UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Wuilmer Omar Ferrera Bejarano,

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,

Eric Tollefson, Sheriff of Kandiyohi County.

Respondents.

0:25-cv-03236 (NEB/JFD)

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

REPLY ARGUMENT

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

Petitioner does not challenge Respondents' initiation of removal proceedings. Petitioner challenges which standard applies to his confinement. Respondents contort custody and removal into a singular proceeding. A bond redetermination proceeding and a removal proceeding are separate proceedings, records, and rights. Sections 1229 and 1229(a) do not mention detention, arrest, or custody. The regulation is salient. "[A] 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). The Court should ignore the effort to concoct a jurisdictional quagmire. There is "an exception to § 1252(g) for a habeas claim raising a pure question of law." S*ilva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017). Petitioner is raising a purely legal question *unrelated* to the removal process.

II. Respondents Substantive Arguments Are Unavailing.

a. 8 U.S.C. § 1225(b)(2)(A) applies at or near a border or port of entry

"The 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 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 proffer administrative caselaw to contort the terms "applicant for admission" and "seeking admission" in a manner that would render one of those phrases entirely unnecessary. *See* Doc. No. 14, at 19. *Matter of Lemus-Losa*, however, 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." 25 I. & N. Dec. 734, 743 (BIA 2012)). Plain language militates to Petitioner's reading.

Emphasizing § 1225(a)(3) is misguided. 1225(a)(3) 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 the subsequent phrase is necessarily synonymous with the proceeding one is also meritless. *See* Doc. 14, at 19.

U.S. v Woods instructs,

> 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."

571 U.S. 31, 45–46 (2013). The Court must consider the full quote over parsing. 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 argument that Petitioner's reading renders the phrase "applicant for admission" surplusage is meritless. Respondents read the terms "applicant for admission" and "seeking admission" as interchangeable. *See* Doc. 14, at 19. Obviously 8 U.S.C. § 1225(b)(2)(A) applies to "applicants for admission." No one disputes that, but the text also requires that those "applicants for admission" be "seeking admission." Respondents read that latter phrase out of the statute entirely. That violates the rule against surplusage.

Furthermore, the term "seeking admission," is phased 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.

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. It 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. *Pena* neglected to wrestle with the "seeking admission" language at § 1225(b)(2)(A), which is the key language. *See* 2025 WL 2108913. *Florida v. United States* limited its inquiry to "aliens arriving at the Southwest Border into the country *en masse*." 2025 WL 2108913, at *1249. Such individuals are within the ambit of § 1225(b)(2)(A). It is wholly inapplicable here. The Court should consider factually parallel cases of *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025). The Court should grant this motion.

b. Specific Legislative Statements Are Probative.

The Court cannot look past Congressional Reports noting 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). Respondents' arguments about the Laken Riley Act do not warrant indulgence –the Court cannot assume that Congress just wanted to make "doubly sure" a subset of people are detained. Congress sought to circumscribe § 1226. Any other understanding violates 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).

c. *Loper Bright* Did not Eviscerate Decades of Practice or Interpretation

Loper Bright Enters. v. Raimondo clarified that,

> "[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.

603 U.S. 369, 386 (2024). Respondents spoke specifically 28 years ago and acted accordingly until July 7, 2025. "Despite 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." Doc. No. 9, at Ex. J. That has been the position for more

than two decades. *Loper Bright* requires the Court to give substantial weight to the Agency's interpretation and behavior.

d. Respondents Fail to Rationalize the Automatic Stay Provision or Justify its Invocation.

Respondents try to deflect Petitioner's arguments by pointing to inapposite authority and distorting recent decisions from within this district.

Reliance on *Ernesto Ruben Barajas Farias* v. *Garland, et al.*, No. 24-cv04366 (MJD/LIB), 2024 WL 6074470 (Dec. 6, 2024), is misplaced. *Barajas* challenged a different regulation—8 C.F.R. § 1003.19(h)(1)(i)(C)—the detention of persons convicted of offenses listed in 8 U.S.C. § 1227(a)(4)(A). 8 C.F.R. § 1003.19(h)(1)(i)(C) bars an immigration judge conducting a bond redetermination. The automatic stay regulation, conversely, permits DHS to nullify an immigration judge's reasoned and legally authorized order. Respondents omit that *Barajas* also held "other detainees [not covered under 8 C.F.R. § 1003.19(h)(1)(i)(C)] *will* be given a more granular determination." *Id.* *This is what transpired here.* The challenge is to Respondents' unilateral, after-the-fact, veto lacking any right of review or individual assessment.

Banyee v. Garland, 115 F.4th 928 (8th Cir. 2024), is likewise inapplicable. *Banyee* dealt with a challenge to the *length* of *mandatory* detention under 8 U.S.C. § 1226(c). Section 1226(c) specifically excludes this group from seeking a bond. *Banyee* does not engage with Respondents' capacity to negate a lawful bond order

unilaterally. This Petition is not a length of detention challenge. It is a challenge to the power to obstruct a lawfully issued bond when the immigration court rejected DHS' jurisdictional argument without any form of process or ability to challenge the action. *Banyee* did not consider one party having the power to tell a court "Too bad" if the court did not agree with the party's legal position. "The *why*…is more important than *how long*." *Banyee*, 115 F.4th at 932 (emphasis in original). *Banyee* challenged the *how long*. Petitioner challenges the *why*.

The Court should reject Respondents' attempt to distinguish *Mohammed H. v. Trump*, No. CV 25-1576 (JWB/DTS), 2025 WL 1692739 (D. Minn. June 17, 2025) and *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn. May 21, 2025). As Respondents note, "Judge Blackwell's decision [in *Mohammed H.*] was premised on a finding that 'Petitioner remained in custody only because the Government invoked the automatic stay provision.' Petitioner in the *Mohammed H.* case had been detained under 8 U.S.C. § 1226(a)…." Doc. No. 14 at 25. That is exactly the case here—Petitioner was detained under 8 U.S.C. § 1226(a), was granted a bond, and remains in custody only because Respondents invoked the automatic stay provision. "The Constitution prohibits arbitrary detention, even in the immigration context." *Mohammed H.*, 2025 WL 1692739, at *8.

Respondents acted without making a showing of dangerousness, flight risk, or any other factor justifying detention. Simply by fiat—without introducing any

proof and without immediate judicial review—the Government effectively overruled the bond decision and kept Petitioner detained. The automatic stay rendered Petitioner's continued detention arbitrary and denied him an opportunity to contest the basis of his detention. *Gunaydin* offers an explication how the automatic stay lacks adequate procedural due process. 2025 WL 1459154, at *5. The Court must conclude Respondents cannot rationalize a regulation devoid of process that shifts power to detain to an adverse party. The Court must conclude Petitioner is very likely to prevail on the merits.

CONCLUSION

Petitioner asks that the Court grant this motion accordingly.

Respectfully submitted,

/s/ David L. Wilson **August 15, 2025**
Date

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CERTIFICATE OF SERVICE

I, **David Wilson**, 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/ David Wilson, **August 15, 2025**

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