UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Francisco Javier Tiburcio Garcia,

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,

Joel L. Brott, Sheriff of Freeborn County.

Respondents.

0:25-cv-03219-JMB-DTS

PETITIONER'S REPLY TO RESPONDENT'S MEMORANDUM IN OPPOSITION TO MOTION OF PRELIMINARY INJUNCTION AND PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Respondents' objections should not and cannot sway the Court. [1] Respondents' brief contradicts the plain text, multiple cannons of construction, the legislative record, and decades of administrative practice and understanding. Respondents fail to properly account for 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.[2]

ARGUMENT

I. Respondents Substantive Arguments Are Unavailing.

Respondents raise three central arguments in support of the supposed applicability of 8 U.S.C. § 1225(b)(2)(A). First, they suggest that the plain text of § 1225 supports the continued detention of Petitioner. Second, they point to general guiding principles related to the Illegal Immigration Reform and Immigrant

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[1] The Court's analysis in this matter must account for recent Minnesota district court orders granting Petitioners' Preliminary Injunctions in substantively 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); *Diosdado Aguilar Vazquez v. Bondi et al*, 25-cv-03162 (KMN/ECW).

[2] Petitioner asks that the Court consider proceeding at this point under Fed. R. Civ. P. 65 since all parties have had notice of the proceeding and an opportunity to respond in writing.

Responsibility Act of 1996, in an effort to contradict the express statements of specific Congressional intent vis-a-vis bond eligibility. Third, 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. 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 10 (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).

Respondents argue that the term "seeking admission" is synonymous with the term "applicant for admission." Respondents' argument should not persuade the court. Notably, the Fifth, Ninth, and Eleventh Circuits have uniformly rejected that argument that the term "application for admission" is not synonymous with "applicant for admission." *Torres v. Barr*, 976 F.3d 918, 924 (9th Cir. 2020) ("the phrase 'at the time of application for admission' … refers to the particular point in time when a noncitizen submits an application to physically enter into the United States"); *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)). If an "application for admission" is not a continuing process engaged in by all "applicants for admission," then surely the more textually distinct act of "seeking admission" cannot be synonymous with "applicant for admission" either.

Instead, the term "seeking admission must be interpreted consistent with the statutory definition. It is not a "term of art," it is a statutorily defined term that means 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). Petitioner was doing no such thing when apprehended hundreds of miles from the border. 8 U.S.C. § 1225(b)(2)(A) does not apply.

The Court must observe that 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 the applicant for admission must be contemporaneously "seeking admission," that is, seeking entry from abroad, if 8 U.S.C. § 1225(b)(2)(A) is to apply. That was very plainly not the case here when Petitioner was apprehended in the northern half of the United States.

In their effort 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. 11, at 10 (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. Rather than engaging in such gymnastics, "[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 militates towards Petitioner's reading–requiring an attempted entry from outside the United States.

Respondents' effort to broaden the application of 8 U.S.C. § 1225(b)(2)(A) by contrasting "seeking admission" and "arriving" also lacks any definitional support to be drawn from the text of the INA. Once again, "admission" is statutorily defined, separate and apart from "applicant for admission." *Compare* 8 U.S.C. § 1101(a)(13), *with* 8 U.S.C. § 1225(a)(1). Given Respondents' contention that statutory language "is known by the company it keeps," *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022), it may be reasonable to construe the undefined term "arriving" as similar in meaning to "seeking admission." It is certainly more reasonable to ascribe these terms similar meanings given that Congress left one of those terms – arriving – undefined, than it is to conflate separately defined terms.

The neighboring inadmissibility provision at 8 U.S.C. § 1182(a)(9)(A) reinforces this point. It lumps those who are "**removed under** 8 U.S.C. § 1225(b)(1) **of this title**" together with those removed "at the end of proceedings under section **1229a of this title initiated upon the alien's arrival in the United States**." 8 U.S.C. § 1182(a)(9)(A)(i) (emphasis added). Given that the only provision of law that appears to authorize full proceedings under 8 U.S.C. § 1229a for those arriving at the border is 8 U.S.C. § 1225(b)(2)(A), this inadmissibility provision reinforces Petitioner's interpretation that 8 U.S.C. § 1225(b)(2)(A), like 8 U.S.C. § 1225(b)(1), applies to those arriving at or near the border. That is why removals in 1229a proceedings initiated upon arrival at the border, that is to say 8 U.S.C. §

1225(b)(2)(A) removals, are treated like removals under 8 U.S.C. § 1225(b)(1), triggering a five-year inadmissibility period, whereas those otherwise "ordered removed under section 1229a of this title" are subject to a ten-year bar. *See* 8 U.S.C. § 1182(a)(9)(A)(ii). This dichotomy, between border detention and removal, and interior enforcement is clear in both provisions.

Respondents' next turn to 8 U.S.C. § 1225(a)(3), but this 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. 11, at 10. The full citation 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 Corp.*, 442 U.S. 330, 339 (1979). In other words, "or" is generally 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). The provisions are different and govern different things.

The principal that "the specific governs the general" does nothing to advance Respondents case. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). By statute, 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). The Court cannot embrace that application of this canon if doing so negates the meaning of multiple sections of § 1226. Respondent essentially nullify the purpose of § 1226(b)(2) and (c).

Respondents initially took Petitioner into custody pursuant to a "warrant of arrest / Notice to Appear." *See* Dkt. No. 7, at Ex. C. 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. *See supra.* As such, 8 U.S.C. § 1226(a), and not 8 U.S.C. § 1225(b)(2)(A), controls.

Finally, neither *Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025), nor *Fla. 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).

The growing body of authority demonstrates a consensus. *See Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); and *Anicasio v. Kramer*, 4:25CV3158 (Neb. Aug. 14, 2025). This too demonstrates why the Court should conclude that 8 U.S.C. § 1226(a), and not 8 U.S.C. § 1225(b)(2)(A), governs Petitioner's detention. The Court should grant this motion.

b. 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. 11, at 14, then Respondents arguments related to Congressional intent fail.

Respondents further neglect to acknowledge or address the import of recent amendments to the INA in the Laken Riley Act making a subset of, but not all, aliens present without admission or parole subject to mandatory detention. *See* Laken Riley Act, PL 119-1, January 29, 2025, 139 Stat 3. Respondents' arguments regarding the Laken Riley Act, their reading would not simply make "doubly sure" that unlawful aliens are detained. Dkt. No. 11, 12. 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., Wash. v. Guillen*, 537 U.S. 129, 145 (2003).

Respondents reading of 8 U.S.C. § 1225(b)(2)(A) would render many parts of

8 U.S.C. § 1226(c) irrelevant. As has been previously held, "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]" *Corley v. United States*, 556 U.S. 303, 314 (2009) (cleaned up). Defendants fail to give meaning to large swaths of the Act, proving the fallacy of their reading.

c. 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*, 25 U.S. 206 (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*.

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

If that were not enough, the Court may further note that Respondents ignored Department regulations requiring that the "inspection by an immigration officer" predicating detention under 8 U.S.C. § 1225(b)(2)(A) must occur "at a designated port-of-entry." 8 C.F.R. § 235.3(b)(1). Once again, that was not the case here.

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 tragedy to reverse itself when there is no indication in the cases presented to date that no Respondent intends to do so voluntary. Administrative exhaustion would serve no purpose other than to further prolong his 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. 7, Ex. A. Then the Court has the Lyon 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, Petitioner,*, 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; *ADRIANO MAIA DOS SANTOS, Petitioner,*, 2025 WL 2370988; *Lopez Benitez*, 2025 WL 2371588; *Anicasio*, 4:25CV3158 (Neb. Aug. 14, 2025).

III. Remaining *Dataphase* Factors.

There can be no doubt that "a loss of liberty" is "perhaps the best example of irreparable harm." *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018). "When assessing this factor, courts [also] consider the conditions under which detainees are currently held, including whether a detainee is held in conditions indistinguishable from criminal incarceration." *Gunaydin v. Trump*, 2025 WL 1459154, at *7 (D. Minn. May 21, 2025). Petitioner is currently detained in Freeborn County jail, alongside criminal inmates under conditions indistinguishable from criminal incarceration. This favors preliminary relief.

Finally, the government asserts a "compelling interest in the steady enforcement of its immigration laws" and that "[j]udicial intervention would only disrupt the status quo." Dkt. No. 11, at 17-18. Nothing could be further from the truth.

It is important to note what Petitioner is requesting here. He does not seek immediate release. He seeks a bond hearing in which a neutral arbiter can determine whether he poses a danger to persons or property and whether he is a flight risk. That is all. For 28 years, from 1997 to 2025, this was the status quo. Moreover, Petitioner would have received a bond hearing had he sought one prior to the publication of the Lyons memorandum on July 8, 2025.

Endorsing Respondent's position – that detention is the status quo in all habeas cases involving custodial detention – would essentially gut any and all preliminary injunctive relief in any and all habeas cases across the board. After all, habeas contemplates some ongoing form of custody. Given that "[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), the Court should refuse to accept such a far-ranging invitation. The status quo has long been the availability of bond hearings, and that is what should be ordered.

CONCLUSION

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

Respectfully submitted,

/s/ David L. Wilson **August 20, 2025**
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CERTIFICATE OF SERVICE

I, **Clara Fleitas-Langford**, hereby certify that on August 19, 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/ Clara Fleitas-Langford — **August 20, 2025**

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