UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Diosdado Aguilar Vazquez,

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,

Fort Snelling Immigration Court,

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

and,

Ryan Shea, Sheriff of Freeborn County.

Respondents.

0:25-cv-03162-KMM-ECW

MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

Pursuant to Counts 2, 3, and 4 of Petitioner's Petition for Habeas Corpus, Petitioner Diosdado Aguilar-Vazquez requests a Temporary Restraining Order to (i) enjoin Respondents from moving Petitioner outside of the geographic boundaries of the District of Minnesota and (ii) Petitioner seeks an Emergency Temporary Restraining Order requiring that Respondents provide Petitioner with a bond hearing in accordance with 8 U.S.C. § 1226(a)(2)(A) within 7 days.

The plain language, Congressional history, and structure of the Immigration and Nationality Act ("INA"), as well as the implementing regulations and administrative caselaw, illustrate that Petitioner cannot be detained pursuant to 8 U.S.C. § 1225(b)(2)(A), and that he must be afforded a bond hearing consistent with 8 U.S.C. § 1226(a)(2)(A) within 7 calendar days. As Petitioner is likely to prevail on the merits of his case, unlawful detention without a bond hearing is an irreparable harm, and the government has no interest in unlawfully detaining Petitioner without a bond hearing, this TRO should be granted.

FACTS

Petitioner, a native and citizen of Mexico, entered the United States without inspection on or around April 3, 2003. *See* Dkt. 2, Exh. B. On June 21, 2013, Respondents served Petitioner with a Notice to Appear in Immigration court,

thereby initiating removal proceedings under 8 U.S.C. § 1229a. *See* Dkt. 2, Exh. B. At the same time that they served the Notice to Appear, Respondents served Aguilar-Vazquez with a Warrant of Arrest. Following the arrest, Respondents released Petitioner on an order of supervision and form I-286, issued by Respondents expressly states that:

> **Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations**, I have determined that pending a final determination by the immigration judge in your case, and in the event you are ordered removed from the United States, until you are taken into custody for removal, you shall be … released on your own recognizance.

Dkt. 2., Exh. M.

Following his release, Aguilar-Vazquez filed an application for Cancellation of Removal, and his case was eventually administratively closed. He has acted as a responsible father to his now 16-year-old US citizen daughter and became integrally involved in Minneapolis's Spanish language Alcoholics Anonymous program. Over the years, the Grupo Vida y Esperanza (Life and Hope Group) Alcoholics Anonymous group has been central to Aguilar-Vazquez's identity, and he has risen through the ranks, ultimately becoming a coordinator arranging 4th and 5th step weekends for new members to work with sponsors to confront and address issues around alcohol abuse and assisting participants in achieving lives of sobriety. *See* Dkt. 2, Exh. U.

Twelve years after his release from custody, on May 19, 2025, Aguilar-Vazquez was pulled over for speeding and cited for failing to equip his vehicle with an ignition interlock device pursuant to restrictions on him arising from his then decades old DWIs. He was convicted a month later and in July of 2025, Steele County probation officers contacted ICE. On July 16, 2025, Aguilar-Vazquez was once again detained by ICE officers in the public lobby of the Steele County Probation Office as Aguilar-Vazquez was attending his scheduled check in. *See* Dkt. 2, Exh. C.

Around the same time that Aguilar-Vazquez appeared to comply with the order of probation, Respondent ICE, "in coordination with" EOIR, which oversees the Fort Snelling immigration court, announced a new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission." Dkt. 2, Exh. A. The policy was released on July 8, 2025 and pursuant to it, Respondents claim that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades

On July 21, 2025, Aguilar-Vazquez sought a custody redetermination hearing before the immigration court sitting in Ft. Snelling, Minnesota. Dkt. 2., Exh. D. That hearing was held on July 30, 2025, where the immigration court denied the request, holding that The Court does not have jurisdiction to release Respondent under INA Section 235(b) (2). The Court would alternately deny release on bond as Respondent has not established that he is not a flight risk. Matter of R-A-V-P-, 27 I&N Dec. 803 (BIA 2020). If there is any decision finding that the Court has jurisdiction to consider bond for those who enter without permission, the Court would find that is a material change in circumstance in support of a motion for a bond redetermination." Dkt. 2., Exh. E. This determination was made pursuant to an ICE policy memorandum entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," which claims that all persons who entered the United States without inspection are subject to mandatory detention provision under 8 U.S.C. § 1225(b)(2)(A) as "applicants for admission." Dkt. 2., Exh. A. This policy was implemented "in coordination with" the Department of Justice. Dkt. 2., Exh. A. Similar decisions have been rendered on all cases involving aliens present without admission or parole appearing in custody hearings at Fort Snelling since August 8, 2025. *See* Dkt. 2., Exh. N; Exh. O; Exh. P; Exh. Q; Exh. R.

On August 4, 2025, Aguilar-Vazquez filed an appeal of the decision with the Board of Immigration Appeals. Dkt. 2., Exh. F. That appeal remains pending.

ARGUMENT

I. The Court has Jurisdiction Over Petitioner's Claims.

In other similar cases, Respondents have contended that § 1252(b)(9) and §1252(g) would preclude review of Petitioner's claims because § 1252(b)(9) allocates "[j]udicial review of all questions of law…including interpretation and application of constitutional and statutory provisions, arising from any action taken…to remove an alien from the United States" to federal courts of appeals. However, § 1252(b)(9) comes under the authority of § 1252(b), which lists "[r]requirements for review of orders of removal." § 1252(b)(9) channels review of "final orders of removal" to federal courts of appeals. Nothing in this record indicates that any order of removal has been issued for Petitioner. Rather, Petitioner has been denied bond by an Immigration Judge. Without an order of removal, § 1252(b)(9) alone does not bar this Court from reviewing Petitioner's TRO regarding the legality of the new DHS policy and Bond Orders applying § 1225 rather than § 1226(a).

Further, Respondents have attempted to argue that § 1252(g) bars the Court's review of this matter because this provision strips all courts of jurisdiction to hear "any cause or claim by or on behalf of any alien arising from the decision or action

by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." § 1252(g). Petitioner is asserting that he is not subject to mandatory detention during the pendency of removal proceedings, not any decision to commence proceedings, adjudicate cases, or execute removal orders. **After all, the initiation of proceedings is governed under 8 U.S.C. § 1229, regardless of whether the mandatory detention provisions at 8 U.S.C. § 1225(b)(2)(A), or the discretionary detention framework at 8 U.S.C. § 1226(a)(2)(A), applies**. Proceedings are commenced with the filing of an NTA that complies with the requirements at 8 U.S.C. § 1229(a). *See* 8 U.S.C. §§ 1225(b)(2)(A); 1229(a); 1229a.

Respondents may argue, as they have elsewhere, that the Court lacks jurisdiction because Respondents "commenced" proceedings under 8 U.S.C. § 1225(b)(2). This assertion is baseless. Section 1229a is titled "initiation of proceedings" for a reason. It governs that process. This matter is a challenge to how to interpret the sections that address Respondents' authority to detain, not commence, initiate, or execute the removal process. Petitioner is not challenging any action taken under 8 U.S.C. § 1229. Rather, Petitioner challenges Respondents' contention that he is subject to 8 U.S.C. § 1225(b)(2).

This is consistent with the Supreme Court, which has previously characterized § 1252(g) as a narrow provision, applying "only to three discrete actions that the

Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 482 (1999) (emphasis in original). In doing so, the Supreme Court found it "implausible that the mention of *three discrete events* along the road to deportation was a shorthand way to referring to all claims arising from deportation proceedings." Id. (emphasis added).

Moreover, even if this suit did somehow relate to the discreet events outlined at 8 U.S.C. § 1252(g), 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 Enf't, 543 U.S. 335, 125 S. Ct. 694, 160 L. Ed. 2d 708 (2005)). This is a pure question of law in the habeas context. 8 U.S.C. § 1252(g) does not apply because detention has nothing to do with initiation of proceedings, but even if that were not the case, under Jama, 8 U.S.C. § 1252(g) could not apply here anyway.

Finally, section 1252, titled "Judicial Review of Orders of Removal," contains a provision detailing "[m]atters not subject to judicial review." See 8 U.S.C. § 1252(a)(2). This provision contains four subsections outlining categories of claims that are not subject to judicial review. *See* 8 U.S.C. § 1252(a)(2)(A)-(D). None of these subsections precluding judicial review apply to this matter, as the specified

statutory provisions do not cite to 8 U.S.C. § 1225(b)(2)(A), which are the two provisions the Parties agree Petitioner's claims challenge. Thus, no part of § 1252 deprives this Court of jurisdiction.

II. A Temporary Restraining Order is Appropriate.

"[T]he standard for analyzing a motion for a temporary restraining order is the same as a motion for a preliminary injunction." Tumey v. Mycroft AI, Inc., 27 F.4th 657, 665 (8th Cir. 2022). The relevant factors are: 1) the likelihood of irreparable harm; 2) the likelihood of success on the merits; 3) relevant hardships, and 4) public interest. See Dataphase Sys., Inc. v. C L Sys., Inc., 640 F.2d 109, 112 (8th Cir. 1981). The Eighth Circuit has held that the first two factors are particularly important as they comprise what is known as the "traditional test" employed to evaluate the necessity of a Temporary Restraining Order ("TRO"). Id. at 12. Petitioner maintains that weighing of these factors militates towards the Court granting this motion.

1) Likelihood of Irreparable Harm

At the outset, "the equitable balancing test a court must conduct using the Dataphase factors requires an initial determination that threatened irreparable harm exists." Gelco Corp. v. Coniston Partners, 811 F.2d 414, 420 (8th Cir. 1987). It most certainly does in this case.

As Minnesota federal district courts have recognized "a loss of liberty … is perhaps the best example of irreparable harm." Matacua v. Frank, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018). See also Farella v. Anglin, 734 F. Supp. 3d 863, 885 (W.D. Ark. 2024). Indeed, "[f]reedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause." Zadvydas v. Davis, 533 U.S. 678, 679 (2001). Petitioner has been detained without a bond since June 23, 2025, despite his clear eligibility for bond under 8 U.S.C. § 1226(a)(2)(A), which statutorily mandates a bond hearing. Despite this, the Immigration Court declined to exercise jurisdiction over his bond proceedings, for which he is statutorily eligible.

Since that time, Petitioner has remained "detained at the Freeborn County Jail, which is 'not meaningfully different from a penal institution for criminal detention.'" Ararso U.M. v. Barr, No. 19-CV-3046 (PAM/DTS), 2020 WL 1452480, at *4 (D. Minn. Mar. 10, 2020), report and recommendation adopted, No. 19CV3046 (PAM/DTS), 2020 WL 1445810 (D. Minn. Mar. 25, 2020) (citing Jamal A. v. Whitaker, 358 F. Supp. 3d 853, 860 (D. Minn. 2019)). This is despite a total absence of criminal history or contacts with law enforcement. This is irreparable harm on its own, but Petitioner will be further harmed if Respondents are not enjoined from transferring him to a detention facility in another state.

Petitioner is aware of other detained aliens similarly fighting both removal and detention, who have been transferred around the country, causing loss of access

to their counsel and support networks, and significantly delaying any proceedings and due process they are owed. See Khalil v. Joyce, No. 25-CV-01963 (MEF)(MAH), 2025 WL 972959 (D.N.J. Apr. 1, 2025), motion to certify appeal granted, No. 25-CV-01963 (MEF) (MAH), 2025 WL 1019658 (D.N.J. Apr. 4, 2025), et al.,; Ozturk v. Hyde, No. 25-1019, 2025 WL 1318154 (2d Cir. May 7, 2025); Khalil, 2025 WL 972959.

In-person meetings between immigrants and their attorneys are necessary for all aspects of representation in immigration proceedings including: (1) conducting an assessment of clients' legal claims and eligibility for relief; (2) interviewing clients to obtain a lengthy personal declaration that often details traumatic facts about physical, sexual, and other violence; (3) counseling clients as to their legal options and developments in their case; (4) obtaining signatures on applications and release forms when seeking client records from outside agencies; and (5) preparing clients to testify in court, including to face cross-examination by an experienced ICE attorney. A transfer further impedes these vital attorney-client exchanges by limiting the means by which Petitioner and his attorneys can communicate confidentially. Moving Petitioner out of this District, therefore, inhibits these crucial attorney-client communications. Given the time sensitive nature of continued unlawful detention, this too is irreparable harm.

The aforementioned establish irreparable harm and justify the prompt issuance of a TRO in this matter ordering Respondents not to transfer Petitioner out of Minnesota. Moreover, it also illustrates the irreparable harm if Petitioner is not afforded a bond hearing in accordance with 8 U.S.C. § 1226(a)(2)(A) in 7 days. Thus, this Court should issue a TRO to prevent irreparable harm to Petitioner arising from deprivations of due process in violation of Petitioner's Fifth Amendment rights.

Plaintiff avers that he has demonstrated the requisite irreparable harm.

2) Likelihood of Success on Merits

"While no single factor is determinative, the probability of success factor is the most significant" in determining whether to grant a TRO or preliminary injunction. Home Instead, Inc. v. Florance, 721 F.3d 494, 497 (8th Cir. 2013). Analyzing the likelihood of a party's success on the merits is not an inquiry aimed at pinning down the mathematical probability that a plaintiff will prevail on the merits. Rather, the court seeks to ascertain whether the "balance of equities so favors the movant that justice requires the Court to intervene to preserve the status quo until the merits are determined." Dataphase Systems, Inc., 640 F.2d at 113.

Petitioner is almost assured of succeeding on the merits of his case. First, under the clear language and structure of the INA, Petitioner is not "applying for admission"—he has been continuously residing in the US for the last 11 years—so 8 U.S.C. § 1225(b)(2)(A) cannot apply and he is eligible for bond under 8 U.S.C. §

1226(a)(2)(A). This is further reinforced by several cannons of constructions, which compel the conclusion that 8 U.S.C. § 1225(b)(2)(A) cannot apply to Petitioner. Second, clear congressional intent illustrates that 8 U.S.C. § 1225(b)(2)(A) cannot apply to Petitioner. Third, the regulations illustrate that 8 U.S.C. § 1225(b)(2)(A) cannot apply to Petitioner. Fourth, longstanding administrative precedent establishes that 8 U.S.C. § 1225(b)(2)(A) cannot apply to Petitioner. Because 8 U.S.C. § 1225(b)(2)(A) cannot apply, Petitioner may only be detained pursuant to a warrant for arrest under 8 U.S.C. § 1226(a)(2)(A), which means that he is eligible for bond.[1]

a. Under the Clear Language and Structure of the INA, Petitioner is not "Seeking Admission," so 8 U.S.C. § 1225(b)(2)(A) Cannot Apply to Him.

The text and structure of the INA illustrate that 8 U.S.C. § 1225(b)(2) is totally inapplicable to this case. "Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis." Dolan v. U.S. Postal Serv., 546 U.S. 481, 486 (2006). "In doing so, 'we must 'give effect, if possible, to every clause and word of [the] statute.'" Fischer v. United States, 603 U.S. 480, 486 (2024) (citing Williams v. Taylor, 529 U.S. 362, 404 (2000)). A comprehensive reading of 8 U.S.C. § 1225 illustrates that both 8 U.S.C. §

[1] The relevant regulations, congressional reports, and government policy authorities are listed in Docket 2, the Declaration of Sierra Paulsen in support of exhibits, and provided in Exhibits G-L.

1225(b)(1) and 8 U.S.C. § 1225(b)(2) apply only to those arriving at the border or those who have recently arrived.

"[W]e start where we always do: with the text of the statute." Van Buren v. United States, 593 U.S. 374 (2021). 8 U.S.C. § 1225(b)(1) is easy. It clearly applies only if an alien "is arriving in the United States or is described in clause (iii)." 8 U.S.C. § 1225(b)(1)(A)(i). This "is arriving in the United States or is described in clause (iii)" language is repeated again at 8 U.S.C. § 1225(b)(1)(A)(ii). If that were not enough, the temporal recency is spelled out in clause (iii), which applies if an alien:

> Has not been admitted or paroled into the United States, and who has 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)(iii). This dovetails with Supreme Court precedent establishing that "an alien who is detained shortly after unlawful entry cannot be said to have 'effected an entry.'Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 140 (2020)(*citing* Zadvydas v. Davis, 533 U.S. 678, 693 (2001)). These are the aliens "arriving in" the United States who are subject to 8 U.S.C. § 1225(b)(1). No one contends that 8 U.S.C. § 1225(b)(1) applies to anyone aside from recent arrivals and how could they. It applies only to "arriving in the United States and **certain** other aliens who have not been admitted or paroled," INA § 235(b)(1)

(emphasis added), not all of them. As such, 8 U.S.C. § 1225(b)(1) is limited to those arriving and recent arrivals.

In the same way that the "is arriving" language narrows the class of aliens to which 8 U.S.C. § 1225(b)(1) applies to recent arrivals, the qualifier "seeking admission" similarly limits the class of aliens to which 8 U.S.C. § 1225(b)(2) applies to those seeking entry into the United States from outside the country. In this way, an "alien present in the United States who has not been admitted" is only subjected to 8 U.S.C. § 1225(b)(2) if he is "seeking admission." As the Supreme Court has held:

> It is important to note at the outset that our immigration laws have long made a distinction between those aliens who have come to our shores **seeking admission** … and those who are within the United States after an entry, **irrespective of its legality**. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely "on the threshold of initial entry."

Leng May Ma v. Barber, 357 U.S. 185, 187 (1958) (citing Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206, 212 (1953)) (emphasis added).

This is particularly notable given that the term "admission" is statutorily defined as "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). As always, "we start … with the text of the statute," Van Buren, 593 U.S. 374, so to be "seeking admission" a person must be seeking "lawful **entry** of the alien **into** the United

States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13) (emphasis added). This is augmented by long held interpretations of "[t]he word 'entry' [which] by its own force implies a coming from outside." U.S. ex rel. Claussen v. Day, 279 U.S. 398, 401 (1929). Petitioner is not outside the United States, nor was he apprehended at the threshold of the United States, nor has he been outside the country for some eleven years. He is not seeking admission into the country. He has been here for a decade. 8 U.S.C. § 1226(b)(2) cannot apply to him.

The remainder of the INA's definition of "admission" reinforces the conclusion that "admission" contemplates entry from outside. The provisions related to when a LPR will be treated as "seeking an admission" bear this out.

> An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission … unless the alien-
>
> (i) has abandoned or relinquished that status,
>
> (ii) has been absent from the United States for a continuous period in excess of 180 days,
>
> (iii) has engaged in illegal activity after having departed the United States,
>
> (iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,

> (v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or
>
> (vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

8 U.S.C. § 1101(a)(13)(C). Once again, an "admission" necessarily contemplates entry from outside the territorial boundaries of the United States. To be "seeking admission" as contemplated under 8 U.S.C. § 1225(b)(2), an alien must be entering from abroad. The provision clearly applies at and immediately around the border.

If that were not enough, the "[a]dmission of immigrants into the United States" is governed under INA § 211, which requires "a valid unexpired immigrant visa … and [ ] a valid unexpired passport or other suitable travel document." 8 U.S.C. § 1181(a). Moreover, those seeking admission are "admitted **into** the United States." Id. This also necessarily contemplates an alien "seeking entry" from outside the United States.

This is also consistent with how the pre-IIRAIRA INA, distinguished between aliens present in the United States and those seeking to enter. Prior to 1997, "[t]he deportation hearing [was] the usual means of proceeding against an alien already physically in the United States, and the exclusion hearing [was] the

usual means of proceeding against an alien outside the United States seeking admission." Landon v. Plasencia, 459 U.S. 21, 25 (1982).

In fact, the term "seeking admission" was plucked from former 8 U.S.C. § 1225, which governed "exclusion proceedings" and the "[t]he inspection ... of aliens (including alien crewmen) seeking admission or readmission to ... the United States" who, then as now, were "examined by one or more immigration officers at the discretion of the Attorney General and under such regulations as he may prescribe...." 8 U.S.C. § 1225(a) (1994). Under the prior regime, those who were "seeking admission" were those "outside the United States seeking admission." Landon v. Plasencia, 459 U.S. 21, 25 (1982). Given that this language, now codified at 8 U.S.C. § 1225, came from the former 8 U.S.C. § 1225 which also governed the "inspection of aliens" the well-established legal principal applies; "[w]hen a statutory term is 'obviously transplanted from another legal source,' it 'brings the old soil with it.'" Taggart v. Lorenzen, 587 U.S. 554, 560 (2019) (citing Hall v. Hall, 584 U.S. 59, 73 (2018)). Then as now, those "seeking admission" are those arriving at the border or a port of entry, not those simply present in the United States without admission.

By contrast, long tenured aliens like Petitioner are not "seeking admission" when they are detained by ICE. While they may be "applicants for admission" under 8 U.S.C. § 1225(a)(1), to "seek admission" they would need to present at a

border or port of entry and request "admission into the United States." 8 U.S.C. § 1181. This is also consistent with how all Circuits have "construe[d] the meaning of the phrase 'at the time of application for admission'" in the context of 8 U.S.C. § 1182(a)(7), which "refers to the **particular point in time when a noncitizen submits an application to physically enter into the United States**." Torres v. Barr, 976 F.3d 918, 924 (9th Cir. 2020) (emphasis added). See also Marques v. Lynch, 834 F.3d 549, 561 (5th Cir. 2016) (quoting Ortiz-Bouchet v. U.S. Atty. Gen., 714 F.3d 1353, 1356 (11th Cir. 2013)) ("Section 1182(a)(7) 'only applies to applicants for admission and not to immigrants ... who sought post-entry adjustment of status while already in the United States.'"). Just as an "application for admission" occurs at the specific moment an application is applied, seeking admission also occurs at the moment admission is sought.

This is further reinforced by the subsection's title. While they do not supplant the statutory text, "statutory titles and section headings 'are tools available for the resolution of a doubt about the meaning of a statute.'" Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc., 554 U.S. 33, 47 (2008) (citing Porter v. Nussle, 534 U.S. 516, 528 (2002)). Section 235 is titled "[i]nspection by immigration officers; expedited removal of inadmissible arriving aliens; [and] referral for hearing." 8 U.S.C. § 1225. All of this is squarely related to inspection at

or near a point of entry, not interior enforcement against aliens who have been present for decades.

The "catchall" nature of 8 U.S.C. § 1225(b)(2) further reinforces a limited reading cabined to the general parameters of 8 U.S.C. § 1225(b)(1). As the Supreme Court has noted, 8 U.S.C. § 1225(b)(2) is a "catchall" that "applies to most other applicants for admission not covered by § 1225(b)(1)." Jennings v. Rodriguez, 583 U.S. 281, 281 (2018). "The ejusdem canon applies when 'a catchall phrase' follows 'an enumeration of specifics, as in dogs, cats, horses, cattle, and other animals." A. Scalia & B. Garner, READING LAW § 32, at 199 (2012). "We often interpret the catchall phrase to 'embrace only objects similar in nature to those objects enumerated by the preceding specific words.'" Fischer v. United States, 603 U.S. 480, 509 (2024) (citing Cir. City Stores, Inc. v. Adams, 532 U.S. 105, 115 (2001)). Here, as illustrated through the text, see supra, the catchall at 8 U.S.C. § 1225(b)(2) follows in line with the more specific provisions contained at 8 U.S.C. § 1225(b)(1) in that it applies at and around the border and ports of entry. It is a catchall, not a force multiplier. After all, this catchall provision would be an odd place to hide the most far-reaching and consequential detention authority in the INA. "Congress does not 'hide elephants in mouseholes." Sackett v. Env't Prot. Agency, 598 U.S. 651, 677 (2023) (citing Whitman v. Am. Trucking Associations, 531 U.S. 457, 468 (2001). It did not do so here, and 8

U.S.C. § 1225(b)(2) does not apply to interior enforcement beyond the border and decades after entry.

If all this were not enough, the Supreme Court has previously discussed the structure of 8 U.S.C. § 1225 and 1226 in a way that supports Petitioner's reading. According to the Supreme Court, 8 U.S.C. § 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings." Jennings v. Rodriguez, 583 U.S. 281, 289 (2018). By contrast, 8 U.S.C. § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." Id. at 287. Indeed, in contrast to 8 U.S.C. § 1226(a), the whole purpose of 8 U.S.C. § 1225 is to define how DHS should inspect, process, and detain various classes of people arriving at the border or who have just entered the country. See id. at 297 ("§ 1225(b) applies primarily to aliens seeking entry into the United States."). Once again, 8 U.S.C. § 1225 applies at the border and at ports of entry not to interior enforcement against individuals like Petitioner.

This was also the conclusion of the only courts to substantively address this issue. In Rodriguez v. Bostock, a district court in the Western District of Washington took Petitioner's position, in part because "[s]ection 1226(c)(1)(E)'s mandated detention for inadmissible noncitizens who are implicated in an

enumerated crime, including those 'present in the United States without being admitted or paroled,' would be meaningless since 'all noncitizens who have not been admitted' would already be governed by [235]'s mandatory detention authority." Rodriguez v. Bostock, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. Apr. 24, 2025). In another, somewhat similar, case, a federal district court in Massachusetts held that the "express exception' to Section 1226(a)'s discretionary framework at 8 U.S.C. 1226(c)] "implies that there are no other circumstances under which' detention is mandated for noncitizens, like Gomes, who are subject to Section [236](a)." Gomes v. Hyde, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025). It held as much "[b]ecause Gomes was arrested on a warrant and ordered detained under Section 1226," even though he was initially "encountered … near the southern border, … arrested [ ] without a warrant and detained [ ] because he did not possess a valid immigrant visa or other valid entry document." *Id.* at 3. Essentially, because he was arrested on a warrant, 8 U.S.C. § 1226 controlled over 8 U.S.C. § 1225 and the sole exception to 8 U.S.C. § 1226(a) was 8 U.S.C. § 1226(c), which did not apply. These cases similarly illustrate the inapplicability of 8 U.S.C. § 1225(b)(2) to this case.

The plain language confines the application of 8 U.S.C. § 1225(b)(2) to those "seeking admission" and that does not include long present aliens like Petitioner. It cannot apply to him

b. Clear Confirmations of Congressional Intent Illustrate that Petitioner is not Subject to Mandatory Detention Under 8 U.S.C. § 1225(b)(2).

If the structure and language did not make 8 U.S.C. § 1225(b)(2)'s inapplicability to this case clear, Congress did so expressly. In House reports accompanying the legislation that enacted 8 U.S.C. § 1225(b)(2), the legislators noted that how the simultaneously enacted detention authority that now lives at 8 U.S.C. § 1226(a) merely "restate[d] the [then] 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**." 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). Once again, both provisions were created in the same Act. See Illegal Immigration Reform and Immigration Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 3009-585 ("IIRIRA"). It seems preposterous that Congress would enact one provision, 8 U.S.C. § 1226(a)(2)(A), for the purpose of authorizing "the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States" just

one section after enacting a provision that DHS now claims subjects those exact same people to mandatory detention. See 8 U.S.C. § 1225(b)(2).

If that were not enough, more recent amendments to 8 U.S.C. § 1226(c) reinforce that not all aliens present without admission or parole are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). As a rule, courts do not "adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law." Republic of Sudan v. Harrison, 587 U.S. 1 (2019). In fact, this "canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." City of Chicago, Illinois v. Fulton, 592 U.S. 154 (2021) (quoting Yates v. United States, 574 U.S. 528, 543 (2015)).

Interpreting 8 U.S.C. § 1225(b)(2) as Respondents do would have the Court render the entire Laken Riley Act (LRA) superfluous. In the LRA, Congress added language to 8 U.S.C. § 1226(c) that directly references people who have entered without inspection or who are present without authorization. See Laken Riley Act, PL 119-1, January 29, 2025, 139 Stat 3. Pursuant to these amendments, an alien who "is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 212(a) of this title; and is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer

offense, or any crime that results in death or serious bodily injury to another person" is subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(E).

If everyone inadmissible under 8 U.S.C. § 1182(a)(6)(A) is already subject to mandatory detention under 8 U.S.C. § 1225(b)(2), then there would be no need for the LRA at all. That would render an entire provision of the INA surplusage and runs afoul of the maxim that "[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." Pierce Cnty., Wash. v. Guillen, 537 U.S. 129, 145 (2003) (citing Stone v. I.N.S., 514 U.S. 386, 397 (1995)). This cannot stand and definitively illustrates that 8 U.S.C. § 1225(b)(2) is confined to the borders and ports of entry. It does not apply to Petitioner.

Finally, DHS's longstanding practice of considering people like Petitioner as detained under 8 U.S.C. § 1226(a) further supports reading the statute to apply to them. Historically, DHS has issued long tenured aliens who entered without admission a Form I-286, Notice of Custody Determination, or Form I-200, Warrant for Arrest of Alien, stating that they have been detained under 8 U.S.C. § 1226(a). As these arrest documents demonstrate, Respondents have long acknowledged that 8 U.S.C. § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the country's borders long after their entry. Such a longstanding and consistent interpretation "is powerful evidence that

interpreting the Act in [this] way is natural and reasonable." Abramski v. United States, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting). See also Bankamerica Corp. v. United States, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government's interpretation and practice to reject its new proposed interpretation of the law at issue).

This is long held Agency practice, and it makes it clear that, despite Respondents' newfound position, 8 U.S.C. § 1226 governs Petitioner's detention, and as such, he is eligible for bond.

c. Respondents' own Regulations Foreclosure Application of 8 U.S.C. § 1225(b)(2) to Aliens like Petitioner who are Apprehended and Detained Hundreds of Miles from the Border Pursuant to a Warrant of Arrest

Immigration Judges are bound by '[r]egulations with the force and effect of law." United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 265 (1954)). As such "an agency's failure to follow its own binding regulations is a reversible abuse of discretion." Carter v. Sullivan, 909 F.2d 1201, 1202 (8th Cir. 1990). The applicable regulations define precisely who 8 U.S.C. § 1225 applies to, and it does not apply to aliens like Petitioners who have been in the United States for decades. By regulation:

> The expedited removal provisions shall apply to the following classes of aliens who are determined to be inadmissible under section [1182](a)(6)(C) or (7) of the Act:

(i) Arriving aliens, as defined in 8 C.F.R. § 1.2;

(ii) As specifically designated by the Commissioner, aliens who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled **following inspection by an immigration officer at a designated port-of-entry**, and who have not established to the satisfaction of the immigration officer that they have been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility. The Commissioner shall have the sole discretion to apply the provisions of section 235(b)(1) of the Act, at any time, to any class of aliens described in this section. The Commissioner's designation shall become effective upon publication of a notice in the Federal Register. However, if the Commissioner determines, in the exercise of discretion, that the delay caused by publication would adversely affect the interests of the United States or the effective enforcement of the immigration laws, the Commissioner's designation shall become effective immediately upon issuance, and shall be published in the Federal Register as soon as practicable thereafter. When these provisions are in effect for aliens who enter without inspection, the burden of proof rests with the alien to affirmatively show that he or she has the required continuous physical presence in the United States. Any absence from the United States shall serve to break the period of continuous physical presence. **An alien who was not inspected and admitted or paroled into the United States but who establishes that he or she has been continuously physically present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility shall be detained in accordance with section 235(b)(2) of the Act for a proceeding under section 240 of the Act.**

8 C.F.R. § 235.3(b)(1). By regulation, unless the applicant is an arriving alien, which Respondents do not appear to suggest in this case, the provisions apply only to aliens

"following inspection by an immigration officer at a designated port-of-entry." 8 C.F.R. § 235.3(b)(1)(ii). While the attempted entry need not have occurred at a port of entry, the plain language illustrates that the inspection must have.

Indeed, Respondents confirmed that 8 U.S.C. § 1226(a) applies to Respondent when they promulgated the regulations governing immigration courts and implementing 8 U.S.C. § 1226 decades ago. At that time, EOIR 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 (emphasis added).

Thus, the regulations make it clear that those aliens who fit the description at 8.U.S.C. § 1225(b)(1)(A) mark the default position, and that 8.U.S.C. § 1225(b)(2) serves the limited role of sweeping up aliens apprehended in border inspections who can illustrate presence beyond two years. Petitioner was not apprehended or inspected at the border. He was picked up in Burnsville, Minnesota, hundreds of miles from the border, and far from any port of entry. He was not inspected by an immigration official at a designated port of entry either. Instead, he was apprehended during a probation check in at the Steele County Court. As such, the expedited

removal provisions at 8.U.S.C. § 1225(b)(2) cannot apply to him.

d. Decades of Binding Administrative Caselaw Foreclosure the Application of 8.U.S.C. § 1225(b)(2) to all aliens inadmissible under 8.U.S.C. § 1182(a)(6)(A)

Under longstanding precedent, the nature of an alien's entry is a factor, not a dispositive bar, to be considered in determining whether an applicant presents a flight risk and is therefore eligible for bond. "[D]ecisions of the Board ... are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States." 8 C.F.R. § 1003.1(g). This factor-based approach, which considers an alien's nature of entry, but does not make it dispositive, is binding administrative caselaw, from which Immigration Judges may not stray.

The nature of an alien's entry to the United States has been a "factor" relevant to "setting [ ] bail" since at least 1974. See Matter of San Martin, 15 I. & N. Dec. 167, 168–69 (BIA 1974) ("He utilized a surreptitious method to return to the United States"). However, it has never been dispositive. This factor-based approach survived IIRAIRA and in 2006, the Board released the seminal *Matter of Guerra*, in which it noted how:

> Immigration Judges may look to **a number of factors** in determining whether an alien merits release from bond, as well as the amount of bond that is appropriate. These factors may include any or all of the following: (1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's

> family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) **the alien's manner of entry to the United States**.

In Re Guerra, 24 I. & N. Dec. 37, 40 (BIA 2006). Thus, manner of entry is one of nine factors that may be considered, not the be all and end all. Moreover, the Board expressly added that the IJ "may choose to give greater weight to one factor over others, as long as the decision is reasonable." *Id.* at 40. The Board permits an IJ to steeply discount the relevance of the manner of entry in the analysis if it so chooses. To the extent that Respondents now argues that matter of entry is the only factor that matters, it is wrong as a matter of administrative law.

Since *Matter of Guerra*, the Board has repeatedly reiterated the factor-based approach. In *Matter of R-A-V-P-*, the Board held that, where an alien had only "recently arrived in the United States, having entered without inspection, and he ha[d] made no claim to lawful status in this country, either now or in the past, … ha[d] no family ties, no employment history, no community ties, or any record of appearances in court in the United States[, t]h[o]se factors militate[d] against the [alien]'s release on bond," but they did not require it. Matter of R-A-V-P-, 27 I. & N. Dec. 803, 805 (BIA 2020). More recently still, on June 11, 2025, the Board

identified "the alien's manner of entry to the United States" as the ninth factor in assessing bond for an individual who "entered the United States unlawfully . . . , does not have work history in this country, was arrested for petty theft on October 22, 2023, removed her court ordered GPS ankle monitor, and assisted her son in fleeing from law enforcement after shooting at a police officer." *Matter of E-Y-F-G-*, 29 I. & N. Dec. 103, 104 (BIA 2025). The Board noted that the applicant's "short length of her residency in this country, her criminal activity shortly after entry, her removal of the ankle monitor, and her role in assisting a fugitive in evading law enforcement . . . [w]eigh[d] heavily against" her but did not mention her unlawful entry as a particularly important factor at all. *Id.* As recently as June 13, the Board failed to invoke mandatory detention for a woman who "was first ordered removed in 2001 and has since reentered the United States on four known occasions," instead stating that this "lengthy history of immigration law violations attests to the applicant being a significant flight risk." Matter of C-M-M-, Applicant, 29 I. & N. Dec. 141, 143–44 (BIA 2025). Once again, the nature of entry was a factor, not the dispositive bar to bond that Respondents now claims it is. If, pursuant to Matter of *E-Y-F-G-*, the nature of entry does not weigh as heavily as criminal conduct or evasion of law enforcement, then it certainly cannot control everything else. Respondents' position to the contrary dramatically violates this framework.

Finally, there is Matter of Li, 29 I. & N. Dec. 66 (BIA 2025), which

Respondents trot out and stretch well beyond its breaking point. There, the Board held that "[a]n applicant for admission who is arrested and detained **without a warrant while arriving** in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the Immigration and Nationality Act." Matter of Li, 29 I. & N. Dec. 66 (emphasis added). It added that "the term 'arriving' applies to aliens, like the [alien], 'who [are] apprehended' just inside 'the southern border, and not at a point of entry, on the same day [they] crossed into the United States.'" *Id.* at 67 (citing Matter of M-D-C-V-, 28 I. & N. Dec. 18, 23 (BIA 2020)). It even stated that "section 235(b)(2)(A) of the INA" applies to "aliens arriving in and seeking admission into the United States." *Id.* at 68 (emphasis added). There is nothing notable about this position; it aligns perfectly with Petitioner's contentions. 8 U.S.C. § 1225(b) applies to aliens seeking admission at or near the border. Petitioner was and is not seeking admission at or near the border. As such, 8 U.S.C. § 1225 (b)(2) is completely inapplicable and 8 U.S.C. § 1226(a) applies.

e. Respondent's Own Charging Documents Clearly Confirm that Petitioner was Detained under 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A).

In *Martinez v. Hyde*, the Federal District Court for the district of Massachusetts pointed to DHS's charging documents to establish that the alien I that case was detained under 8 U.S.C. § 1226(a), as opposed to 8 U.S.C. §

1225(b)(2), and therefore entitled to a bond hearing. The same is true here.

In *Martinez*, the court noted how Mr. Martinez's "Order of Release on Recognizance contradicts Respondents' assertion that her April 2024 Border Patrol encounter constituted an examination under section 1225" because the "Order of Release does not indicate that she was examined or detained under section 1225 but instead explicitly premises her release on section 1226 ("[i]n accordance with section 236 of the Immigration and Nationality Act")." 2025 WL 2084238, at *3 (D. Mass. July 24, 2025). Here too, Petitioner's I-220A specifically notes that "[i]n accordance with **section 236** of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance … ." Dkt. 2., Exh. S.

Martinez also looked to the Notice to Appear to ascertain how the government actually charged the petitioner in that case, noting how "the issuing officer appears to have explicitly declined to designate Petitioner as an 'arriving alien,' which is the active language used to define the scope of section 1225(b)(2)(A) in [DHS's] implementing regulation." 2025 WL 2084238, at *4 (citing 8 C.F.R. § 235.3(c)(1)) ("Except as otherwise provided in this chapter, any arriving alien who appears to the inspecting officer to be inadmissible, and who is placed in removal proceedings pursuant to section [1229a] shall be detained in accordance with section [1225(b)]."). Similarly, Petitioner's NTA also designated

him as present without admission or parole, and not as an arriving alien. Dkt. 2., Exh. B.

Finally, the Form I-286 Notice of Custody determination issued in this case could not be clearer. It states, in no uncertain terms, that:

> **Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations**, I have determined that pending a final determination by the immigration judge in your case, and in the event you are ordered removed from the United States, until you are taken into custody for removal, you shall be … released on your own recognizance.

Dkt. 2., Exh. M. Once again, INA § 236 is 8 U.S.C. § 1226. Once again, 8 U.S.C. § 1226, not 8 U.S.C. § 1225, applies.

Ultimately, Respondents have been clear in the underlying proceedings that they have detained and released Petitioner under 8 U.S.C. § 1226(a)(2) not 8 U.S.C. § 1225(b)(2). It is only now, more than a decade later, that they seek to rewrite this immigration history and invoke, for the first time, the mandatory detention provisions at 8 U.S.C. § 1225(b)(2). This attempt at revisionism is inconsistent with the statute, the regulations, a host of clear representation of Congressional intent. *See supra*. it also finds itself at odds with Respondents' own records in this case. Given that the government has routinely invoked 8 U.S.C. § 1226(a)(2) to justify Respondent's detention, it is only right to hold them to their position now.

Petitioner is detained under 8 U.S.C. § 1226(a), and he is entitled to a bond hearing under 8 U.S.C. § 1226(a)(2)(B) accordingly.

3) Relevant Hardships and Public Interest

"The balance of the equities and the public interest … factors merge [when] the federal government is the party opposing the injunction." Missouri v. Trump, 128 F.4th 979, 996–97 (8th Cir. 2025). These factors require the Court to consider "whether the movant's likely harm without a preliminary injunction exceeds the nonmovant's likely harm with a preliminary injunction in place." Cigna Corp. v. Bricker, 103 F.4th 1336, 1347 (8th Cir. 2024).

The harms to Petitioner have been articulated, supra § 1, and they are severe. In contrast, "[t]here is generally no public interest in the perpetuation of unlawful agency action." Missouri v. Trump, 128 F.4th 979, 997 (8th Cir. 2025). The Eighth Circuit has also noted that the federal interest in an action is "minimal" where the plaintiff has illustrated a "strong likelihood of success in showing it exceeds agency authority." Id. As that is precisely the case here, all factors favor the issuance of a TRO.

CONCLUSION

The evidence compels the conclusion that Petitioner, who has demonstrated a strong likelihood of success on the merits, will suffer significantly and irreparably in the absence of a TRO. As such, a TRO must be granted, enjoining Respondents

from moving Petitioner outside of Minnesota and ordering a bond hearing consistent with 8 U.S.C. § 1226(a)(2)(A) within 7 calendar days.

Respectfully submitted,

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