

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Jose Jacob Otero Escalante,

Petitioner,

v.

Pamela Bondi, Attorney General;

Kristi Noem, Secretary, U.S. Department of
Homeland Security;

Department of Homeland Security;

Todd M. Lyons, Acting Director of
Immigration and Customs Enforcement,

Immigration and Customs Enforcement,

Sirce Owen, Acting Director for Executive
Office for Immigration Review,

Executive Office for Immigration Review,

Peter Berg, Director, Ft. Snelling Field Office
Immigration and Customs Enforcement;

and,

Ryan Shea, Sheriff of Freeborn County.

Respondents.

0:25-cv-03051-ECT-DJF

**PETITIONER'S REPLY TO
RESPONDENT'S
OBJECTIONS TO REPORT
AND RECOMMENDATION**

INTRODUCTION

Respondents' objections should not and cannot sway the Court. Respondents filed an essentially nonresponsive brief that misconstrues the petition and contradicts clear circuit precedent. Respondents' substantive arguments entirely fail to address the import of the "seeking admission is" language at 8 U.S.C. § 1225(b)(2)(A), several clear Congressional statements of intent issued contemporaneously with enactment, their reading's erasure of amendments made to the Immigration and Nationality Act this very year, thirty years of contrary administrative practice and caselaw, and the Agency's own contrary regulations. In short, Respondents' submission is essentially unresponsive.

ARGUMENT

I. 8 U.S.C. § 1252(g) Plays No Role in this Case.

The Court can see that nowhere in his Petition does Petitioner challenge Respondents' initiation of removal proceedings. *See* Doc. No. 6, at 3-4; Doc. No. 1, at 28. Nowhere does Petitioner request that removal proceedings be terminated or that they were improperly initiated. Respondents served Petitioner and filed with the immigration court its Notice to Appear to initiate proceedings. *See* Doc. No. 2, at Ex. B; 8 U.S.C. § 1229(a). Respondents issued a warrant of arrest to initiate detention

as required under 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(b). *See* Doc. No. 2, at Ex. C.¹ Petitioner is not challenging the initiation of removal proceedings. Petitioner is challenging whether Respondents have evoked the wrong legal standard to justify subjecting him to mandatory custody during his proceedings. Custody is a separate issue. Petitioner requests a bond hearing in accordance with 8 U.S.C. § 1226(a)(2). Petitioner vehemently maintains that 8 U.S.C. § 1225(b)(2)(A) is inapplicable. This is not something that the jurisdiction stripping statutes at 8 U.S.C. § 1252(g) prohibits.

Rather, the Court should recognize that the Eighth Circuit has explicitly observed that “an exception to § 1252(g) for a habeas claim raising a pure question of law.” *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (citing *Jama v. I.N.S.*, 329 F.3d 630, 633 (8th Cir. 2003), *aff’d sub nom. Jama v. Immigr. & Customs Enft.*, 543 U.S. 335, 125 S. Ct. 694, 160 L. Ed. 2d 708 (2005)).

In *Jama*, the petitioner “[c]hallenge[d] ... the Attorney General's construction of a statute; specifically, the Attorney General's legal conclusion that 8 U.S.C. § 1231(b)(2)(E)(iv) authorizes the INS to remove Mr. Jama to Somalia without first establishing that Somalia will accept his return.” 329 F.3d at 632. The Eighth Circuit

¹ This suggests, contrary to Respondents’ brief, Doc. No. 13, at 1, that Petitioner was detained pursuant to 8 U.S.C. § 1226(a), which requires “a warrant issued by the Attorney General.” This detention provision, of course, provides for discretionary release on bond. *See* 8 U.S.C. § 1226(a).

held that “[o]ur role [] (and the role of the district court below) is not to second-guess the Attorney General's exercise of his discretion; it is to address a purely legal question of statutory construction [and] therefore, that Mr. Jama's question is simply outside the scope of the jurisdiction-stripping provision of § 1252(g).” *Id.* (internal citations omitted).

The same is true here. Petitioner has presented to the Court a purely legal question. The question is rather simple – what the correct legal standard is. The primary issue concerns whether the mandatory detention under 8 U.S.C. § 1225(b)(2)(A) applies to all aliens, like Petitioner, who have not been previously admitted or paroled into the United States, even if they have been here for more than a decade. This is an issue of statutory construction and enforcement of Respondents’ practice and policies. The Court may review it.

Every court to date considering this question has rebuffed Respondents’ attempt to avoid a court answering this question of law. *See Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rodrigues De Oliveira v. Joyce*, No. 2:25-CV-00291-LEW, 2025 WL 1826118 (D. Me. July 2, 2025). It is an inescapable conclusion here too.

II. Respondents Substantive Arguments Are Nonresponsive.

Respondent's substantive arguments related to the supposed applicability of 8 U.S.C. § 1225(b)(2)(A) also fail to respond to the arguments set forth in Petitioner's memorandum. Respondents essentially quote the statute, failing to acknowledge the language limiting application of 8 U.S.C. § 1225(b)(2)(A) to those who are "seeking admission" at the time of the Department of Homeland Security's determination of inadmissibility. *See* Doc. No. 13; 8 U.S.C. § 1225(b)(2)(A).

This language lies at the crux of Petitioner's arguments, *see* Doc. No. 6, at 9, yet Respondents' fail to address it in any substantive way whatsoever. *See* Doc. No. 13. Nor do Respondents acknowledge express Congressional indications that 8 U.S.C. § 1226(a) "restates the ... authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same).

Respondents further neglect to acknowledge or address the import of recent amendments to the INA in the Laken Riley Act making a subset of, but not all, aliens present without admission or parole subject to mandatory detention. *See* Laken Riley Act, PL 119-1, January 29, 2025, 139 Stat 3. The Court can see that Respondents did not ignore Department regulations requiring that the "inspection by an immigration officer" predicated detention under 8 U.S.C. § 1225(b)(2)(A) occur "at

a designated port-of-entry,” 8 C.F.R. § 235.3(b)(1), as well as prior Department guidance stating that “aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.” Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10323, 62 FR 10312-01, 10323.

Respondent likewise do not explain or try to justify abandoning thirty years of Department practice and caselaw that makes the nature of entry a factor, but not dispositive, in the bond eligibility context. *See Matter of San Martin*, 15 I. & N. Dec. 167 (BIA 1974); *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006); *Matter of R-A-V-P-*, 27 I. & N. Dec. 803 (BIA 2020); *Matter of E-Y-F-G-*, 29 I. & N. Dec. 103 (BIA 2025); *Matter of C-M-M-*, 29 I. & N. Dec. 141 (BIA 2025).

In short, Respondent’s positions have been raised and roundly rejected around the country. *See Rodriguez*, No. 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *Gomes*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rodrigues De Oliveira*, 2025 WL 1826118 (D. Me. July 2, 2025). Respondents fail to even respond to the issues raised. The TRO must be issued.

CONCLUSION

Petitioner asks that the Court grant the motion for a temporary restraining order and set a schedule for the remainder of this matter accordingly.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, **David Wilson**, hereby certify that on August 4, 2025, I electronically filed the foregoing with the Federal Court for the District of Minnesota by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Respectfully submitted,

/s/ David Wilson,

August 4, 2025

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