

**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,

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-03162-KMM-ECW

**PETITIONER'S REPLY TO  
RESPONDENT'S  
MEMORANDUM IN  
OPPOSITION TO MOTION  
FOR TEMPORARY  
RESTRAINING ORDER**

## INTRODUCTION

Respondents' objections should not and cannot sway the Court.<sup>1</sup> Respondents' brief that misconstrues the petition and contradicts precedent. Respondents fail to address the import of the "seeking admission is" 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 motion.

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

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<sup>1</sup> The Court's analysis in this matter must account for the recent order granting Petitioner's Temporary Restraining Order in a substantially similar case. See Antonia Aguilar Maldonado v. Olson et al, No. 25-cv-3142 (SRN/SGE).

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* proceeding. Removal proceedings commenced when the Notice to Appear was served and subsequently filed with the immigration court over 12 years ago. Any discussion of removal is a red herring cast out to stymie Petitioner's effort to challenge Respondents' utter disregard of the law.

Respondents contort custody and removal into a singular proceeding when they are not as matter of law and regulation. Removal and custody are two trains traveling on very different tracks. Detention is conceivably related to a person's immigration status; however, a bond redetermination proceeding and a removal proceeding are separate and do not intertwine at any point. 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. Attorneys can appear in one but not the other, a person has different procedural rights, a custody determination cannot cause the cessation 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 “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.” This is not an arriving alien.

Furthermore, Petitioner’s detention does not arise from “an action taken” to remove him from the United States. Respondents cannot articulate how seeking a bond for the duration of a removal proceeding correlates to an action that in any way impacts the actual removal proceeding. Section 1252(b)(9) cannot shield unconstitutional detention from judicial review. Assessment of constitutionality is the exclusive province of this Court.

The Court must ignore Respondents’ cherry picking 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.” Respondents neglect to acknowledge that *Jennings* states explicitly that courts review the availability of a bond hearing if a petitioner is not challenging an order of removal, the initiation of removal proceedings, or the government’s decision to detain him in the first place. *Jennings v. Rodriguez*, 583 U.S. 281, 841. 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). 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 Enft.*, 543 U.S. 335, 125 S. Ct. 694, 160 L. Ed. 2d 708 (2005)). 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. Respondents Substantive Arguments Are Unavailing.**

Respondents raise five central 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 suggest that Petitioner's claim rests on a factual error as to the nature of the removal proceedings to which he is subject. Third, they argue that the canons of *noscitur a sociis* and against surplusage support the applicability of 8 U.S.C. § 1225(b)(2)(A). Fourth, 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. Fifth, they attempt to twist *Loper Bright* to escape their own 30-year practice and reading of the statute at the time of its enactment.

### **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 a “warrant of arrest / Notice to Appear” in 2013. Dkt. No. 6, at Ex. T. Their custody determination also stated that “in 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. No. 6, at Ex. S. INA 236 is 8 U.S.C. § 1226(a). 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 Petitioner is not “seeking admission” at this time, nor was he at the time of his initial 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 in 2013 and Respondent subject to a “warrant of arrest / Notice to Appear” as the case disposition illustrates. Dkt. No. 6, at Ex. T. Next, they released Petitioner “in accordance with section 236 for the Immigration and Nationality Act.” Dkt. No. 6, at Ex. S. Again, INA 236 is 8 U.S.C. § 1226(a). Petitioner remained out of custody

for 12 years. It was not until July 29, 2025, that Respondents sought an additional charge, applicable to arriving aliens, under 8 U.S.C. § 1182 (a)(7)(A)(i)(I). That charge has not been conceded or sustained by the immigration court. It is simply that, a charge. In this case, Respondents have always asserted authority to detain, and release, Petitioner under 8 U.S.C. § 1226(a). That remains the case today.

**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. 11, at 19 (citing *Marquez-Reyes v. Garland* 36 F.4<sup>th</sup> 1195, 1202 (9<sup>th</sup> 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. 13, at 19 (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. 13, at 19. 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, parties can selectively cherry-pick words or they can provide the full quote. 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. 13, at 19. 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 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 *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); and Judge Susan Richard Nelson’s recent order in case Minnesota District case 25-cv-03142, 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. 13, at 21 (citing *id.* at 225) (emphasis added). If, as Respondents contend, the specific controls the general, Dkt. No. 13, at 16, then Respondents arguments related to Congressional intent fail.

As for Respondents arguments regarding the Laken Riley Act, their reading would not simply make “doubly sure” that unlawful aliens are detained. Dkt. No. 13, 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' assertion that Petitioner cannot succeed on the merits because he has not exhausted his remedies holds no water.**

As Petitioner has articulated before, administrative exhaustion would serve no purpose other than to further prolong his unlawful detention without a bond proceeding. The Board has issued unpublished decisions affirming the position of Lyons memo, which was issued in coordination with the Department of Justice. Dkt. No. 6, Exh. A. 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). That is the case here, and similarly situated courts have agreed. See Gomes, 2025 WL 1869299, at \*4; Rodriguez, 779 F. Supp. 3d at 1252; Dos Santos v. Noem, 2025 WL 2370988, at \*6; Benitez, s2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025). CARLOS JAVIER LOPEZ BENITEZ, Petitioner, v. FRANCIS et al., Respondents., No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025). Martinez v. Hyde, 2025 WL 2084238 (D. Mass. July 24, 2025); Rocha Rosado v. Figueroa, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); Dos Santos v. Noem, 2025 WL 2370988, at \*9 (D. Mass. Aug. 14, 2025); Lopez Benitez v. Francis, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025).

**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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**August 15, 2025**

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**CERTIFICATE OF SERVICE**

I, **Sierra Paulsen**, hereby certify that on August 15, 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 15, 2025**

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