United States District Court
Eastern District of Michigan

Juan Manuel Lopez-Campos,

Petitioner,

v.

Kevin Raycraft, in his official capacity as Acting Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security; Pamela Bondi, in her official capacity as U.S. Attorney General; Executive Office for Immigration Review,

Respondents.

Civil No. 25-12486

Honorable Brandy R. McMillion

Magistrate Judge Elizabeth A. Stafford

Response to Petition for a Writ of Habeas Corpus

Pursuant to the Court's order to show cause, (ECF No. 7), respondents submit this response to petitioner's request for a writ of habeas corpus, (ECF No. 1). As described in the attached brief, respondents respectfully request that the Court deny the petition because petitioner's detention does not violate the constitution or federal law.

Respectfully submitted,

Jerome F. Gorgon Jr.
United States Attorney

/s/ Zak Toomey
Zak Toomey (MO61618)
Assistant U.S. Attorney
211 W. Fort Street, Suite 2001
Detroit, Michigan 48226
(313) 226-9617
zak.toomey@usdoj.gov

Dated: August 20, 2025

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Respondents' Brief in Support of Their Response to Petition for a Writ of Habeas Corpus

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Issues Presented

I. Should the Court require petitioner to exhaust his administrative remedies before pursuing this suit when he has the opportunity to appeal the same issue he presents to this Court to the Board of Immigration Appeals?

II. Is petitioner properly detained under 8 U.S.C. § 1225(b)(2)(A) during his removal proceedings when he has no lawful status in the United States, he has conceded removability, and he falls within the scope of the statute?

III. Is ICE required to detain petitioner under § 1226(a) instead of § 1225(b)(2)(A) when no statutory provision requires ICE to detain petitioner under § 1226(a) and he is properly detained under § 1225(b)(2)(A)?

IV. Is petitioner's detention consistent with the due process clause when his detention is limited to a finite period, he received a hearing regarding his detention in immigration court, he has the right to appeal his detention administratively, and controlling law establishes that he is not due any more process under the Constitution?

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Introduction

Petitioner is a noncitizen who was not lawfully admitted to the United States and he has no lawful immigration status. He is currently detained by ICE while the agency pursues administrative removal proceedings against him. Petitioner does not challenge the agency's decision to initiate removal proceedings against him and he does not challenge the agency's authority to detain him in the first instance. Instead, petitioner only challenges the agency's decision to detain him under a statutory provision that does not entitle him to a bond hearing while his removal proceedings are still pending. The Court should reject this challenge for several reasons. First, petitioner should address this challenge with the Board of Immigration Appeals before addressing it in this Court. Second, ICE properly detained petitioner under 8 U.S.C. § 1225(b)(2)(A) and the fact that a similar statute also would have authorized his detention on terms more favorable to him does not make his detention unlawful. Third, petitioner's detention does not violate the due process clause because he has received the process provided by statute, which defines the scope of the process due under the Constitution in immigration proceedings.

Background

According to Lopez-Campos's petition, he is a citizen of Mexico who entered the United States unlawfully in 1999. (Pet., ECF No. 1, PageID.8). Lopez-Campos was not inspected at a port of entry. (Exhibit 1 – Mitchell Decl. ¶ 4). He was not

lawfully admitted or paroled into the United States. (*Id.*). ICE has no record of when or where Lopez-Campos entered the United States. (*Id.*).

Lopez-Campos alleges that he has several immediate relatives who are citizens of the United States. (Pet., ECF No. 1, PageID.8). Congress provided a pathway for the lawful admission of noncitizens who have U.S. citizen immediate relatives. *See* 8 U.S.C. § 1151(b)(2)(A)(i). The pathway for noncitizens with U.S. citizen immediate relatives is faster and easier than most other pathways to lawful residence in the United States. *See id.* For more than two decades, Lopez-Campos made no attempt to obtain lawful status in the United States. (*See* Pet., ECF No. 1, PageID.8).

In June 2025, Lopez-Campos was arrested by local police during a traffic stop in Romulus, Michigan. (Exhibit 1 – Mitchell Decl. ¶ 5; Pet., ECF No. 1, PageID.8–9). The Court may take judicial notice that Romulus is less than 25 miles from an international border with Canada. *See* Fed. R. Evid. 201. During the traffic stop, local police could not verify Lopez-Campos's immigration status, so they contacted the nearest Customs and Border Protection (CBP) station in Gibraltar, Michigan. (Exhibit 1 – Mitchell Decl. ¶ 5; Pet., ECF No. 1, PageID.8–9). CBP is not a party to this case. (*See* Pet., ECF No. 1).

On June 25, 2025, officials at the Gibraltar Border Patrol station issued an arrest warrant for Lopez-Campos after finding that he was inadmissible under 8

U.S.C. § 1182(a)(6)(A)(i)(I) and provided Lopez-Campos a notice that CBP officials had determined that he should be detained during his administrative removal proceedings. (Exhibit 1 – Mitchell Decl. ¶ 6). The forms CBP used to issue the notice and warrant indicate that they are issued under 8 U.S.C. § 1226. (*Id.* at 6). On the same date, Lopez-Campos requested that an immigration judge conduct a bond hearing. (*Id.*). CBP detained Lopez-Campos at a facility near Gibraltar, Michigan for approximately one week before transferring him to ICE custody. (Pet., ECF No. 1, PageID.9).

On July 2, 2025, ICE accepted custody of Lopez-Campos and detained him at the Monroe County Jail. (*Id.*; Exhibit 1 – Mitchell Decl. ¶ 8). ICE detained Lopez-Campos under 8 U.S.C. § 1225(b)(2)(A) after finding that Lopez-Campos was an applicant for admission to the United States seeking admission, but not clearly and beyond doubt entitled to admission. (Exhibit 1 – Mitchell Decl. ¶ 8).

On August 6, 2025, Lopez-Campos attended a hearing in immigration court with his attorney. (Exhibit 1 – Mitchell Decl. ¶ 9). At that hearing, Lopez-Campos admitted that he was inadmissible and conceded the charge of removability. (*Id.*). He also requested bond. (*See* Bond Dec., ECF No. 1-1, PageID.22).

On August 8, 2025, the immigration judge denied Lopez-Campos's request for bond because Lopez-Campos was detained under 8 U.S.C. § 1225(b)(2)(A) as an "applicant for admission" and, therefore, the immigration judge lacked

jurisdiction to release Lopez-Campos on bond because that statute does not permit it. (*See* Bond Dec., ECF No. 1-1, PageID.22). Lopez-Campos reserved his right to appeal the immigration judge's bond decision and his deadline to appeal is September 5, 2025. (Exhibit 1 – Mitchell Decl. ¶ 9).

Notwithstanding Lopez-Campos's concession that he is removable, he has applied for cancellation of removal under 8 U.S.C. § 1229b(b)(1). (Exhibit 1 – Mitchell Decl. ¶ 11; Pet., ECF No. 1, PageID.10). Cancellation of removal is reserved for cases where a noncitizen can show that their removal would cause an "exceptional and extremely unusual hardship" to a U.S. citizen relative, among other requirements. 8 U.S.C. § 1229b(b)(1)(D).

The immigration court has scheduled a merits hearing on Lopez-Campos's application for cancellation of removal for October 2, 2025. (Exhibit 1 – Mitchell Decl. ¶ 11). At that hearing, Lopez-Campos will be able to offer evidence and testimony in support of his application. *See* 8 U.S.C. § 1229a(b)(1).

If Lopez-Campos is ordered removed at the hearing on October 2, 2025, the authority for his detention would shift from 8 U.S.C. § 1225(b)(2)(A) to 8 U.S.C. § 1231. (Exhibit 1 – Mitchell Decl. ¶ 12).

On August 11, 2025, Lopez-Campos filed this petition seeking a writ of habeas corpus. (*See* Pet., ECF No. 1). In his petition, he does not challenge the agency's initiation of removal proceedings against him, nor could he. (*See id.*).

Lopez-Campos was not lawfully admitted, he has no legal status, and he has conceded his removability. (*See* Exhibit 1 – Mitchell Decl. ¶¶ 4, 9). And, even if Lopez-Campos wished to challenge his removability, he could not do so in this Court because challenges to any aspect of removal proceedings must be filed in the Sixth Circuit in the first instance. *See* 8 U.S.C. §§ 1252(a)(5), (g); *Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018).

Similarly, Lopez-Campos does not challenge the agency's initial decision to detain him. (*See* Pet., ECF No. 1, PageID.10–12). ICE detained Lopez-Campos under 8 U.S.C. § 1225(b)(2)(A). (Exhibit 1 – Mitchell Decl. ¶ 8). Lopez-Campos argues that ICE did not have the authority to detain him under § 1225(b)(2)(A), but concedes that, even if § 1225(b)(2)(A) were not a proper basis for his detention, ICE still would have had the lawful authority to detain him under a similar statute, 8 U.S.C. § 1226(a). (*See* Pet., ECF No. 1, PageID.10–12).

Standard of Review

A district court may grant a writ of habeas corpus if a petitioner is in federal custody in violation of the Constitution or a federal law. 28 U.S.C. § 2241.

Argument

The Court should deny petitioner's request for a writ of habeas corpus. First, the Court should require that Lopez-Campos pursue this issue in the Board of Immigration Appeals because that administrative appeal process may resolve the

dispute in this case and, even if not, the Court will benefit from the Board's reasoned decision. Second, even if the Court chooses to consider this issue before it is fully developed administratively, the Court should find that Lopez-Campos is properly detained under § 1225(b)(2)(A) because he falls within the scope of the statute. The Court should reject Lopez-Campos's argument that he may only properly be detained under § 1226(a) because there is no textual support for his argument. Finally, the Court should reject Lopez-Campos's due process argument because he has received all process provided by the statutes governing his administrative removal proceedings and, under controlling law, that is all the process due under the Constitution.

I. The Court Should Require Lopez-Campos to Exhaust His Administrative Remedies

When Congress has not imposed a statutory administrative exhaustion requirement, "sound judicial discretion governs whether or not exhaustion should be required." *Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013) (quotations omitted). The exhaustion doctrine both allows agencies to "'apply [their] special expertise in interpreting relevant statutes' and promotes judicial efficiency." *Id.* Therefore, the Sixth Circuit usually requires administrative exhaustion, even when not statutorily required. *See, e.g.*, *id.*

Here, the Court should require that Lopez-Campos appeal the immigration judge's denial of bond before considering the merits of his claim. There are

thousands of administrative immigration cases initiated each year. (EOIR Data, https://www.justice.gov/eoir/media/1344791/dl?inline (last visited August 18, 2025)). Congress provided a robust administrative hearing and appeal process for noncitizens in removal proceedings that includes evidentiary hearings, motion practice, and appeals. *See* 8 U.S.C. § 1229a. In particular, a noncitizen may appeal an immigration judge's decision denying bond to the Board of Immigration Appeals. *See* 8 C.F.R. § 236.1(d)(3). After deciding the appeal, the Board issues a written decision explaining its reasoning. *See, e.g.*, *Matter of Q. Li*, 29 I. & N. Dec. 66, 67 (BIA 2025) (deciding appeal of denial of bond). And, the precise legal issue raised in this case is now currently on appeal to the Board in hundreds of cases around the country. *See, e.g.*, *id.*; (Exhibit 2 – BIA Supp. Briefing Ltr.). Accordingly, requiring administrative exhaustion in this case would realize Congress's intent to funnel the disputes arising in immigration proceedings through the administrative appeal process, it would promote judicial efficiency by shielding the federal courts from the thousands of disputes that arise in these administrative cases each year, and after administrative appeals are exhausted, the Board will produce a reasoned decision that will aid the court's review of the relevant issues. *See Shearson*, 725 F.3d at 595 ("This record will help a court better determine the issues . . .").

The Court should reject Lopez-Campos's argument that the administrative appeal process is inadequate. A court may excuse administrative exhaustion if the

administrative appeal process is inadequate to resolve the dispute or would be futile. *See Shawnee Coal Co. v. Andrus*, 661 F.2d 1083, 1093 (6th Cir. 1981). However, Lopez-Campos does not dispute that the Board of Immigration Appeals has the power to reverse the immigration judge's bond decision. (*See* Pet., ECF No. 1, PageID.16; *see also* Exhibit 3 – BIA Dec. (remanding a denial of bond under § 1225(b)(2)(A))). Instead, he argues that an appeal *may* take up to six months, so pursuing his claim in this case *may* be more expedient. (*See* Pet., ECF No. 1, PageID.16). However, according to the Administrative Office of U.S. Courts, many judges take longer than six months to resolve disputes like this one in federal court. (*See* CJRA Rep., https://www.uscourts.gov/sites/default/files/document/cjra_8_0331.2025.pdf (last visited Aug. 18, 2025). And, if time were truly a concern for Lopez-Campos, he would have filed his appeal with the Board before filing this suit, but he has not. (*See* Exhibit 1 – Mitchell Decl. ¶ 10).

The Court should also reject Lopez-Campos's similar insinuation that the Board, which is a component of the Department of Justice, will not independently follow the law and will instead simply rubber stamp whatever ICE proposes. (*See* Pet., ECF No. 1, PageID.16). The Board is comprised of immigration law experts and nearly all of its members have served during several different presidential administrations. (*See* BIA, https://www.justice.gov/eoir/board-of-immigration-appeals#board (last visited 8/18/2025)). Further, the Board has ruled in noncitizens'

favor (and against ICE) in similar cases in the past, although those decisions were not precedential. (*See, e.g.*, Exhibit 3 – BIA Dec.). And, aside from an oblique insinuation, Lopez-Campos offers absolutely no evidence indicating that there is any danger whatsoever that the Board would ignore the law if he were to ever appeal the denial of his request for bond. (*See* Pet., ECF No. 1, PageID.16). Therefore, this argument should not be credited.

In addition, Lopez-Campos cannot demonstrate that this case presents a "non-frivolous" constitutional question that weighs against administrative exhaustion. The Sixth Circuit has acknowledged that exhaustion may not be required when a petitioner raises "non-frivolous" constitutional questions that cannot be addressed during the administrative process. *Bangura v. Hansen*, 434 F.3d 487, 493 (6th Cir. 2006). This exception does not apply here. In this case, the only constitutional issue Lopez-Campos raises is a due process claim. (*See* Pet., ECF No. 1, PageID.18). However, as described in more detail below, Lopez-Campos does not allege that he has been denied any procedure available in administrative immigration proceedings and, because of that, he cannot prevail on his due process claim as a matter of law. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138–140 (2020). Therefore, Lopez-Campos's due process claim does not overcome the other factors that weigh in favor of requiring administrative exhaustion in this case.

II. Lopez-Campos is Properly Detained Under § 1225(b)(2)(A)

There are two guiding principles when interpreting immigration statutes. The first is the broad discretion granted to immigration officials to enforce the nation's immigration laws. This discretion is explicit in the U.S. Code and the Supreme Court has consistently reaffirmed immigration officials' "plenary authority" in this realm for more than a century. *See* 6 U.S.C. §§ 202(2), (3); 8 U.S.C. § 1103(a)(5); *Thuraissigiam*, 591 U.S. at 139 (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)).

The second is that that immigration statutes must be interpreted in accordance with the occasionally counterintuitive definitions provided by statute. *See, e.g.*, 8 U.S.C. § 1101(a)(1)–(50); 8 U.S.C. § 1225(a)(1). "When a statute includes an explicit definition, [courts] must follow that definition, even if it varies from a term's ordinary meaning." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (quotation omitted).

Applying these principles, Lopez-Campos falls within the category of noncitizens that must be detained during their removal proceedings under 8 U.S.C. § 1225(b)(2)(A). Under § 1225(b)(2)(A), immigration officials "shall" detain "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." 8 U.S.C. § 1225(b)(2)(A). While the plain meaning of many of the terms in §

1225(b)(2)(A) may imply to some that the statute only applies to noncitizens in the process of initially arriving at an international border, the statutory definitions provided for those terms make it clear that the provision is broader and applies to many noncitizens who have already entered the United States unlawfully.

For instance, the plain meaning of a term like "applicant for admission" evokes a noncitizen walking up to a customs officer and formally requesting admission at a port of entry. *See, e.g.*, Applicant, Black's Law Dictionary (12th ed. 2024 ("Someone who requests something; a petitioner."). However, the statute defines an "applicant for admission" as any noncitizen "present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). Thus, this definition creates a legal fiction that deems any noncitizen who entered unlawfully as one applying for entry, even if they are already physically present within the United States. *See id.*; *see also* 8 U.S.C. § 1182(d)(5)(A); *Thuraissigiam*, 591 U.S. at 139 ("aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are 'treated' . . . 'as if stopped at the border.'").

Similarly, Lopez-Campos argues that the phrase "an alien seeking admission" means someone "arriving at U.S. ports of entry." (Pet., ECF No. 1, PageID.15). However, the statutory definition of "admission" does not refer to a noncitizen physically crossing the border into the country; instead, it describes "lawful entry," which relates to a noncitizen's legal right to enter, without regard to where or when

that right may be granted. 8 U.S.C. § 1101(a)(13)(A). In particular, the statute defines "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *Id.* Therefore, the term "an alien seeking admission" in § 1225(b)(2)(A) does not refer to a noncitizen attempting to physically access the United States; it instead refers to a noncitizen seeking a *lawful* means of entering the United States, such as a visa or a grant of refugee status, which are ways in which noncitizens can make a "lawful entry" into the United States. *See id.*; *see also* Admission, Black's Law Dictionary (12th ed. 2024) ("Admission: Immigration law. The entry into a country by an alien with apparent legal permission to do so, usu. as obtained with a visa.").

When properly applying the statutory definitions, § 1225(b)(2)(A) requires an immigration officer to detain any noncitizen "present" in the United States who has not been lawfully admitted or paroled and who seeks a lawful means of entry, such as a visa, if the official determines that the noncitizen is "not clearly and beyond doubt entitled to be admitted" and the officer refers the noncitizen for removal proceedings under 8 U.S.C. § 1229a, which is the statute providing the procedural aspects of removal proceedings. *See* 8 U.S.C. §§ 1101(a)(13)(A), 1225(a)(1), (b)(2)(A).

This understanding of the statute is consistent with the circumstances of its enactment. Section 1225(b)(2)(A) was added to the Immigration and Nationality Act

as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, § 302, 110 Stat. 3009-546. Congress enacted IIRIRA to eliminate "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). Therefore, IIRIRA created the legal fiction that noncitizens who had already entered the United States illegally were deemed "applicants for admission" and treated as if they were still on the threshold. *See id.*

Here, Lopez-Campos falls within the scope of § 1225(b)(2)(A). Lopez-Campos was not lawfully inspected or admitted to the United States and he was apprehended while present in the United States, so he is an "applicant for admission." (Exhibit 1 – Mitchell Decl. ¶ 4); 8 U.S.C. § 1225(a)(1). He is presumed to desire a lawful means of entering the country, therefore, he is "an alien seeking admission." *See* 8 U.S.C. §§ 1225(a)(1), 1101(a)(13)(A); *see also Zhang v. Mukasey*, 509 F.3d 313, 316–17 (6th Cir. 2007) (holding that an alien can only have one lawful entry based on the language of 8 U.S.C. § 1103(a)(13)(A)). An immigration official properly found that he was not clearly and beyond doubt entitled to admission. (Exhibit 1 – Mitchell Decl. ¶ 8). And ICE has pursued administrative immigration proceedings against him under 8 U.S.C. § 1229a. (*Id.* ¶ 11). Accordingly, Lopez-

Campos meets every element of § 1225(b)(2)(A) and his detention under that statute is proper.

The Court should reject Lopez-Campos's argument that he does not fall within the scope of § 1225(b)(2)(A). Lopez-Campos argues that § 1225(b)(2)(A) only applies to noncitizens apprehended at the border because it uses the term "seeking admission." (*See* Pet., ECF No. 1, PageID.11, 15). This argument fails for a few reasons. First, Lopez-Campos was apprehended less than 25 miles from an international border, therefore, for purposes of immigration enforcement he was effectively detained at the border. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 545, 552 (1976) (holding that immigration related stops within 90 miles of the border comply with the Fourth Amendment).

Second, Lopez-Campos's argument ignores the statutory definitions. Lopez-Campos suggests that the term "seeking admission" means "seeking physical access" and relies for support on non-binding case law characterizing § 1225(b)(2)(A) as only applying at the border. (*See* Pet., ECF No. 1, PageID.11, 15). However, the statutory definitions override that interpretation. *See* 8 U.S.C. § 1225(a)(1). And, the cases Lopez-Campos cites are either non-binding district court cases from others circuits that were issued on an emergency basis and that similarly fail to faithfully apply the statutory definitions, (*See* Pet., ECF No. 1, PageID.14 (citing *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 1193850 (W.D.

Wash. Apr. 24, 2025)), or dicta from the Supreme Court that characterized § 1225(b)(2)(A) as "generally" applying when noncitizens are apprehended at the border, while also acknowledging that it is a broad "catchall" provision that mandates detention for all noncitizens who qualify as "applicants for admission," *see Jennings v. Rodriguez*, 583 U.S. 281, 286–88, 297 (2018). Neither Lopez-Campos's interpretation of the statute nor the authority he cites overcome the interpretation of § 1225(b)(2)(A) required by the relevant statutory definitions.

III. Lopez-Campos Cannot Be Detained Under 8 U.S.C. § 1226(a)

Under 8 U.S.C. § 1226(a), ICE may obtain a warrant to arrest and detain a noncitizen to pursue administrative removal proceedings against them. 8 U.S.C. § 1226(a). Noncitizens detained under 8 U.S.C. § 1226(a) are generally entitled to a bond hearing, unless they fall into an exception, such as the exceptions described in § 1226(c). *See id.* Section 1226(a) is similar to § 1225(b)(2)(A), but it reaches noncitizens that are not covered by § 1225(b)(2)(A). For instance, some noncitizens lawfully enter the United States on a visa, but then overstay the visa. *See, e.g.*, *Wilkinson v. Garland*, 601 U.S. 209, 213 (2024). Noncitizens who overstay a visa do not fall within the definition of noncitizens subject to detention under § 1225(b)(2)(A) because they were admitted and inspected before entering the United States. *See* 8 U.S.C. § 1225(a)(1). However, noncitizens who overstay a visa may be detained under § 1226(a). *See* 8 U.S.C. § 1226(a).

If a noncitizen qualifies as an "applicant for admission" and an immigration official determines that they are not "clearly and beyond doubt" entitled to admission, they must be detained under § 1225(b)(2)(A) and the noncitizen cannot be detained under §1226(a). *See* 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded."). That is because the language of § 1225(b)(2)(A) is mandatory and requires detention for noncitizens who fall within the scope of the statute until the conclusion of their administrative immigration proceedings. *See* 8 U.S.C. § 1225(b)(2)(A); *Jennings v. Rodriguez*, 583 U.S. at 300. Therefore, ICE does not have discretion to detain "applicants for admission" who otherwise fall within § 1225(b)(2)(A) under a different statute that would allow the noncitizen to be released on bond, such as § 1226(a). *See Jennings*, 583 U.S. at 297. Only noncitizens who do not qualify as "applicants for admission" or who otherwise do not meet the criteria of § 1225(b)(2)(A) are eligible for detention under § 1226(a). Therefore, ICE properly detained Lopez-Campos under § 1225(b)(2)(A) instead of under § 1226(a).

Plaintiff's arguments to the contrary are unpersuasive. First, Lopez-Campos argues that ICE must rely on § 1226(a) in this case because ICE typically detained noncitizens like Lopez-Campos under that statute in the past. (Pet., ECF No. 1, PageID.3). As an initial matter, this assertion is incorrect. ICE has relied on

§ 1225(b)(2)(A), instead of § 1226(a), to detain noncitizens who had already entered the United States like Lopez-Campos since at least the Biden administration. (*See* Exhibit 3 – BIA Dec. (issued in 2023)). So, while ICE may be expanding the use of its authority under § 1225(b)(2)(A), ICE's application of that statute to cases like Lopez-Campos's is not new. (*See id.*).

Further, recent developments in the law support ICE's position. In particular, in 2018, the Supreme Court in *Jennings* explained that § 1225(b) is "quite clear" and "unequivocally mandate[s]" detention for all "applicants for admission" who do not have a legal right to enter. *Jennings*, 583 U.S. at 300, 303. Then, in 2019 and 2025, respectively, the Attorney General and the Board of Immigration Appeals issued opinions interpreting *Jennings* to require that, if a noncitizen falls within the scope of § 1225(b), they must be detained under that section instead of under § 1226(a). *See Matter of Q. Li*, 29 I. & N. Dec. 66, 70 (BIA 2025); *Matter of M-S-*, 27 I. & N. Dec. 509, 517 (2019); *see also Florida v. United States*, 660 F. Supp. 3d 1239, 1273, 1275 (N.D. Fla. 2023) (holding that DHS did not have discretion to detain noncitizens within the scope of §1225(b)(2)(A) under § 1226(a)). Therefore, ICE's detention of Lopez-Campos in this case is required by recent authority that governs the agency's interpretation of the statute.

In addition, even if ICE's reliance on § 1225(b)(2)(A) was entirely new, Lopez-Campos could not prevent immigration officials from using their valid

statutory authority, simply because they pursued a different path in the past. In general, it is exceptionally difficult to estop the government from changing its position and generally requires a plaintiff to prove that the government engaged in "affirmative misconduct," *see Michigan Exp., Inc. v. United States*, 374 F.3d 424, 427–28 (6th Cir. 2004), and it is an open question whether the government may *ever* be estopped from changing its position in the immigration context, *see Elia v. Gonzales*, 431 F.3d 268, 276 (6th Cir. 2005). Given this high bar, none of the evidence in this case, such as ICE's allegedly "new" policy or the fact that CBP may have initially detained Lopez-Campos under § 1226(a), could prevent ICE from detaining him under § 1225(b)(2)(A) once CBP transferred him to ICE custody, as long as Lopez-Campos otherwise falls within the scope of the statute, which, as explained above, he does.

Second, Lopez-Campos argues that ICE cannot detain him under § 1225(b)(2)(A) because applying it to cases like his (noncitizens who have already entered the country), would render § 1226(a) and a recent amendment to § 1226(c) (the Laken Riley Act), redundant. (Pet., ECF No. 1, PageID.15). However, the statutes do not cover identical categories of noncitizens, such as noncitizens who overstay a visa. *See* 8 U.S.C. §§ 1225(b)(2)(A), 1226(a). In addition, to the extent that some noncitizens technically fall within the scope of both statutes and thus the statutes may apply to a somewhat overlapping group of noncitizens, the statutes

provide an order of priority that prevents the statutes from being redundant. *See id.* That is, if an applicant falls within § 1225(b)(2)(A), ICE must use that statute, but if § 1225(b)(2)(A) does not apply, then ICE may detain the noncitizen under § 1226(a), if appropriate. *See id.* And, in any event, the Supreme Court has rejected the argument that immigration officials cannot apply immigration statutes simply because they overlap with other similar provisions. *See Jennings*, 583 U.S. 281, 305–06 (rejecting the argument that the scope of § 1226(c) must be limited because it overlapped with a provision of the Patriot Act); *see also Barton v. Barr*, 590 U.S. 222, 239 (2020) ("Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text. . .").

IV. Lopez-Campos's Detention Does Not Violate the Due Process Clause

To succeed on a due process claim, a plaintiff must show that they "have a property interest that entitles them to due process protection" and, if so, the "court must then determine 'what process is due.'" *Leary v. Daeschner*, 228 F.3d 729, 741 (6th Cir. 2000). With respect to applicants for admission 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 138–140, 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 when detention has no definite end point, detention up to six months is presumptively valid under the due process clause, *see Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Here, Lopez-Campos does not present a plausible due process claim. Lopez-Campos was given notice of the charges against him, he has access to counsel, he has attended a hearing with an immigration judge, he has requested bond and has the right to appeal that decision, he has been detained by ICE for only five weeks and he is scheduled for an evidentiary hearing on his application for cancelation of removal in less than two months. (*See* Exhibit 1 – Mitchell Decl. ¶¶ 4–12). Lopez-Campos has not identified any statutory procedure that ICE has denied him and there is no reason to believe that Lopez-Campos will be detained under § 1225(b)(2)(A) for more than six months. Under these circumstances, Lopez-Campos cannot plausibly argue that his detention violates the due process clause.

Conclusion

Respondents respectfully request that the Court deny Lopez-Campos's petition for a writ of habeas corpus because he is not detained in violation of federal law or the Constitution.

Respectfully submitted,

Jerome F. Gorgon Jr.
United States Attorney

/s/ Zak Toomey
Zak Toomey (MO61618)
Assistant U.S. Attorney
211 W. Fort Street, Suite 2001
Detroit, Michigan 48226
(313) 226-9617
zak.toomey@usdoj.gov

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Certificate of Service

I hereby certify that on August 20, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Zak Toomey
Zak Toomey
Assistant U.S. Attorney