus and a class action complaint asking the Court to order Respondents to release Petitioner or provide her with a bond hearing. The Court issued a show cause, ordering Respondents to respond to the petition. (Order, PageID.77.) The Court noted that, at the time of the Order, Petitioner had not filed a motion for class certification pursuant to Federal Rule of Civil Procedure 23 and concluded that the issue of class certification was not before the Court. (*Id.* PageID.77.) On November 23, 2025, Petitioner filed a motion for class certification. (Pet. Mot. & Br., ECF Nos. 5 & 6.)[1]

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

[1] This response only addresses Petitioner Morales' request for habeas relief, per the Court's order to show cause. Respondents intend to contest Petitioner's motion for class certification and will file a response separately and on a later date to be determined by the Court.

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. IIRARA 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 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 she 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]she 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 against for the same offense." *Id.*

Congress recently amended § 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).

For many years after Congress enacted 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.

However, on September 5, 2025, the Board of Immigration Appeals issued a published decision in *Hurtado*. The Board concluded that § 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").

ARGUMENT

I. Petitioner has not exhausted her administrative remedies.

Petitioner has yet to request a bond hearing. Should she request and the immigration court decline to grant her bond, Petitioner 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 her 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 she 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.*, *Himnandez 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. Chimtoff*, 488 F.3d 812, 815 (9th Cir. 2007)).

The government acknowledges that the Court previously declined to require prudential exhaustion. *See, e.g.*, *Hernandez Garcia v. Raycraft*, No. 1:25-cv-1281, 2025 WL 3122800, at *5 (W.D. Mich. Nov. 7, 2025); *Sanchez Alvarez v. Noem*, No. 1:25-cv-1090, 2025 WL 2942648, at *3 (W.D. Mich. Oct. 17, 2025); *Rodriguez Carmona v. Noem*, No. 1:25-cv-1131, 2025 WL 2992222, at * at *4 (W.D. Mich. Oct. 24, 2025). Here, however, the three-factor test weighs in favor of requiring Petitioner to exhaust her administrative remedies. First, although Petitioner alleges that that Respondents violated the INA and the Due Process Clause, the latter claim likewise hinges on the INA and Respondents' allegedly wrongful interpretation of the statute. "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 Himnandez*, 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).

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." *Himnandez*, 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." *Id.*

Third, allowing the immigration court and, if necessary, the BIA to evaluate Petitioner's bond motion "would permit the agency to correct its own mistakes, if any, and preclude the need for judicial review if Petitioner is successful." *Id.* at *10. If the immigration court grants Petitioner bond, there will be no need for judicial review of her claims. Likewise, if the immigration court denies her motion, Petitioner may appeal the decision to the BIA, when she may seek a new bond hearing and request release. Indeed, a bond hearing is the very relief Petitioner seeks here.

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)). Petitioner should pursue her claims before the immigration court and, if necessary, the Board of Immigration Appeals before seeking relief from this Court.

II. Petitioner is properly detained under § 1225.

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 Respondents' interpretation of the statute.

A. Section 1225(b)(2) mandates detention of aliens like Petitioner who are present in the United States without having been lawfully admitted.

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. "As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)).

1. Applicant for admission.

Section 1225(a)(1) defines an "applicant for admission" as 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 . . .) . . . ." 8 U.S.C. § 1225(a)(1); *see Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) ("[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, she or she will still be required to prove eligibility for admission."). Accordingly, by its very definition, the term "applicant for admission" includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'" (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("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 . . . ."); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that "the broad category of applicants for admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted" (citing 8 U.S.C. § 1225(a)(1))). An arriving alien is defined, in pertinent part, 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).

All aliens who are applicants for admission "shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a). An applicant for admission seeking admission at a United States 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); *see* 8 U.S.C. § 1229a(c)(2)(A). "An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated port-of-entry. . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a]." 8 C.F.R. § 235.1(f)(2).

Petitioner falls squarely within the statutory definition. She was "present in the United States," and there is no dispute that she has "not been admitted." 8 U.S.C. § 1225(a). Petitioner did not present himself at a port-of-entry but instead entered the United States between port-of-entries and without having been admitted after inspection by an immigration officer. Petitioner is, therefore, an alien present without admission and, consequently, an applicant for admission.

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.

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, she 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 she is an applicant for admission who is present without admission and is seeking to remain in the United States. She has not agreed to depart, so logically she 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 she conceded her removability and allowed her removal in her 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, she can seek a lawful admission. *See, e.g.*, 8 U.S.C. § 1229b. For instance, if Petitioner does not concede removability and allow her immediate removal at her upcoming hearing in immigration court, she may apply to cancel her removal and adjust her 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 her application is successful,

she 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).

B. Section 1226(c) does not support Petitioner's interpretation of the statute.

Petitioner also argues that Respondent's interpretation of § 1225(b)(2) would render superfluous § 1226, which is a separate mandatory detention provision for certain inadmissible and criminal aliens. That, too, is wrong. Although § 1226(c) and § 1225(b)(2) overlap for some aliens, § 1226(c) has substantial independent effect beyond aliens that entered without admission, and mere overlap is no basis for re-writing clear statutory text.

To begin, there is no colorable argument that Respondents' interpretation of § 1225(b)(2)(A) renders § 1226(a)'s discretionary detention authority superfluous. Section 1226(a) authorizes the government to "arrest[] and detain[]" *any* "alien" pending removal proceedings but provides that the government 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 § 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 aliens who have overstayed their visas will be governed by § 1226(a), because those aliens (unlike Petitioner) *were* lawfully admitted to the United States.

Likewise, Respondents' reading of § 1225(b)(2)(A) does not render § 1226(c) superfluous. As described above, § 1226(c) is the exception to § 1226(a)'s discretionary detention regime. It requires the government 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 § 1226(a), subsection (c) applies to significant groups of aliens *not* encompassed by § 1225(b)(2), such as visa overstayers.

Most obvious, § 1226(c)(1) requires the government 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, § 1225(b)(2) has no application to admitted aliens. Moreover, § 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 § 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, § 1226(c)(1) applies to admitted aliens, who are not covered by § 1225(b)(2).

Finally, § 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.

Section 1225(b)(2) also does not render superfluous Congress's recent amendment of § 1226(c) through the Laken Riley Act. That law requires mandatory detention of criminal aliens who are "inadmissible" under 8 U.S.C. § 1182(a)(6)(A), (a)(6)(C), or (a)(7). *See* 8 U.S.C. § 1226(c)(E)(i)-(ii). As with the other grounds of "inadmissibility" listed in § 1226(c), both (a)(6)(C) and (a)(7) apply to inadmissible aliens who were admitted in error, as well as those never admitted. That means there is no surplusage, as § 1225(b)(2) has no application to aliens who were admitted in error.

To be sure, the Laken Riley Act's application to aliens who are inadmissible under §1182(a)(6)(A)—for being "present . . . without being admitted or paroled"—overlaps with § 1225(b)(2)(A). Both statutes mandate detention of "applicants for admission" who fall within the specified grounds of inadmissibility. However, "[r]edundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton v. Barr*, 590 U.S. 222, 223 (2020). That is particularly true here, where this portion of the Laken Riley Act overlaps with § 1225(b)(2)(A) even under Petitioner's reading, which recognizes that applicants for admission who are "seeking admission" must be detained under § 1225(b)(2)(A). *See Microsoft Corp. v. I4I Ltd. P'ship*, 564 U.S. 91, 106 (2011) ("[T]she canon against superfluity assists only where a competing interpretation gives effect to every clause and word of a statute").

Besides, § 1226(c) does independent work, despite the overlap, by narrowing the circumstances under which aliens may be *released* from mandatory detention. Again, for aliens subject to mandatory detention under § 1225(b)(2), IIRIRA allows the government to "temporarily" parole them "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(b)(5). Section 1226(c)(1) takes that option off the table for aliens who have also committed the offenses or engaged in the conduct specified in § 1226(c)(1)(A)-(E). As to those aliens, § 1226(c) *prohibits* their parole and authorizes their release only if "necessary to provide protection to" a witness or similar person "and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." 8 U.S.C. § 1226(c)(4). So even as to aliens who are already

subject to mandatory detention under § 1225(b)(2), § 1226(c) is not superfluous: It significantly narrows the government's parole power with respect to those individuals.

C. Congress intended for the detention of aliens like Petitioner under § 1225(b)(2).

Petitioner's reading of the statute not only is 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."). Her interpretation would reward her for knowingly violating the law, entitling her 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.

To the contrary, as noted above, one of IIRIRA's express objectives was to dispense with the 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. 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 like Petitioner 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 preferential treatment for illegal entrants that IIRIRA sought to eradicate. The Court should reject any interpretation that is so transparently subversive of Congress's stated objective. *King*, 576 U.S. at 492.

Respondents' interpretation, 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. Respondents' interpretation of § 1225(b)(2) is true to that purpose.

In sum, the text, structure, 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 already entered the United States unlawfully. *Hernandez Garcia* 2025 WL 3122800, at *5 n.2; *Sanchez Alvarez*, 2025 WL 2942648, at *6 n.1; *Rodriguez Carmona*, 2025 WL 2992222, at *6. However,

not all decisions have been resolved against the government on the issue of properly interpreting 8 U.S.C. § 1225(b)(2). *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); *Chavez v. Noem*, — F. Supp. 3d —, 2025 WL 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025); *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 she is 'not clearly and beyond doubt entitled to be admitted' to the United States." (quoting 8 U.S.C. § 1225(b)(2)(A))). Moreover, no circuit court, including the Sixth Circuit, has considered whether DHS properly is construing § 1225(b)(2) to apply to aliens like Petitioner. Consequently, this Court is left to apply "all relevant interpretive tools" to conclude which interpretation of the statute is best. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024). The best interpretation of § 1225(b)(2) permits Petitioner's detention under the statute, for the reasons stated above.

D. Applicants for admission may only be released from detention on § 1182(d)(5) parole.

Importantly, applicants for admission may only be released from detention if DHS invokes its discretionary parole authority under 8 U.S.C. § 1182(d)(5). DHS has the exclusive authority to temporarily release on parole "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). In *Jennings*, the Supreme Court placed significance on the fact that §

1182(d)(5) is the specific provision that authorizes release from detention under § 1225(b), at DHS's discretion. *Jennings*, 583 U.S. at 300. Specifically, the Supreme Court emphasized that "[r]egardless of which of those two sections authorizes . . . detention, [8 U.S.C. § 1225(b)(1) or (b)(2)(A)], applicants for admission may be temporarily released on parole . . . ." *Id.* at 288.

Parole, like an admission, is a factual occurrence. *See Hing Sum*, 602 F.3d at 1098; *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025) (treating whether an alien was paroled as a question of fact). The parole authority under § 1182(d)(5) is "delegated solely to the Secretary of Homeland Security." *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010); *see* 8 C.F.R. § 212.5(a). Thus, neither the BIA nor IJs have authority to parole an alien into the United States under § 1182(d)(5). *Castillo-Padilla*, 25 I&N Dec. at 261; *see also Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771, 777 n.5 (BIA 2002) (indicating that "parole authority [under 8 U.S.C. § 1182(d)(5)] is now exercised exclusively by the DHS" and "reference to the Attorney General in [8 U.S.C. § 1182(d)(5)] is thus deemed to refer to the Secretary of Homeland Security"); *Matter of Singh*, 21 I&N Dec. 427, 434 (BIA 1996) (providing that "neither the [IJ] nor th[e] Board has jurisdiction to exercise parole power"). Further, because DHS has exclusive jurisdiction to parole an alien into the United States, the manner in which DHS exercises its parole authority may not be reviewed by an IJ or the BIA. *Castillo-Padilla*, 25 I&N Dec. at 261; *see Matter of Castellon*, 17 I&N Dec. 616, 620 (BIA 1981) (noting that the BIA does not have authority to review the way DHS exercises its parole authority).

Importantly, parole does not constitute a lawful admission or a determination of admissibility, and an alien granted parole remains an applicant for admission, 8 U.S.C. §§ 1101(a)(13)(B), 1182(d)(5)(A); *see* 8 C.F.R. §§ 1.2 (providing that "[a]n 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). Parole does not place the alien "within the United States." *Leng May Ma*, 357 U.S. at 190. An alien who has been paroled into the United States under § 1182(d)(5) "is not . . . 'in' this country for purposes of immigration law . . . ." *Abebe*, 16 I&N Dec. at 173 (citing, *inter alia*, *Leng May Ma*, 357 U.S. at 185; *Kaplan*, 267 U.S. at 228). Following parole, the alien "shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States," including that they remain subject to detention pursuant to § 1225(b)(2). 8 U.S.C. § 1182(d)(5)(A).

III. Petitioner's detention comports with due process.

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

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

To this end, the Supreme Court has also long applied the so-called "entry fiction" that all "aliens who arrive at ports of entry . . . are treated for due process purposes as if stopped at the

border." *Thuraissigiam*, 591 U.S. at 139 (internal quotation and citation omitted). Indeed, that is so "even [for] those paroled elsewhere in the country for years pending removal." *Id.* The Supreme Court has applied the entry fiction to foreign nationals with highly sympathetic claims to having "entered" and developed significant ties to this country. *See, e.g.*, *Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (holding that a mentally disabled girl paroled into the care of U.S. citizen relatives for nine years should be "regarded as stopped at the boundary line" and "had gained no foothold in the United States"); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 214–215 (1953) (holding that a foreign national with 25 years of lawful residence who sought to reenter enjoyed "no additional rights" beyond those granted by "legislative grace"). With these cases in mind, it follows that Congress intended for an unlawful entrant who violates immigration laws and evades detection must, once found, be "treated as if stopped at the border." *See Mezei*, 345 U.S. at 215.

Indeed, Supreme Court precedents indicate that foreign nationals who entered illegally by evading detection while crossing the border should be treated the same as those who were stopped at the border in the first place. *See Thuraissigiam*, 591 U.S. at 138–40. While foreign nationals who have been *admitted* may claim due-process protections beyond what Congress has provided even when their legal status changes (such as a foreign national who overstays a visa, or is later determined to have been admitted in error), *see Wong Yang Sung v. McGrath*, 339 U.S. 33, 49–50 (1950), the Supreme Court has never held that foreign nationals who have "entered the country clandestinely" are entitled to such additional rights, *see Yamataya v. Fishim*, 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.

Considering this precedent, Petitioner does not present a plausible due process claim. She admits that she entered the country without inspection and thereafter evaded review. Petitioner received notice of the charges against her, has access to counsel, 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 a short time. Petitioner has an upcoming hearing in immigration court. She has not requested a bond hearing. No further due process is due to her.

IV. Petitioner's APA claims are not properly before the Court.

This is not an APA case. The Court ordered Respondents to show cause "why the writ of habeas corpus and other relief requested in the petition should not be granted," not prepare an administrative record of a final agency action upon which the parties could present cross-motions for summary judgment. (Order to Show Cause, PageID.44-45.) Habeas petitioners are limited to challenging the fact or duration of their confinement, not the conditions of that confinement or the agency policies governing it. *Wilson v. Williams*, 961 F.3d 829, 838 (6th Cir. 2020); *Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004). And, as a prudential matter, courts in this circuit have not permitted "combined habeas corpus and other civil claims to proceed together in one case." *J.O.B. v. United States*, No. 3:23-CV-217, 2024 WL 4011825, at *7 (S.D. Ohio Aug. 30, 2024) (collecting cases), *R. & R. adopted*, No. 3:23-CV-217, 2024 WL 4223636 (S.D. Ohio Sept. 18, 2024); *Ruza v. Michigan*, No. 1:20-CV-504, 2020 WL 4670556, at *2 (W.D. Mich. Aug. 12, 2020), *aff'd*, No. 20-1841, 2021 WL 3856305 (6th Cir. Apr. 7, 2021) (same). Habeas petitions and civil actions "have distinct purposes and contain unique procedural requirements that make a hybrid action difficult to manage." *Ruza*, 2020 WL 4670556, at *2. Thus, Petitioner's APA claims

improperly are pleaded, and the Court should not consider them alongside his petition for writ of habeas corpus.

Petitioner also does not have standing to bring her APA claim. By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704. Thus, Petitioner's APA claim is independently barred by this limitation in 5 U.S.C. § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement" those claims "must be brought in habeas." 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention. Even if Petitioner's APA claim had merit, which it does not, the result would be the same as that in habeas – release from detention. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)). Petitioner's APA claims are not properly before the Court and should be dismissed.

V. Petitioner's immigration-related claim is outside the protection of the Suspension Clause.

Petitioner also claims that under the Suspension Clause, any attempt by Congress to eliminate habeas review would be unconstitutional if it deprives individuals of an opportunity to challenge an unlawful detention. The Suspension Clause forbids suspension of the writ of habeas

corpus "unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. Art. I, § 9, cl. 2. In order apply the Suspension Clause to permit habeas relief when confronted with a jurisdiction-stripping statute, the Court must: (1) "determine whether a given habeas petitioner is prohibited from invoking the Suspension Clause due to some attribute of the petitioner or to the circumstances surrounding his arrest or detention." *Osorio-Martinez*, 893 F.3d 166 (internal quotations and citations omitted). Second, if the petition is not prohibited from invoking the Suspension Cause, the Court must "turn to the question of whether the substitute for habeas is adequate and effective to test the legality of the petitioner's detention (or removal)." *Id.*

The Suspension Clause does not apply here. The Court in *Thuraissigiam*, 591 U.S. at 119 determined that the Suspension Clause applies only to "core" habeas claims seeking release from custody, consistent with the writ's historical scope at the time of the Constitution's drafting. Because Petitioner's claim concerns removal in the immigration context rather than a request for relief from detention, it falls outside the narrow protections of the Suspension Clause and therefore Petition cannot invoke its application.

VI. 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 petition names Secretary Noem, Attorney General Bondi, Sirce Owen, and Todd Lyons, but they are not proper respondents to this habeas 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).

The acting Detroit ICE Field Office Director is a proper respondent in this case and the remaining federal respondents should be dismissed.

CONCLUSION

The government respondents respectfully request that the Court deny the petition for a writ of habeas corpus because she is not detained in violation of federal law or the Constitution.

Respectfully submitted,

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Dated: November 25, 2025

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