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 RESPONDENTS' MEMORANDUM IN RESPONSE TO ORDER TO SHOW CAUSE

INTRODUCTION

Respondents' objections should not and cannot sway the Court.[1] Respondents' brief that misconstrues the petition and contradicts precedent. Respondents fail to address the import of the "seeking admission" language at 8 U.S.C. § 1225(b)(2)(A), clear Congressional statements made contemporaneously with enactment, legislative amendments made this year, thirty years of administrative practice, and the Agency's contrary regulations. The Court should grant the petition.

ARGUMENT

I. 8 U.S.C. §§ 1252(g) and (b)(9) Play No Role in this Case.

Respondents' reading of § 1252(g) stretches the Supreme Court's construction of 1252(g) past its breaking point. 1252(g) only "limits review of cases 'arising from' decisions 'to commence proceedings, adjudicate cases, or execute removal orders.'" Dept. of Homeland Security v. Regents of the University of California, 591 U.S. 1, 12 (2020). The Court "...rejected as 'implausible' the suggestion that 1252(g) covers 'all claims arising from deportation proceedings' or imposes a

[1] The Court's analysis in this matter must account for two recent orders granting petitioners' Temporary Restraining Orders in substantially similar cases. *See* Antonia Aguilar Maldonado v. Olson et al., No. 25-cv-3142 (SRN/SGE); Wuilmer Omar Ferrera Bejarano v. Bondi et al, 25-cv-03236 (NEB/JFD) (D. Minn. Aug 18, 2025); Diosdado Aguilar Vazquez v. Bondi et al., No. 25-cv-3162 (KMM/ECW).

'general jurisdictional limitation." Id. (quoting Reno v. American-Arab Anti-Discrimination Comm., 525 U.S. 471, 482 (1999)).

Nowhere in his Petition does Petitioner challenge Respondents' initiation of its removal proceedings. Petitioner has not requested staying, enjoining, or anything else about the removal proceeding. This Petition is exclusively about the *separate custody* proceedings. Removal proceedings commenced when the Notice to Appear was served and subsequently filed with the immigration court. *See* 8 U.S.C. § 1229a.

Respondents contort custody and removal into a singular proceeding when they are separate as matter of law and regulation. Removal and custody are two trains traveling on very different tracks. Custody proceedings advance under 8 U.S.C. § 1226. Removal proceedings are initiated exclusively under 8 U.S.C. § 1229 and governed by 8 U.S.C. § 1229a. Sections 1229 and 1229(a) do not incorporate a single reference to detention, arrest, or custody.

The regulation is salient. "Consideration by the Immigration Judge of an application or request of a respondent regarding custody or bond under this **section *shall be separate and apart from*, and *shall form no part of, any deportation or removal hearing or proceeding***." 8 CFR § 1003.19(d) (emphasis added). *See also* EOIR Immigration Court Practice Manual, Ch. 9.3(e)(4) and 2.1(C)(2). There is a litany of differences. There is a right to an attorney in removal proceedings but not in a custody matter, there are different procedural rights, and a custody determination

cannot conclude, or in any way impact, the resolution of a removal proceeding. The Court must ignore the effort to blend the two proceedings together to create a jurisdictional quagmire. The power to conduct custody proceedings has no impact on a removal hearing.

Respondents cite § 1252(b)(9), when arguing that "Petitioner challenges the government's decision and action to detain him, which arises from DHS's decision to commence removal proceedings against him as an arriving alien and thus an 'action taken…to remove [them] from the United States." This distorts the record. Respondents charged Petitioner as "an alien present in the United States who has not been admitted or paroled." Dkt. 21, at 21. However, Respondents did not charge Petitioner as an arriving alien. *See* Dkt. 22-1, at 1.

Nor does Petitioner's detention arise from "an action taken" to remove him from the United States. Custody is "separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding." 8 CFR § 1003.19(d). Respondent's contentions to the contrary are meritless.

The Court must ignore Respondents' cherry-picked language from Jennings. Respondents assert that § 1252(b)(9) and 1252(a)(5) "divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain *for purposes of* removal or for proceedings" because the Jennings Court interprets 1252(b)(9) as covering challenges to the "decision to

detain [an alien] **in the first place** or to seek removal." Dkt. 21, at 21 (citing Jennings v. Rodriguez, 138 S. Ct. 830, 293–94 (2018)). Petitioner does not challenge the decision to detain in the first place. He challenges, instead, the availability of a bond hearing, which was precisely the issue that the Supreme Court exercised jurisdiction to review in Jennings. This Petition is appropriately circumscribed to stay within this jurisdictional allowance.

Petitioner's position is consistent with decisions from within this district. *See* Mohammed H. v. Trump, No. CV 25-1576 (JWB/DTS), 2025 WL 1692739, at *2 (D. Minn. June 17, 2025); Antonia Aguilar Maldonado v. Olson et al., No. 25-cv-3142 (SRN/SGE); Wuilmer Omar Ferrera Bejarano v. Bondi et al, 25-cv-03236 (NEB/JFD) (D. Minn. Aug 18, 2025); Diosdado Aguilar Vazquez v. Bondi et al., No. 25-cv-3162 (KMM/ECW) (D. Minn. Aug 19, 2025). Furthermore, even if this were not the case, the Eighth Circuit astutely concluded 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 Enf't, 543 U.S. 335, 125 S. Ct. 694, 160 L. Ed. 2d 708 (2005)). At a minimum, this principle controls here.

The Court is answering a pure legal question– what the correct legal standard is regarding custody. Every court that has considered this question has rebuffed an attempt to avoid answering this question. *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. Exhaustion Is Futile When Respondents Collaborate in Developing a Nationwide Change of Policy.

Respondents' suggestions simply ignore the record. Mr. Lyons noted that ICE's new "policy" was developed in conjunction with the Department of Justice. Respondents want the Court to force Petitioner to try to convince the agency that helped developed this legal scheme to reverse itself when there is no indication in the cases presented to date that Respondents intend to do so voluntarily. Administrative exhaustion would serve no purpose other than to prolong Petitioner's unlawful detention without a bond proceeding. The Supreme Court has noted that prudential exhaustion is not required when to do so would be futile or "the administrative body . . . has . . . predetermined the issue before it." McCarthy v. Madigan, 503 U.S. 140, 148 (1992). Here, the Board has issued unpublished decisions affirming the position of Lyons memo, which first articulated the government's evolving position on the application of 8 U.S.C. § 1225(b)(2)(A) was issued in coordination with the Department of Justice. Dkt. No. 2, Ex. A. Then the

Court has the Lyons memo itself. Exhaustion is intended to resolve the arbitrary, isolated instance of agency action. It is incapable of unwinding a systemic effort to change course solely to increase the usage of detention despite the law. Administrative appeals would be a futile exercise and expense that Petitioner alone would bear.

Furthermore, "[t]here is no useful purpose to proceeding through the administrative remedy process where the petitioner presents a pure question of law." Vang v. Eischen, No. 23-CV-721 (JRT/DLM), 2023 WL 5417764, at *3 (D. Minn. Aug. 1, 2023). Petitioner's request contains a pure legal question. In addition, "A party also may escape the exhaustion requirement if it is able to show that the agency clearly exceeded its statutory authority." Trinity Indus., Inc. v. Reich, 901 F. Supp. 282, 286 (E.D. Ark. 1993) (citing Philip Morris, Inc. v. Block, 755 F.2d 368, 370 (4th Cir. 1985). Respondents are attempting to exceed the statutory detention authority found in 8 U.S.C. § 1225(b)(2)(A), so, once again, prudential exhaustion is not required.

That is the case here, and similarly situated courts have agreed. *See* Antonia Aguilar Maldonado, 2025 WL 2374411; Ferrera Bejarano, 25-cv-03236 (D. Minn. Aug 18, 2025); Aguilar Vazquez, 25-cv-03162 (D. Minn. Aug 19, 2025); Rodriguez, 779 F. Supp. 3d 1239; Martinez, 2025 WL 2084238; Rocha Rosado, 2025 WL

2349133; Gomes, 2025 WL 1869299; Dos Santos, 2025 WL 2370988; Lopez Benitez, 2025 WL 2371588; Anicasio, 4:25CV3158 (Neb. Aug. 14, 2025).

III. Respondents Substantive Arguments Are Unavailing.

Respondents raise several arguments in support of the supposed applicability of 8 U.S.C. § 1225(b)(2)(A). First, they suggest that the provisions at 8 U.S.C. § 1225(b)(2)(A) somehow speak more specifically and directly to Petitioner's detention than the detention provisions at 8 U.S.C. § 1226(a). Second, they argue that the cannons of noscitur a sociis and against surplusage support the applicability of 8 U.S.C. § 1225(b)(2)(A). Third, they point to general guiding principles related to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, in an effort to contradict the express statements of specific Congressional intent vis-a-vis bond eligibility. Fourth, they attempt to twist Loper Bright to escape their own 30-year practice and reading of the statute at the time of its enactment. Finally, they suggest that Petitioner's due process claims are meritless simply because he is an applicant for admission, and that he has no ability to challenge his detention under the APA because their conduct is not subject to judicial review.

A. 8 U.S.C. § 1226(a) is more direct and specific than § 1225(b)(2)(A).

Petitioner concurs that, generally, "the specific governs the general." RadLAX Gateway Hotel v. Amalgamated Bank, 566 U.S. 639, 645 (2012). That does nothing to advance Respondents case. Here, the "[a]pprehension and detention

of aliens … pending a decision on whether the alien is to be removed from the United States" is governed by 8 U.S.C. § 1226. This is particularly true where there has been "a warrant issued by the Attorney General." 8 U.S.C. § 1226(a).

Respondents initially took Petitioner into custody pursuant to an I-200 warrant of arrest on June 23, 2025, that expressly notes that it was "authorized pursuant to sections 236." Dkt. No. 22-2. INA § 236 is 8 U.S.C. § 1226. It follows that the "detention" provisions at 8 U.S.C. § 1226(a) speak more specifically and directly to Petitioner's case than the general "inspection" and "referral" provisions at 8 U.S.C. § 1225(b)(2)(A). This is particularly true given that Respondents expressly invoked 8 U.S.C. § 1226 as the source of their authority and Petitioner is not "seeking admission" at this time, nor was he at the time of his detention. Infra § II(c).

B. Respondents ignore their own conduct throughout this case.

Respondents allege that Petitioner's claim rests on a factual error, but the facts of this case clearly refute their position. Petitioner was taken into custody subject to an I-200 "warrant of arrest." *See* Dkt. No. 22-2. The warrant of arrest is the most instructive and blatantly obvious indicator of the authority under which Petitioner is detained. The warrant states that it is addressed to "Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act […] to serve warrants of arrest for immigration violations." Dkt. No. 22-2. INA § 236 is 8 U.S.C. § 1226. If the document issued by the Agency overseeing the arrest

of Petitioner states that he was taken into custody under § 1226, then Respondents have always had the authority to detain, and release, Petitioner under 8 U.S.C. § 1226(a). That remains the case today, regardless of Respondents' post-hoc attempts to bend the law to conform with their new detention policy.

C. The plain language clearly limits 8 U.S.C. § 1225(b)(2)(A) to those "seeking admission" at or near a border or port of entry.

Respondents contend that "statutory language 'is known by the company it keeps.'" Dkt. No. 21, at 24 (citing Marquez-Reyes v. Garland 36 F.4th 1195, 1202 (9th Cir. 2022). Petitioner agrees and adds that "[w]hen 'a statute includes an explicit definition' of a term, 'we must follow that definition." Van Buren v. United States, 593 U.S. 374, 397 (2021) (citing Tanzin v. Tanvir, 592 U.S. 43, 47 (2020).

Once again, "[t]he terms 'admission' and 'admitted' mean, with respect to an alien, 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). This definition applies throughout the "chapter." 8 U.S.C. § 1101(a). Therefore, for 8 U.S.C. § 1225(b)(2)(A) to apply, the alien must be both an "applicant for admission" and "seeking admission" at the time of the determination. The plain text of the provision requires both. *See* 8 U.S.C. § 1225(b)(2)(A). To be seeking "lawful entry of the alien into the United States," 8 U.S.C. § 1101(a)(13), an applicable applicant for

admission must be seeking "entry," which "by its own force implies a coming from outside." U.S. ex rel. Claussen v. Day, 279 U.S. 398, 401 (1929).

Trying to contort the plain meaning of the term "seeking admission," Respondents turn to administrative caselaw that improperly conflates the terms "applicant for admission" and "seeking admission" in a manner that would render one of those phrases entirely unnecessary within the provision at 8 U.S.C. § 1225(b)(2)(A). *See* Dkt. No. 21, at 24 (citing Matter of Lemus-Losa, 25 I. & N. Dec. 734, 743 (BIA 2012)). Notably, Respondents citation acknowledged that "[i]n ordinary parlance, the phrase "seeks admission" connotes a request for permission to enter," but then stretched to amend the definitional phrase provided by Congress, suggesting the Congressionally mandated verbiage was actually a "term of art." Matter of Lemus-Losa, 25 I. & N. Dec. at 743. Generally speaking, "[i]n construing a statute, we look first to the plain meaning of the words of the statute." United States v. Smith, 171 F.3d 617, 620 (8th Cir. 1999). Here, the Congressionally provided definition and the plain language favor Petitioner's reading–an entry from outside the United States.

Respondents' emphasis on 8 U.S.C. § 1225(a)(3) is also misguided. That provision defines who "shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). It does not define who "shall be detained." Moreover, the notion that the word "or" somehow means that the subsequent phrase is necessarily synonymous

with the proceeding one is also meritless. *See* Dkt. 21, at 25. The full language from U.S. v Woods is instructive.

> While that can sometimes introduce an appositive—a word or phrase that is synonymous with what precedes it ("Vienna or Wien," "Batman or the Caped Crusader")—its ordinary use is almost always disjunctive, that is, the words it connects are to "be given separate meanings."

United States v. Woods, 571 U.S. 31, 45–46 (2013) (citing Reiter v. Sonotone, 442 U.S. 330, 339 (1979). In other words, "or" is ordinarily disjunctive and here, some "applicants for admission" are "seeking admission" and some who are not "applicants for admission" may be "otherwise seeking admission," and all those people are subject to inspection. However, only those who are both an "applicant for admission" and "seeking admission … shall be detained." 8 U.S.C. § 1225(b)(2)(A).

Next, the Orwellian argument that Petitioner's reading somehow renders the phrase "applicant for admission" surplusage barely merits a response. Respondents would read the terms "applicant for admission" and "seeking admission" as interchangeable. *See* Dkt. 21, at 25. Obviously 8 U.S.C. § 1225(b)(2)(A) applies to "applicants for admission." No one disputes that. However, the text also requires that those "applicants for admission" be "seeking admission." Respondents would write the second phrase out of the statute entirely. That violates the cannon against surplusage.

Furthermore, the term "seeking admission," is phrased in the present tense, and "[c]onsistent with normal usage, we have frequently looked to Congress' choice of verb tense to ascertain a statute's temporal reach." Carr v. United States, 560 U.S. 438, 448 (2010). This suggests that, for 8 U.S.C. § 1225(b)(2)(A) to apply, the applicant for admission must be contemporaneously "seeking admission," that is, seeking entry into the United States from abroad.

In employing the inadmissibility provision from 8 U.S.C. § 1182(a)(7), which applies "at the time of application for admission," courts in the Fifth, Ninth, and Eleventh Circuits have held that the act of applying for admission occurs at "the particular point in time when a noncitizen submits an application to physically enter into the United States … from outside the country or inside the country at a port of entry." Torres v. Barr, 976 F.3d 918, 924 (9th Cir. 2020); Marques v. Lynch, 834 F.3d 549, 561 (5th Cir. 2016); Ortiz-Bouchet v. U.S. Atty. Gen., 714 F.3d 1353, 1356 (11th Cir. 2013)). It is a particular point at which an applicant seeks to enter from abroad. Thus, "seeking admission" does not apply here.

Neither Pena v. Hyde, 2025 WL 2108913 (D. Mass. July 28, 2025), nor Florida v. United States, 660 F. Supp. 3d 1239 (N.D. Fla. 2023), should convince the Court otherwise. In Pena, the Court entirely failed to wrestle with the "seeking admission" language at 8 U.S.C. § 1225(b)(2)(A). *See* 2025 WL 2108913. In Florida v. United States, the court limited its inquiry to "aliens arriving at the Southwest

Border into the country *en masse*." 2025 WL 2108913, at 1249. Those individuals were arriving at, or recently arrived at, the border. Thus, they indisputably fall within the ambit of 8 U.S.C. § 1225(b)(2)(A).

Instead, the court should follow Antonia Aguilar Maldonado, 2025 WL 2374411; Ferrera Bejarano, 25-cv-03236 (D. Minn. Aug 18, 2025); Aguilar Vazquez, 25-cv-03162 (D. Minn. Aug 19, 2025); Rodriguez, 779 F. Supp. 3d 1239; Martinez, 2025 WL 2084238; Rocha Rosado, 2025 WL 2349133; Gomes, 2025 WL 1869299; Dos Santos, 2025 WL 2370988; Lopez Benitez, 2025 WL 2371588; and Anicasio, 4:25CV3158 (Neb. Aug. 14, 2025), to conclude that 8 U.S.C. § 1226(a), and not 8 U.S.C. § 1225(b)(2)(A), governs Petitioner's detention.

D. Respondents recitations of general principals of legislative intent cannot overcome the specific statements of intent related to bond eligibility.

Respondents urge the Court to ignore Congressional Reports specifically noting that 8 U.S.C. § 1226(a) permits aliens present in the United States without inspection to seek bond, *see* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) ("Section 236(a) restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States."), in favor of general platitudes, from the same report, relating to an intent to "replace **certain** aspects of the [then] current 'entry doctrine.'" Dkt. No. 21, at 26 (citing *id.* at 225) (emphasis added). If, as Respondents

contend, the specific controls the general, Dkt. No. 21, at 22, then specific statements as to the availability of bond trump general references to the entry doctrine.

As for Respondents arguments regarding the Laken Riley Act, their reading would not simply make "doubly sure" that unlawful aliens are detained. Dkt. No. 21, at 22. It would render the first bill of President Trump's second term entirely pointless, in violation of the precept that "[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." Pierce Cnty. v. Guillen, 537 U.S. 129, 145 (2003).

E. Respondents' thirty years of practice based on contemporaneous interpretation is illuminative under the Loper Bright framework.

Even under Loper Bright,

> "[T]he construction of a doubtful and ambiguous law, the contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect." Such respect was thought especially warranted when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time.

Loper Bright Enters. v. Raimondo, 603 U.S. 369, 386 (2024) (citing Edwards' Lessee v. Darby, 12 Wheat. 206, 210 (1827)).

In 1996, Respondents explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] 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. That has been the position for 29 years. That is certainly meaningful under Loper Bright.

F. Respondents' claim that detention is for the purpose of conducting his removal proceedings is a distraction as the two proceedings are separate under the law.

Again, Petitioner is not challenging the fact that he is in removal proceedings, **nor is he challenging the fact that he was detained in the first place.** Petitioner's challenge is to the legality of his ongoing detention without opportunity to be heard in a bond hearing. Removal proceedings initiated under 8 U.S.C. § 1229(a) are separate from Petitioner's detention under U.S.C. § 1226. Petitioner has been issued a warrant of arrest, making clear the fact that he was detained under U.S.C. § 1226. Under the statute, Petitioner may be released on bond if certain conditions are met. The right to a bond hearing before the Immigration Judge is entirely distinct from any proceeding related to a person's removal case. C.F.R. § 1003.19(d). Any discussion of removal is a red herring cast out to stymie Petitioner's effort to challenge Respondents' utter disregard of the law.

G. Respondents' assertion that the Due Process claims lack merit holds no water.

Respondents claim that Petitioner's due process rights were not violated hinge entirely on their assertion that he was detained pursuant to 8 U.S.C. § 1225 as an

applicant "seeking admission." The Court can cast this argument aside once it understands that Respondent is not, and never was, "seeking admission" under the plain language of the statute. Respondents' argument ignores the fact that immigration judges have statutory authority under 8 U.S.C. § 1226 to issue individualized bond decisions and instead treats detention as an automatic consequence of status, stripping it of any legitimate regulatory tether. By denying Petitioner the right to a bond redetermination hearing on the merits of his custody case, Respondents are converting what should be a narrowly tailored regulatory measure into an instrument of punishment which imposes on those in immigration civil proceedings held in detention conditions indistinguishable from those of criminally convicted inmates. This is precisely the sort of punitive civil detention the Constitution forbids.

H. Respondents' suggestion that there is "no final agency action for the Court to review at this juncture" is entirely disingenuous.

Under the APA, a court can "hold unlawful and set aside agency action … found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(a)(2)(A). An "agency action" is "the whole or a part of an agency rule, order, license, sanction, relief or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). An agency "'rule' means the whole or a part of an agency statement of general or particular applicability and future effect

designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." 5 U.S.C. § 551(14).

The Lyons memo is a clear articulation of a nationwide policy adopted by several U.S. government agencies, all of which are tasked with overseeing immigration enforcement and adjudication of removal cases. *See* Dkt. 2. Exh. A. This is clearly an agency rule. Moreover, the Supreme Court has held that a final agency action is one from which legal consequences will flow. Port of Bos. Marine Terminal Ass'n v. Rederiaktiebolaget Transatlantic, 400 U.S. 62, 71 (1970); Chicago & S. Air Lines v. Waterman S. S. Corp., 333 U.S. 103, 112–13 ("administrative orders are not reviewable unless and until they **impose an obligation, deny a right or fix some legal relationship as a consummation of the administrative process**) (emphasis added). The dissemination of the Lyons memo sets forth the following instructions to all involved agencies:

> DHS, in coordination with the Department of Justice, has revisited its legal position on detention and release authorities. The following interim guidance is intended to ensure immediate and consistent application of the Department's interpretation while additional operational guidance is developed.

Dkt. 2, Exh. A. This obligation imposed by this directive could not be clearer. The agencies intended to employ this new legal standard, effective **immediately** to effectuate new procedures related to who can and should be detained. If this does not meet the definition of a "final agency action," it is unclear what would.

Finally, under Federal Rule of Civil Procedure 18, "[a] party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party." F.R.C.P. 18(a). The notion that this must be separately pled is simply untrue.

CONCLUSION

Petitioner asks that the Court grant the motion for preliminary injunction and issue the writ of habeas corpus accordingly.

Respectfully submitted,

/s/ David L. Wilson — **August 20, 2025**
Date

David L. Wilson, Esq.
Minnesota Attorney #0280239
Wilson Law Group
3019 Minnehaha Avenue
Minneapolis, Minnesota 55406
Phone: 612.436.7100
Email: dwilson@wilsonlg.com

/s/ Cameron Giebink
Cameron Giebink #0402670
Wilson Law Group
3019 Minnehaha Avenue
Minneapolis, MN 55406
Email: cgiebink@wilsonlg.com

/s/ Sierra Paulsen
Sierra Paulsen Minnesota #0505525
Wilson Law Group
3019 Minnehaha Avenue
Minneapolis, MN 55406
Email: spaulsen@wilsonlg.com

CERTIFICATE OF SERVICE

I, **Sierra Paulsen**, hereby certify that on August 20, 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/ Sierra Paulsen **August 20, 2025**

Sierra Paulsen, Esq.
MN Attorney #0505525
spaulsen@wilsonlg.com
Wilson Law Group
3019 Minnehaha Avenue
Minneapolis, MN 55406
(612) 436-8183 / (612) 436-7101 (fax)