UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JESUS ORLANDO PEREZ FUENTES,

Petitioner,

v.

KEVIN RAYCRAFT, Acting Detroit Field Office Director for U.S. Immigration and Customs Enforcement, in their official capacity; TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in their official capacity; and KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity,

Respondents.
_____/

Case No. 1:26-cv-00598

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

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

The issues presented in this Petition concern the statutory authority for U.S. Immigration and Customs Enforcement's ("ICE") detention of Petitioner, whether Petitioner is entitled to a bond hearing, and if so, whether administrative exhaustion is required. While reserving all rights, including the right to appeal, Respondents submit this standardized response to preserve the legal issues and to conserve the Court's and the parties' resources given the high volume of similar habeas litigation in this district.

Respondents acknowledge that this Court's prior rulings concerning similar challenges would control the result here if the Court adheres to its prior legal reasoning.[1] However,

[1] If the Court continues its practice of conditionally granting the Petition and requiring Respondents to provide a bond hearing in immigration court, Respondents respectfully request that the Court instruct Petitioner to file a bond motion with the Executive Office for Immigration Review, and that the Court's judgment set the deadline for the bond hearing based on the date

Respondents respectfully disagree with that analysis and note that it conflicts with the recent Fifth Circuit decision, *Buenrostro-Mendez v. Bondi*, No. 25-20496, __ F.4th __, 2026 WL 323330 (5th Cir. Feb. 6, 2026). Respondents contend that aliens like Petitioner have not exhausted their administrative remedies, that they are properly are detained under 8 U.S.C. § 1225(b)(2), and that detention does not violate the Constitution. The proper Respondent is the Acting Director of ICE's Detroit Field Office, and the Court need not restrict Petitioner's transfer. To the extent Petitioner makes additional claims under the Administrative Procedure Act ("APA"); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873 (C.D. Cal.) [hereinafter *Bautista*]; *Castañon Nava v. Department of Homeland Security*, No. 1:18-cv-03757 (N.D. Ill.); or the Fourth Amendment; attempts to obtain a ruling regarding the burden at an immigration court bond hearing; or argues that the immigration courts are systemically flawed, the Court should reject those claims.

The pertinent factual background for this Petitioner is provided below, and Respondents' arguments covering the variety of claims brought in similar habeas cases follow in a standardized form intended to cover the variety of claims made in this and similar cases.

FACTUAL BACKGROUND

Petitioner is a citizen of Venezuela who enter the United States on or about October 7, 2023, and applied for admission into the United States, at the San Ysidro Port of Entry via a CBP One application. (Ex. A, I-213.) He was paroled into the United States pending removal proceedings before an immigration judge. (*Id.*) A Notice to Appear for removal proceedings was

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Petitioner files that motion. This approach aligns with the procedures in the Immigration Court Practice Manual, Chapter 9.3(a), which contemplates that the detainee would file a request for a bond hearing. *See, e.g.*, Order, *Baicu v. Baker*, No. 1:26-cv-00202, (D. Md. Jan. 23, 2026), ECF No. 11.

issued, charging that Petitioner was an arriving alien who was "not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations . . . ." (Ex. B, Notice to Appear (citing 8 U.S.C. § 1182(a)(7)(A)(i)(I)).)

On December 3, 2025, ICE observed an occupied parked vehicle at a location known to ICE officers as an area where a high population of unlawfully present individuals work. (Ex. A, I-213.) ICE officers conducted a mobile query of the vehicle, which revealed that it was registered to Petitioner. (*Id.*) ICE officers approached the vehicle, identified themselves, and conducted a field interview to confirm Petitioner's identity. (*Id.*) Petitioner was detained pursuant to a warrant. (Ex. C, I-200 Warrant.)

Petitioner is being housed at the North Lake facility in Baldwin, Michigan. He is on the detained docket with the Detroit immigration court. On February 19, 2026, the immigration judge conducted a hearing on Petitioner's motion to continue proceedings to allow him to complete his I-589 application for asylum. (Ex. D, IJ Order.) The immigration judge admitted Petitioner's exhibits, denied the motion to continue proceedings, and denied Petitioner's I-589 application as waived or abandoned. (*Id.*) The immigration judge explained that an immigration judge is not required to consider a Form I-589 on the merits if it is incomplete, and that incomplete applications may be considered waived or abandoned, "particularly where an opportunity to cure has been offered." (*Id.*) Petitioner filed his I-589 application on October 1, 2024, and indicated that "[m]ore details will be supplemented later." (*Id.*) (Alteration in original.) As of the February 19, 2026, hearing, Petitioner's application remained incomplete, despite Petitioner's attorney appearing to represent him in September 2024. (*Id.*) As a result, the

immigration judge ordered Petitioner removed to Venezuela on February 19, 2026. (*Id.*) Petitioner reserved his right to appeal. (*Id.*)

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. *Buenrostro-Mendez*, 2026 WL 323330, at *1; *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*, 602 F.3d at 1099.

At the time, the INA "provided for two types of removal proceedings: deportation hearings 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. *See* 8 U.S.C. §§ 1225(a)-(b), 1226(a) (1995). In contrast, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Hing Sum*, 602 F.3d at 1100. Aliens in deportation proceedings, unlike those in exclusion proceedings, were entitled to request release on bond. 8 U.S.C. § 1252(a)(1).

The INA's prior framework distinguishing between aliens based on physical "entry" had the "unintended and undesirable consequence" of creating a scheme where "non-citizens who had 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 non-citizens who actually presented themselves to authorities for inspection were restrained by "more summary exclusion proceedings" and mandatory custody. *Martinez v. Att'y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)); *see also Buenrostro-Mendez*, 2026 WL 323330, at *1; *Hing Sum*, 602 F.3d at 1100; H.R. Rep. No. 104-469(I), pt. 1, at 225 (1996) [hereinafter "House Rep."] ("[I]llegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection . . . .").

II. IIRIRA eliminated the preferential treatment of aliens unlawfully present in the United States and mandated detention of all "applicants for admission."

Congress discarded the prior regime through enactment of the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, the statute had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their physical 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); *accord Buenrostro-Mendez*, 2026 WL 323330, at *1.

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. *See Buenrostro-Mendez*, 2026 WL 323330, at *2 ("Following the passage of IIRIRA, then, an alien's status as an applicant for admission does not turn on where or how the alien entered the United States."). Instead, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep. 225 (emphasis added); *accord Hing Sum v. Holder*, 602 F.3d at 1100. IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Martinez*, 693 F.3d at 413 n.5 (3d Cir. 2012). IIRIRA effected these changes through several provisions codified at 8 U.S.C. § 1225:

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

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1); *see Buenrostro-Mendez*, 2026 WL 323330, at *4-5. "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, 109-13 (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 a 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); *accord Buenrostro-Mendez*, 2026 WL 323330, at *2 (noting that all aliens not admitted or removed under section 1225(b)(1) are covered by section 1225(b)(2)). 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 also* 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 until the moment those proceedings begin"); *see also Buenrostro-Mendez*, 2026 WL 323330, at *2-4 & n.2-3, *6.

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

Section 1226: IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas, or are later determined to have been improperly admitted. The statute provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." *Id.* § 1226(a). Detention under this provision is generally discretionary: The Attorney General "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2); *see Buenrostro-Mendez*, 2026 WL 323330, at *2.

That "default rule," however, does not apply to certain criminal aliens who are being released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8

U.S.C. § 1226(c). Section 1226(c) provides that "[t]he Attorney General shall take into custody" certain classes of criminal aliens—those who are inadmissible or deportable because the alien (1) "committed" certain offenses delineated in 8 U.S.C. §§ 1182 and 1227; or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The government must detain these aliens "when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense." *Id.*

ARGUMENT

I. The Court should require exhaustion of administrative remedies.

Detained petitioners can request bond in immigration court and 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, the Court should require Petitioner to establish exhaustion of administrative remedies within the immigration courts before seeking a writ of habeas corpus from this Court.

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

the IJ's decision." *Id.* (citing *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003)). The Sixth Circuit has endorsed this procedure for challenging bond determinations. *See Rabi v. Sessions*, No. 19-3249, 2018 U.S. App. LEXIS 19661, at *1-2 (6th Cir. July 16, 2018) (unpublished order) (citing *Leonardo*, 646 F.3d at 1160). Additionally, some lower courts in this circuit have applied a three-factor test for determining whether prudential exhaustion applies. *See, e.g.*, *Hernandez Torrealba*, 2025 WL 2444114, at *9. The test considers whether:

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

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

Here, the three-factor test weighs in favor of requiring Petitioner to exhaust administrative remedies. First, Petitioner's claims hinge 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*, 794 F. Supp. 3d 528, 531 (N.D. Ohio 2025) (quoting *Khalili v. Holder*, 557 F.3d 429, 435 (6th Cir. 2009) (abrogated on other grounds)); *see also Hernandez Torrealba*, 2025 WL 2444114, at *10 (applying *Monroy Villalta* to find that the first factor weighs in favor of requiring exhaustion of claims premised on the statutory interpretation of the INA); *Ba v. Dir. of Detroit Field Office, U.S. Immigration & Customs Enforcement*, 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." (quotations omitted)).

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

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

Thus, as in *Leonardo*, 646 F.3d at 1160, "prudential principles of exhaustion counsel that Petitioner pursue his administrative remedies before seeking a writ of habeas corpus," *Monroy Villalta*, 794 F. Supp. 3d at 532 (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)); *accord Ba*, 2025 WL 2977712, at *3. Petitioner should pursue claims before the

immigration court and, if necessary, the Board of Immigration Appeals before seeking relief from this Court.

II. Detention is proper under § 1225(b)(2).

Petitioner unambiguously meets every element for detention under § 1225(b)(2). *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) ("Our analysis begins and ends with the text.").

A. Section 1225(b)(2) mandates detention.

For Petitioners that applied for admission upon arrival, under the plain language of § 1225(b)(2), DHS is required to detain them pending removal proceedings—regardless of how long they have been in the United States or how far from the border they traveled. For Petitioners that did not apply for admission, under the plain language of Section 1225(b)(2), DHS is required to detain all aliens who are present in the United States without admission and are subject to removal proceedings. Any previous grant of temporary protected status ("TPS") does not amount to an admission, which would change this analysis. *Sanchez v. Mayorkas*, 593 U.S. 409, 414-19 (2021) (TPS is not a lawful admission).

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); *Buenrostro-Mendez*, 2026 WL 323330, at *4 ("Presence without admission deems [noncitizens] to be applicants for admission"); *Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025). An "arriving alien" is defined as "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. §§ 1.2, 1001.1(q). An alien "who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for

admission'" under § 1225(a)(1). *Jennings*, 583 U.S. at 287 (quoting § 1225(a)(1)). And an arriving alien "remains an arriving alien even if paroled pursuant to section 212(d)(5)" of the INA, "and even after any such parole is terminated or revoked." 8 C.F.R. § 1001.1(q). Applicants for admission seeking admission at a port of entry "must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States." 8 C.F.R. § 235.1(f)(1).

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

Petitioner falls squarely within the statutory definition mandating detention. Petitioner remains "present in the United States," and there is no dispute that Petitioner has "not been admitted." 8 U.S.C. § 1225(a).

To the extent Petitioner applied for admission, Petitioner remains an arriving alien. 8 C.F.R. § 1001.1(q). Upon application for entry to the United States, Petitioner did not present documents sufficient to establish that he or she was not subject to removal, and thus was placed into removal proceedings under § 1229a. 8 C.F.R. § 235.1(f)(1). Petitioner cannot—and did not—establish that he or she is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C.

§ 1225(b)(2)(A). Therefore, Petitioner "shall be detained for a proceeding under" 8 U.S.C. § 1229a. 8 U.S.C. § 1225(b)(2)(A).

To the extent Petitioner did not present at a port of entry and seek admission, Petitioner is within the statutory definition of an applicant for admission. 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1. Moreover, such a Petitioner cannot establish that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Therefore, Petitioner "shall be detained for a proceeding under" 8 U.S.C. § 1229a. 8 U.S.C. § 1225(b)(2)(A).

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. *See Buenrostro-Mendez*, 2026 WL 323330, at *5 (holding that applicants for admission are necessarily seeking admission).

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 Cmtys. Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *accord Att'y Gen. of U.S. v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024); *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) ("or otherwise" means "the first action is a subset of the second action"); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th Cir. 2019). Being an

"applicant for admission" thus is a particular "way or manner" of seeking admission, such that an alien who is an "applicant for admission" *is* "seeking admission" for purposes of Section 1252(b)(2)(A). No separate affirmative act is necessary. *See Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 (BIA 2012) ("[M]any people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws.").

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

Moreover, Congress's use of the present participle "seeking" in 8 U.S.C. § 1225(b)(2)(A) should not be ignored. *United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."). By using the present participle "seeking,"

§ 1225(b)(2)(A) "signal[s] present and continuing action." *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). The phrase "seeking admission" "does not include something in the past that has ended or something yet to come." *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019); *see also Pena v. Hyde,* No. CV 25-11983-NMG, 2025 WL 2108913, at *1-2 (D. Mass. July 28, 2025) (finding that, in the absence of the receipt of lawful immigration status, an alien who was unlawfully present in the U.S. for 20 years and had an approved U-130 Petition for Alien Relative "remains an applicant for admission" subject to mandatory detention under § 1225(b)(2)).

Of course, "seeking admission" also has meaning beyond being an "applicant for admission." As § 1225(a)(3) shows, being an "applicant for admission" is only *one* "way or manner" of "seeking admission"—not the exclusive way. For example, lawful permanent residents returning to the United States are not "applicants for admission" because they are already admitted, but they still may be "seeking admission." *See* 8 U.S.C. § 1103(A)(13)(C). But for purposes of § 1225(b)(2) and its regulation of "applicants for admission," the statute unambiguously provides that an alien who is an "applicant for admission" is "seeking admission," even if the alien is not engaged in some separate, affirmative act to obtain lawful admission. *See Mejia Olalde*, 2025 WL 3131942, at *1 ("[I]t makes no sense to describe an active applicant for admission as somebody who is not 'seeking' admission."); *Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913, at *1-2 (D. Mass. July 28, 2025) (because alien did not have lawful status, he remained an applicant for admission subject to mandatory detention under § 1225(b)(2)); *Barrios Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at *5 (W.D. La. Oct. 31, 2025) (holding that "the plain statutory language of § 1225(a)(1) that defines

'applicants for admission' . . . also applies to those who are 'present in the United States who ha[ve] not been admitted'" (quoting 8 U.S.C. § 1225(a)(1))).

Petitioner is "seeking admission" under § 1225(b)(2) because Petitioner is an applicant for admission who is present without admission and is seeking to remain in the United States. Petitioner has not agreed to depart, so logically 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), 1225(a)(3); *Buenrostro-Mendez*, 2026 WL 323330, at *5- 6 & n.10. Nor has Petitioner conceded removability and allowed removal in administrative immigration proceedings. Noncitizens present in the United States who have not been lawfully admitted and who do not agree to immediately depart must be referred for removal proceedings under § 1229a. *See* 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). In removal proceedings, if an unlawfully admitted noncitizen does not accept removal, he can seek a lawful admission. *See, e.g.*, 8 U.S.C. § 1229b; *Moctezuma-Reyes v. Garland*, 124 F.4th 416, 419 (6th Cir. 2024); *Lopez-Soto v. Garland*, 857 F. App'x 848, 854 (6th Cir. 2021).

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

B. Petitioner remains subject to § 1225(b)(2) even if Petitioner previously was paroled.

As noted above, the INA grants DHS discretion to release on parole temporarily "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5); *see* 8 C.F.R. § 212.5(b). This discretionary parole is the "specific provision authorizing release from § 1225(b) detention;" "there are no *other* circumstances under which aliens detained under § 1225(b) may be released." *Jennings*, 583 U.S. at 300. Importantly, however, parole does not

constitute a lawful admission or a determination of admissibility, 8 U.S.C. §§ 1101(a)(13)(B), 1182(d)(5)(A), and an alien granted parole remains an applicant for admission, *id.* § 1182(d)(5)(A); *see also* 8 C.F.R. §§ 1.2 (providing that an "arriving alien remains an arriving alien even if paroled pursuant to [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or revoked"), 1001.1(q) (same); *Jennings*, 583 U.S. at 288 (parole under § 1182(d)(5) "shall not be regarded as an admission of the alien" (quoting § 1182(d)(5)(A))). Again, after parole terminates, the "alien shall . . . be returned to the custody from which he was paroled" and be "dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A).

Even if Petitioner was paroled without admission into the United States such parole would "not alter [his] status an excluded alien or otherwise bring him 'within the United States.'" *Leng May Ma v. Barber*, 357 U.S. 185, 186 (1958). Rather, Petitioner would remain an applicant for admission during parole, and following parole, would remain subject to detention under 8 U.S.C. § 1225(b)(2). 8 U.S.C. § 1182(d)(5)(A).

C. Section 1225(b)(2) already applied to arriving aliens.

Petitioner alleges that detention without a bond hearing is based on a new DHS policy that mandates detention of aliens who initially entered the United States without inspection under § 1225(b)(2)(A). But to the extent Petitioner applied for admission at a port of entry, the policy change does not apply to Petitioner. Section 1225(b)(2)(A) already applied to such individuals. *See, e.g.*, *Clark v. Martinez*, 543 U.S. 371, 373 (2005) (discussing the applicability of § 1225(b)(2)(A) to arriving aliens); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025) (distinguishing arriving aliens subject to § 1225(b)(2)(A) from those who have "already present" in the United States).

Courts long have applied the "entry fiction" to avoid giving favorable treatment to aliens who have not been lawfully admitted to the United States. Under that doctrine, all "aliens who arrive at a port of entry . . . are treated for due process purposes as if stopped at the border," even if the alien is "on U.S. soil" or has been "paroled elsewhere in the country for years pending removal." *Thuraissigiam*, 591 U.S. at 139 (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 215 (1953)). For example, the Supreme Court held that an alien who was paroled for nine years into the United States was still "regarded as stopped at the boundary line" and "had gained no foothold in the United States." *Kaplan v. Tod*, 267 U.S. 228, 230; *see also Mezei*, 345 U.S. at 214-15. Similarly, the Court found that an alien who was paroled into the United States and remained for more than two years had not affected admission or entry, and remained subject to detention and deportation. *Leng May Ma v. Barber*, 357 U.S. at 186, 188-90. Courts have drawn that distinction for more than a century. *Id.* at 188.

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

Respondents' interpretation of § 1225(b)(2) does not render superfluous § 1226, which is a separate mandatory detention provision for certain inadmissible and criminal aliens. *Buenrostro-Mendez*, 2026 WL 323330, at *7. 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. *Buenrostro-Mendez*, 2026 WL 323330, at *7.

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) ("[T]he specific governs the general." (quotations omitted)). 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. *See Buenrostro-Mendez*, 2026 WL 323330, at *7 (noting that § 1226(a) works independently in that "only § 1226(a) applies to admitted aliens who overstay their visas, become deportable on many different grounds, or were admitted erroneously due to fraud or some other error").

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) under any reading, as 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]he

canon against superfluity assists only where a competing interpretation gives effect to every clause and word of a statute." (quotations omitted)).

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.

E. Congress intended the government to detain aliens who did not enter lawfully.

Particularly for Petitioners who are not arriving aliens who applied for admission, their reading of the statute would subvert IIRIRA's express goal of eliminating preferential treatment for aliens who enter unlawfully. *Buenrostro-Mendez*, 2026 WL 323330, at *9 ("By eliminating the exclusion/deportation dichotomy, IIRIRA put aliens seeking admission lawfully on equal footing with those who entered without inspection."); *Torres*, 976 F.3d at 928 (noting that IIRIRA "did away with th[e] 'entry doctrine . . . anomaly" under which "immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had

crossed the border 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."). Such an interpretation would reward those who knowingly violate the law, entitling them to more favorable treatment than a noncitizen who lawfully presented at a port of entry. Nowhere does the INA state that, following an unknown amount of time in the United States without lawful status, an applicant for admission has ceased "seeking admission" rendering him eligible for consideration under 8 U.S.C. § 1226(a). *See Matter of Lemus*, 25 I. & N. Dec. 734, 743 & n.6 (BIA 2012) (noting that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense [including noncitizens present in the United States who have not been admitted] are nevertheless deemed to be 'seeking admission' under the immigration laws").

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. 225. Petitioners' 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 preferential treatment for illegal entrants that IIRIRA sought to eradicate. *See Buenrostro-Mendez*, 2026 WL 323330, at

*9. The Court should reject any interpretation that so transparently subverts 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 *Mezei*, 345 U.S. at 215). 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. An increasing number of decisions have been resolved in favor of the government on the proper interpretation of 8 U.S.C. § 1225(b)(2), including the only circuit court to have considered the question. *See, e.g.*, *Buenrostro-Mendez*, 2026 WL 323330, at *4-9; *Mejia Olalde,* 2025 WL 3131942, at *1 (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*, 802 F. Supp. 3d 1132, 1142 (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*, 801 F. Supp. 3d 1133, 1140-41 (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 he is 'not clearly and beyond doubt entitled to be admitted' to the United States." (quoting 8 U.S.C. § 1225(b)(2)(A))). Because the Sixth Circuit has not yet considered whether DHS properly is construing § 1225(b)(2) to apply to aliens like Petitioner, 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), adopted by the Fifth Circuit, permits Petitioner's detention under the statute, for the reasons stated above. *Buenrostro-Mendez*, 2026 WL 323330, at *4-9.

III. Detention comports with due process.

The Fifth Amendment's Due Process Clause protects against the deprivation of life, liberty, or property "without due process of law." U.S. const. amend. V. That includes freedom from government detention unless "adequate procedural protections" are applied. *Zadvydas v. Davis*, 533 U.S. 690, 701 (2001).

In the immigration context, the Supreme Court has held that the process due under the constitution is coextensive with the removal procedures provided by Congress. *Thuraissigiam*, 591 U.S. at 138-40; *see also United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process[.]"). It has confirmed that statutory provisions denying bond during administrative removal proceedings do not violate the due process clause. *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during

removal proceedings is a constitutionally permissible part of that process."). And it has held that even after a noncitizen is ordered removed, detention for up to six months is presumptively valid under the due process clause. *Zadvydas*, 533 U.S. at 701. These holdings support the conclusion that detention without bond during such a proceeding complies with due process. *See Buenrostro-Mendez*, 2026 WL 323330, at *9.

As noted above, Supreme Court precedents also indicate that foreign nationals who entered illegally by evading detection while crossing the border should be treated the same as those 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 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 light of this precedent, Petitioner does not present a plausible due process claim. Petitioner has received notice of the removal charges, has access to counsel, may request hearings with an immigration judge, may request bond, and has the right to appeal the denial of any request for bond, and has been detained by ICE for a relatively short period of time. No further due process is due at this time. *Thuraissigiam,* 591 U.S. at 138-40. Because Petitioner has received due process, Petitioner cannot assert a viable claim under the Due Process Clause.

IV. The only proper Respondent is the Director of ICE's Detroit Field Office.

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.* 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"); *cf. Toledo Martinez, v. Unknown Party*, No. 1:25-CV-1298, 2025 WL 3223774, at *8 (W.D. Mich. Nov. 19, 2025) (dismissing the Attorney General and North Lake Processing Center, but applying an exception and declining to dismiss the Secretary of DHS as a respondent). The Court should dismiss anyone other than the ICE Field Office Director as a Respondent.

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

A restriction on transferring Petitioner out of this district is unnecessary because the Court will maintain jurisdiction regardless of where DHS holds Petitioner.

The ICE Field Office Director, Petitioner's custodian, is a respondent to this action. *See Rumsfeld v. Padilla*, 542 U.S. 426, 440 (2004); *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). It is well established that "when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release." *Padilla*, 542 U.S. at 440. Accordingly, the Court need not restrict Petitioner's movement to maintain jurisdiction over the petition. *Id.*; *see also Rodriguez Carmona*, 2025 WL 2992222, at *8-9 (declining to grant alien's request for an order that he remain within the district where he filed his habeas petition); *Zhu v. Genalo*, No. 1:25-CV-06523

(JLR), 2025 WL 2452352, at *3 (S.D.N.Y. Aug. 26, 2025) (retaining jurisdiction over alien's habeas proceedings after he had been moved to another district).

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

VI. Petitioner cannot make APA claims in this habeas petition.

Petitioner cannot bring APA claims in this habeas action. This is not an APA case. Petitioner paid only a $5.00 filing fee and did not go through the mechanisms for serving a summons and civil complaint pursuant to Federal Rule of Civil Procedure 4. 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.

In addition, APA claims are unavailable where habeas relief presents an adequate alternative remedy. *Trump v. J.G.G.*, 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring). Habeas relief would be an adequate remedy for Petitioner's claims, by addressing whether he is entitled to release from unlawful custody. That "fall[s] within the 'core' of the writ of habeas

corpus and thus must be brought in habeas." *Id.* at 672 (per curium). This Court has rejected similar efforts to include APA claims in habeas petitions. *See, e.g., Toledo Martinez v. Unknown Party,* No. 1:25-cv-1298, 2025 WL 3223774, at *7 n.3 (W.D. Mich. Nov. 19, 2025) (concluding that habeas was an adequate remedy). Any APA claim is not properly before the Court.

VII. The Central District of California's recent decision in *Bautista* is on appeal and should not be applied in this district and to Petitioner's Michigan custodian.

In *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873 (C.D. Cal.), a district court recently granted partial summary judgment to a group of petitioners detained under 8 U.S.C. § 1225(b)(2) and then granted class certification for a similarly situated group of petitioners. A partial final judgment was entered December 18, 2025. *Id.*, ECF Nos. 87, 94. A notice of appeal has already been filed. *See id.*, ECF No. 95. The district court's partial final judgment is not binding or applicable here because it was issued despite a lack of jurisdiction and the Court should not give preclusive effect to it because it is on appeal, creating a serious risk of inconsistent judgments and unfair results if the *Bautista* judgment is reversed or vacated on appeal.

First, the principles of habeas jurisdiction dictate that the *Bautista* declaratory judgment does not have preclusive effect outside that district and over custodians outside that district. The *Bautista* class sought a declaratory judgment that class members such as Petitioner were unlawfully detained under 8 U.S.C. § 1225(b)(2), rather than § 1226(a). This is core habeas relief that must be brought as a habeas claim alone. As the Supreme Court made clear just this year, "[r]egardless of whether []detainees formally request release from confinement," if "their claims for relief necessarily imply the invalidity of their confinement[], their claims fall within the core of the writ of habeas corpus and thus must be brought in habeas." *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (quotations omitted).

The Supreme Court has imposed two fundamental limits on federal court jurisdiction over core habeas claims. First, "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see also J.G.G.*, 604 U.S. at 672. Second, a habeas petitioner must name the petitioner's immediate custodian—the custodian who has actual custody over the petitioner and can produce the "corpus." *Padilla*, 542 U.S. at 435. "Failure to name the petitioner's custodian as a respondent deprives federal courts of personal jurisdiction" needed to issue relief. *Stanley v. Cal. Supreme Ct.*, 21 F.3d 359, 360 (9th Cir. 1994); *Padilla*, 542 U.S. at 444. Thus, a federal district court is wholly without authority to issue the writ in favor of a habeas petitioner who seeks habeas relief in a judicial district in which he is not confined and the immediate custodian is not located. *Padilla*, 542 U.S. at 442-43. And a "judgment entered without personal jurisdiction over a defendant is void as to that defendant." *Combs v. Nick Garin Trucking*, 825 F.2d 437, 442 (D.C. Cir. 1987).

Given that a challenge to the legality of detention is a core habeas claim, class-wide declaratory relief is inappropriate in the habeas context. *Calderon v. Ashmus*, 523 U.S. 740, 747 (1998) (declaratory judgment action not appropriate to address "validity of a defense the State may, or may not, raise in a habeas proceeding" in part because "the underlying claim must be adjudicated in a federal habeas proceeding"); *Fusco v. Grondolsky*, No. 17-1062, 2019 WL 13112044, at *1 (1st Cir. June 18, 2019) (declaratory judgment action must be dismissed when habeas available). Indeed, a class-wide declaratory judgment imposed from outside the district of confinement cannot be squared with the district-of-confinement requirement of habeas, where the relief is an order of release, 28 U.S.C. § 2241(a), not a declaration of legal rights that can later be enforced. *See Calderon*, 523 U.S. at 747 (1998); *Fusco*, 2019 WL 13112044, at *1; *LoBue v. Christopher*, 82 F.3d 1081, 1082 (D.C. Cir. 1996) (holding that the "availability of a

habeas remedy in another district ousted us of jurisdiction over an alien's effort to pose a constitutional attack . . . by means of a suit for declaratory judgment"); *Monk v. Sec. of Navy*, 793 F.2d 364, 366 (D.C. Cir. 1986) ("In adopting the federal habeas corpus statute, Congress determined that habeas corpus is the appropriate federal remedy for a prisoner who claims that he is 'in custody in violation of the Constitution . . . of the United States,' . . . . This specific determination must override the general terms of the declaratory judgment . . . statute.").

Here, the vast majority of *Bautista* class members are confined outside of the Central District of California by immediate custodians who are also outside the Central District of California and have not been named in the lawsuit. Therefore, the *Bautista* court lacked jurisdiction to issue habeas relief to all class members who are confined outside the Central District of California by immediate custodians outside that District, and a court's judgment cannot be binding and preclusive against a party over which it lacked jurisdiction. *Burnham v. Superior Ct. of Cal.*, 495 U.S. 604, 608 (1990). Indeed, another federal district court has already held that the *Bautista* declaratory judgment does not have preclusive effect. *Calderon Lopez v. Lyons*, No. 1:25-cv-226, 2025 WL 3683918, at *6-14 (N.D. Tex. Dec. 19, 2025).

In sum, the *Bautista* court's declaratory judgment purporting to grant relief that at its core sounds in habeas is a legal nullity outside that district. Petitioner is detained in Michigan, outside the Central District of California. And Petitioner's immediate custodian is the Director of ICE's Detroit Field Office, who was not a party in the Central District of California; subjecting the Director to the judgment of the Central District of California would be inconsistent with the immediate custodian rule. *Padilla*, 542 U.S. at 439-40.

Second, the Court should not give preclusive effect to *Bautista* because it is on appeal. *Bautista v. U.S. Dep't of Homeland Sec.*, No. 25-7958 (9th Cir.). Courts must exercise

significant caution before giving preclusive effect to declaratory judgments that are on appeal. Reflexively granting preclusive effect to such judgments could lead to subsequent judgments "from which it may be impossible to obtain relief" even if the first judgment is reversed on appeal. E.H. Schopler, Annotation, *Judgment as res judicata pending appeal or motion for a new trial, or during the time allowed therefor*, 9 A.L.R.2d 984 (1950). Courts should strive to avoid this "evil result[]." *Id.* ("[B]oth the rule under which the operation of a judgment as res judicata is, and the one under which it is not, affected by the pendency of an appeal, have very unfortunate consequences[.]"); *see also* 18A Wright & Miller's Federal Practice & Procedure § 4404 ("Awkward problems can result from the rule that preclusive effects attach to the first judgment" while that judgment is subject to an appeal); *id.* § 4433 (the rule that a decision is final for the purposes of preclusion while that decision is pending appeal creates "[s]ubstantial difficulties"). This problem can be "avoided . . . by delaying further proceedings in the second action pending conclusion of the appeal in the first action." *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 882–83 (9th Cir. 2007) (citing Wright & Miller § 4433). In the circumstances here—and particularly given the constraints of 8 U.S.C. § 1252(f)(1)—it would not be proper to impose res judicata effect on a class-wide basis while the declaratory judgment is pending on appeal. *See* Schopler, 9 A.L.R.2d 984 (the "only one safe way of avoiding conflicting judgments on the same cause . . . [is] the final decision on the merits of the second suit should be delayed until the decision on appeal has been rendered").

VIII. Any alleged *Castañon Nava* violations are not properly before this Court.

The 2022 settlement agreement in *Castañon-Nava* resolved a class action in the Northern District of Illinois challenging warrantless civil immigration arrests within ICE's Chicago Field Office's area of responsibility. 2025 WL 2842146, at *22-24. The settlement imposes certain requirements when ICE carries out a warrantless arrest in that area and permits a warrantless

arrest only when an officer has probable cause that an individual is unlawfully present and likely to escape before a warrant can be obtained. The Northern District of Illinois is already handling arguments regarding whether ICE has arrested class members in violation of the agreement. *Castañon Nava*, 2025 WL 2842146, at *1. This habeas action is not the proper vehicle for enforcing any benefits the Petitioner may claim under that agreement. Any allegation of non-compliance must instead be raised through class counsel and addressed pursuant to the procedures established in the settlement, before the U.S. District Court for the Northern District of Illinois, which retains oversight of the *Castañon-Nava* class action. Habeas claims in the Western District are not the proper avenue for Petitioner to seek relief for alleged violations for violations of that agreement; *Castañon Nava* provides a process for individuals to seek to join the plaintiff class there. *Nava Ibarra v. Noem,* No. 1:25-cv-01335, ECF No. 6, PageID.88 (W.D. Mich. Nov. 19, 2025).

IX. Petitioner's detention did not violate the Fourth Amendment and even if it did, that would not be grounds for release from custody.

The Fourth Amendment provides protection from unreasonable searches and seizures. U.S. Const. amend. IV. In assessing validity of detention, courts consider the totality of the circumstances and "[a] person's apparent illegal status in this country . . . can support a finding of reasonable suspicion" that justifies detention and is permissible under *Terry v. Ohio,* 392 U.S. 1, 30 (1989). *Valdez v. United States*, 58 F.Supp.3d 795, 814 (W.D. Mich. Nov. 7, 2014). Reasonable suspicion can be based on the officer's "own observations." *Id.* An investigative detention with reasonable suspicion of illegal alienage is permissible provided it does not last any longer than necessary to determine whether the individual is illegally in the United States. *Id.* Immigration officers have the authority, even without a warrant, to "interrogate any alien or person believed to be an alien regarding his right to be or remain in the United States." 8 U.S.C.

§ 1357(a)(1); 8 C.F.R. §§ 287.5(a), 287.8(b)(2); *see also* 8 C.F.R. §§ 287.8(b)(3) ("Information obtained from this questioning may provide the basis for a subsequent arrest."), § 287.8(c)(2)(i) (an arrest can be made "when the designated immigration officer has reason to believe that the person to be arrested . . . is an alien illegally in the United States."); *Saucedo-Carillo v. United States*, 635 F. App'x 197, 202-03 (6th Cir. 2015) (U.S. Border Patrol agent could arrest alien whom agent had reason to believe was in the country illegally, as agent had probable cause based on plaintiff's admissions). The Court therefore should reject any arguments that the manner of Petitioner's detention and arrest by federal officers violated the Fourth Amendment.

Even if the Court concluded that there was a Fourth Amendment violation, habeas release would not be an appropriate remedy. "The body or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred." *Immigration & Naturalization Serv. v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984) (quotations omitted). There can be no doubt: "the mere fact of an illegal arrest has no bearing on a subsequent deportation proceeding." *Id.* at 1040; *see also United States v. Abdi,* 463 F.3d 547, 556-57 (6th Cir. 2006) (even if immigration arrest violated the Fourth Amendment, suppression was not the remedy); *Alonso-Portillo v. Bondi*, No. 1:25-CV-306, 2025 WL 2483393, at *11 (N.D. Ohio Aug. 28, 2025) (rejecting Fourth Amendment habeas claim and noting that termination of detention and release of noncitizen detainee is not available as a remedy for a Fourth Amendment violation); *Buriev v. Warden, GEO, Broward Transitional Ctr.*, No. 25-cv-60459, 2025 WL 2763202, at *3 (S.D. Fla. Sept. 26, 2025) ("[C]ourts have long recognized that an unlawful arrest, by itself, doesn't warrant release.")

X. The Court should not opine on the burden applicable to a bond hearing or, alternatively, should not place the burden on the government.

It would be inappropriate at this juncture for this Court to issue any directive regarding the burden of proof at a bond hearing in immigration court. No such hearing has been ordered. And a habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. "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). 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). 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 (2d Cir. 2003) (Sotomayor, J.). Petitioner would have the right to appeal an unfavorable bond decision to the BIA. 8 C.F.R. § 236.1(d)(3); 8 C.F.R. § 1236.1(d)(3); *see also Ba v. Dir. of Detroit Field Office, U.S. Immigration & Customs Enforcement*, 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." (quotations omitted)).

Even if the Court reaches the issue of the appropriate burden at an administrative bond hearing, under 8 U.S.C. § 1226, its implementing regulations, and BIA decisions, the Court should reject any argument that the burden of proof falls on the government in bond hearings in immigration court. *See Matter of Adenji*, 22 I. & N. Dec. 1102, 1111-12 (BIA 1999); *Matter of Urena*, 25 I. & N. Dec. 140, 141 (BIA 2009) ("The alien bears the burden of proving that his release would not pose a danger to property or persons."); *Matter of R-A-V-P*, 27 I. & N. Dec. 803, 804 (BIA 2020) ("The respondent's assertion that the DHS should bear the burden to demonstrate that he is a flight risk by clear and convincing evidence lacks merit because we have clearly held that section 236(a) places the burden of proof on the alien to show that he merits release on bond.").

Nothing in the text of 8 U.S.C. § 1226(a), "which says only that the Attorney General 'may release' the alien 'on . . . bond'—even remotely supports the imposition" of an evidentiary burden on the government to "prove by clear and convincing evidence that the alien's continued detention is necessary." *Jennings*, 583 U.S. at 306; *see also Nielsen v. Preap*, 586 U.S. 392, 397–98 (2019) ("[T]he alien may secure his release if he can convince the officer or immigration judge that he poses no flight risk and no danger to the community."). Furthermore, the relevant regulations provide that "*the alien* must demonstrate" that he is not a flight risk or danger to persons or property. 8 C.F.R. 236.1(c)(8), 1236.1(c)(8) (emphasis added); *see In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006) ("The burden is on the alien."); *see also*, 8 C.F.R. § 1003.19(h)(3) (imposing the clear and convincing evidentiary burden on noncitizens). The rule that noncitizens bear the burden of proof during § 1226(a) bond hearings is unambiguous.

XI. This Court should reject any argument for release or for this Court to hold a bond hearing based on allegations that the immigration courts are systemically flawed.

None of these arguments pertain to the facts of this case. Petitioner has not had a bond hearing with the immigration court and has not appealed any bond determination to the BIA.

A matter is not ripe for review if it depends on "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Thomas v. Union Carbide Agr. Prods. Co.*, 473 U.S. 568, 580-581 (1985) (quoting 13A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3532 (1984)). Here, arguments about what *might* happen at a future bond hearing or appeal are entirely speculative, and, therefore, not appropriate for this Court to review now. *Lemeshko v. Wrona*, 325 F. Supp. 2d 778, 786 (E.D. Mich. 2004) (dismissing habeas petition alleging possible future violations of 8 U.S.C. § 1231 as unripe because no violation had actually occurred); *Gomez v. Decker*, No. 1:17-CV-1726-GHW, 2017 WL 1423959, at *2 (S.D.N.Y. Mar. 10, 2017) (dismissing habeas petition because "the possibility of future harm does not make this matter ripe for adjudication"). Indeed, many prior petitioners before this Court have been granted bond. *See, e.g.,* W.D. Mich. Case Nos. 26-cv-0110; 26-cv-0039; 26-cv-173; 26-cv-0100; 26-cv-0062; 25-cv-1933; 25-cv-01704; 25-cv-1889.

Petitioner also cannot rely on any alleged disparate experiences of other detainees to obtain relief here; Petitioner only has standing to challenge his/her own detention. *See* 28 U.S.C. § 2242 ("Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf."); *Preston v. Bonn*, No. 1:25-CV-895, 2025 WL 2618598, at *2 (W.D. Mich. Sept. 11, 2025). Petitioner cannot base any claims on inadmissible statements relating to other people. *See* Fed. R. Evid. 802.

Moreover, the Court lacks jurisdiction to coopt the immigration courts' role in determining whether bond is appropriate. While Respondents maintain that Petitioner is not

eligible for a bond hearing, Respondents recognize that this Court has ruled that similar petitioners are entitled to a bond hearing under 8 U.S.C. § 1226(a). The immigration court's bond determination under § 1226(a) is discretionary, and this Court lacks jurisdiction to review or coopt it. *See* 8 U.S.C. § 1226(e) ("No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation ***or denial of bond*** or parole") (emphasis added); *Casillas v. Holder*, 656 F.3d 273, 275 (6th Cir. 2011) ("The grant or denial of a bond is unreviewable."); *Am.-Arab Anti-Discrimination Comm. v. Ashcroft*, 272 F. Supp. 2d 650, 671 (E.D. Mich. 2003) ("The Court may not review the Bureaus' discretionary decisions in deciding not to grant parole."); *Naresh v. Klinger*, No. 2:19-CV-12800, 2019 WL 5455469 (E.D. Mich. Oct. 24, 2019), *supplemented by* 2019 WL 6486122 (E.D. Mich. Dec. 3, 2019), *aff'd sub nom.*, *Kumar v. U.S. Dep't of Homeland Sec.*, No. 19-2404, 2020 WL 2904685, at *2 (6th Cir. June 1, 2020) ("Critically, the Attorney General's exercise of his or her discretion in making a bond determination regarding aliens detained pursuant to § 1226(a) is not reviewable by this Court."). Congress has unequivocally placed the bond decision in the hands of the Attorney General, not this Court. *See* 8 U.S.C. § 1226; 8 U.S.C. § 1252(g) (precluding the district courts from adjudicating any cause or claim arising from the decision to adjudicate cases).

Lastly, challenges to the validity of the immigration system by individuals that ICE detains under § 1225, like Petitioner, can only be brought in the District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3).

CONCLUSION

The Court should deny this Petition for the reasons explained above.

Respectfully submitted,

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