UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 25-cv-03348 (PAM-DLM)

Acxel Stiven Quinteros Del Cid,

Plaintiff,

v.

Pamela Bondi, Attorney General, et al.,

Respondents.

COMBINED MEMORANDUM IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER AND RESPONSE TO HABEAS PETITION

Pursuant to the Court's orders, *see* ECF Nos. 3 and 9, Respondents respectfully submit this brief in opposition to Petitioner's Emergency Motion for a Temporary Restraining Order, ECF Nos. 4 ("TRO Motion"), 6 ("TRO Mem."), and in response to the Verified Petition for Writ of Habeas Corpus, ECF No. 1 ("Petition").[1] The Court should dismiss the Petition on its merits, because the Court lacks jurisdiction to hear this case, and Petitioner's detention is authorized—indeed mandated—by statute. As Petitioner cannot

[1] The Court ordered Respondents to file their response to the petition by Tuesday, September 9, 2025. ECF No. 3. The Court then ordered Respondents to respond to the emergency motion for a temporary restraining order by Wednesday, September 3, 2025. ECF No. 9. Federal Respondents are combining the two ordered briefs in response to the emergency motion and in response to the petition. Federal Respondents do not oppose the Court doing likewise and consolidating its analysis of the requested interim relief with the ultimate merits of the petition. *See* Fed. R. Civ. P. 65(a)(2).

meet his heavy burden to establish entitlement to the extraordinary relief he seeks, it should also deny the TRO Motion.

BACKGROUND

I. Facts and Procedural History

Petitioner Acxel Steven Quinteros is a native and citizen of Guatemala. Declaration of Richard Pryd ("Pryd Decl."), ¶ 4; ECF 1 ¶ 53. He entered the United States in 2021 at or new Ysleta, Texas without being admitted or paroled after inspection by an immigration officer at the border. Pryd Decl. ¶ 5; ECF 1 ¶ 54. United States Border Patrol agents encountered Quinteros in El Paso, Texas on July 17, 2021. Quinteros was interviewed by a USBP Agent who determined Quinteros was illegally present in the United States and identified Quinteros as an unaccompanied minor child (UAC). Pryd Decl. ¶¶ 6-7, Ex. A.

On July 19, 2021, Petitioner was issued a Form I-862 Notice to Appear, charging him with being present in the United States without having been admitted or paroled. Pryd Decl. ¶ 8, Ex. B. Petitioner was also issued a Notice of Custody Determination, indicating that he would be detained. Pryd Decl. ¶ 9, Ex. C. Quinteros requested a bond hearing. *Id.*

On July 19, 2021, Quinteros was released into the custody of the United States Health and Human Services Office of Refugee Resettlement (ORR) for detention placement. ECF 1 ¶ 55. On August 3, 2021, Quinteros was reunited with his non-primary caregiver and released on an order of recognizance. *Id.*; *see also* Pryd Decl. ¶¶ 10-11.

On September 30, 2024, Quinteros filed a Petition for Amerasian, Widower, or Special Immigrant with the United States Citizenship and Immigration Services (USCIS). On April 30, 2025, USCIS approved Quinteros's Form I-360. Pryd Decl. ¶¶ 13-14, Ex. D;

ECF 1 ¶¶ 56.

On July 31, 2025, Quinteros was arrested by ERO St. Paul, MN, transported to the ERO St. Paul, MN office for administrative processing. Pryd Decl. ¶ 16, Ex. E; ECF 1 ¶ 57. ERO St. Paul, MN issued Quinteros a new Notice to Appear, charging removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, for being present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. Pryd Decl., Ex. F; ECF 1 ¶ 58. ERO issued Quinteros a Notice of Rights and Request for Disposition. Quinteros requested a bond hearing and expressed fear of return to Guatemala. Pryd Decl. ¶ 17, Ex. G; ECF 1, n.3. ICE filed additional charges against Quinteros in immigration court on August 7, 2025. Pryd Decl.¶ 18, Ex. H.

Petitioner sought a custody redetermination in immigration court on August 8, 2025. Pryd Decl. ¶ 19; ECF 1 ¶ 63. An immigration judge granted bond a few days later. Pryd Decl. ¶ 20, Ex. I; ECF 1 ¶ 67. On August 13, 2025, ICE filed a Notice of Intent to Appeal the bond order. Pryd Decl. ¶ 21, Ex. J; ECF 1 ¶ 70. ICE filed its Notice of Appeal on August 22, 2025. Pryd Decl. ¶ 22, Ex. K.

Petitioner filed this habeas action on August 24. He then filed an emergency TRO Motion, seeking to be kept in Minnesota during the habeas proceedings and seeking release from custody. The government agrees to do pending the resolution of the merits of the habeas petition, subject to a limited reservation of the government's right to move Petitioner based on unforeseen circumstances or contingencies, with 72 hours' notice. Pryd Decl., ¶ 23.

II. Legal Background for Individuals Seeking Admission to the United States

For more than a century, this country's immigration laws have authorized immigration officials to charge noncitizens as removable from the country, arrest noncitizens subject to removal, and detain noncitizens during removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960). "The rule has been clear for decades: '[d]etention during deportation proceedings [i]s ... constitutionally valid.'" *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024) (quoting *Demore v. Kim*, 538 U.S. 510, 523 (2003)), *rehearing by panel and en banc denied*, *Banyee v. Bondi*, No. 22-2252, 2025 WL 837914 (8th Cir. Mar. 18, 2025); *see Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Demore*, 538 U.S. at 523 n.7 ("In fact, prior to 1907 there was no provision permitting bail for *any* [noncitizens during the pendency of their deportation proceedings."). Indeed, removal proceedings "'would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

Congress has enacted a multi-layered statutory scheme for the civil detention of noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. It is the interplay between these statutes that is at issue here.

A. Inspection and Detention under 8 U.S.C. § 1225

"To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering." *Jennings v.*

Rodriguez, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step in this process, *id.*, stating that all noncitizen "applicants for admission . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled "ALIENS TREATED AS APPLICANTS FOR ADMISSION"—dictates who "shall be deemed for purposes of this chapter an applicant for admission," defining that term to encompass *both* a noncitizen "present in the United States who has not been admitted *or* [one] who arrives in the United States . . . ." *Id.* § 1225(a)(1) (emphasis added).

Paragraph (b) of the Section 1225 governs the inspection procedures applicable to all applicants for admission. They "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287.

Section 1225(b)(1) applies to those "arriving in the United States" and "certain other"[2] noncitizens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.* § 1225(b)(1)(A)(i), (iii). Noncitizens falling under this subsection are generally subject to expedited removal proceedings "without further hearing or review." *See id.* § 1225(b)(1)(A)(i). But where the applicant "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer him or her for a credible fear interview. *Id.* §

[2] The "certain other" noncitizens referred to are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to apply (b)(1)'s expedited procedures to a noncitizen who "has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that [he or she] has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," subject to an exception inapplicable here. The statute therefore explicitly confirms application of its inspection procedures for those already in the country, including for a period of years.

1225(b)(1)(A)(ii). An applicant "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the he or she does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he or she is detained until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" than (b)(1), "serv[ing] as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287 (citing 8 U.S.C. § 1225(b)(1)). Subject to exceptions not applicable here, "if the examining immigration officer determines that [the noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall* be detained for a removal proceeding." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for [noncitizens] arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). The Department of Homeland Security ("DHS") retains sole discretionary authority to temporarily release on parole "any alien applying for admission" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

B. Apprehension and Discretionary Detention under 8 U.S.C. § 1226(a)

"Even once inside the United States, [noncitizens] do not have an absolute right to remain here. For example, [a noncitizen] present in the country may still be removed if he

or she falls 'within one or more . . . classes of deportable aliens.' §1227(a)." *Jennings*, 583 U.S. at 288 (citing 8 U.S.C. § 1227(a), which outlines "classes of deportable aliens" among those already "in *and admitted* to the United States") (emphasis added)). "Section 1226 generally governs the process of arresting and detaining that group of [noncitizens] pending their removal." *Id.* Applicable "[o]n a warrant issued by the Attorney General," it provides that a noncitizen may be arrested and detained pending a decision" on the removal. 8 U.S.C. § 1226(a) For noncitizens arrested under §1226(a), the Attorney General and the DHS have broad discretionary authority to detain a noncitizen during removal proceedings.[3] *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested" noncitizen during the pendency of removal proceedings).

Following apprehension under § 1226(a), a DHS officer makes an initial discretionary determination concerning release. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the" noncitizen. 8 U.S.C. § 1226(a)(1). "To secure release, the [noncitizen] must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527

[3] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for noncitizens under section 1226(a) is "one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

(2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

If DHS decides to release the noncitizen, it may set a bond or condition his release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that a noncitizen should remain detained during the pendency of his removal proceedings, he may request a bond hearing before an immigration judge, within the Department of Justice's Executive Office for Immigration Review. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge conducts a bond hearing and decides whether release is warranted, based on a variety of factors that account for his ties to the United States and the possible risks of flight or danger to the community. *See Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (identifying nine non-exhaustive factors); 8 C.F.R. § 1003.19(d) ("The determination . . . as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].").

Section 1226(a) does not grant "any *right* to release on bond." *Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does it address the applicable burden of proof or particular factors that must be considered. *See generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad discretionary authority to determine, after arrest, whether to detain or release a noncitizen during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

Included within the Attorney General and DHS's discretionary authority are

limitations on the delegation to the immigration court. Under 8 C.F.R. § 1003.19(h)(2)(i)(B), the immigration judge does not have authority to redetermine the conditions of custody imposed by DHS for any arriving alien. The regulations also include a provision that allows DHS to invoke an automatic stay of any decision by an immigration judge to release an individual on bond when DHS files an appeal of the custody redetermination. 8 C.F.R. § 1003.19(i)(2) ("The decision whether or not to file [an automatic stay] is subject to the discretion of the Secretary.").

C. Review of custody determinations at the Board of Immigration Appeals ("BIA").

The BIA is an appellate body within the Executive Office for Immigration Review ("EOIR"). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it," including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also "through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." *Id.* § 1003.1(d)(1). "The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General." 8 C.F.R. § 1003.1(d)(7).

If an automatic stay is invoked, regulations require the BIA to track the progress of the custody appeal "to avoid unnecessary delays in completing the record for decision." 8 C.F.R. § 1003.6(c)(3). The stay lapses in 90 days, unless the detainee seeks an extension

of time to brief the custody appeal, 8 C.F.R. § 1003.6(c)(4), or unless DHS seeks, and the BIA grants, a discretionary stay. 8 C.F.R. § 1003.6(c)(5).

If the BIA denies DHS's custody appeal, the automatic stay remains in effect for five business days. 8 C.F.R. § 1003.(d). DHS may, during that five-day period, refer the case to the Attorney General under 8 C.F.R. § 1003.1(h)(1) for consideration of the case. *Id.* Upon referral to the Attorney General, the individual's release is stayed for 15 business days while the case is considered. The Attorney General may extend the stay of release upon motion by DHS. *Id.*

Here, the automatic stay has been in place for just three weeks.

D. Special Immigrant Juvenile Status

The Immigration and Nationality Act ("INA") recognizes the following class of "special immigrants" present in the United States:

> (1) the non-citizen "has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the [non-citizen's] parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law";
>
> (2) "it has been determined in administrative or judicial proceedings that it would not be in the [non-citizen's] best interest to be returned to the [non-citizen's] or parent's previous country of nationality or country of last habitual residence"; and
>
> (3) "the Secretary of Homeland Security consents to the grant of special immigrant juvenile status."

8 U.S.C. § 1101(a)(27)(J)(i)-(iii). To obtain "Special Immigrant Juvenile Status" ("SIJS") under this provision, a non-citizen must: (1) be under 21 years of age at the time of filing a petition for SIJS status (*i.e.*, a Form I-360); (2) be unmarried at the time of filing and adjudication; (3) be physically present in the United States; (4) be subject to a qualifying juvenile court order; and (5) "[o]btain[] consent from the Secretary of Homeland Security to classification as a special immigrant juvenile." 8 C.F.R. § 204.11(b); *see id.* § 204.11(c)-(d).

There are two primary benefits of SIJS: The non-citizen becomes eligible for adjustment of immigration status to that of legal permanent resident ("LPR")—a benefit within the federal government's discretion to confer—and certain statutory grounds of inadmissibility are waived or waivable in that context and with respect to deportability. *See* 8 U.S.C. §§ 1227(c), 1255(a), (h); *Reyes v. Cissna*, 737 F. App'x 140, 142 (4th Cir. 2018). Regarding adjustment of status, a non- citizen with SIJS is "deemed . . . to have been paroled into the United States." *Id.* § 1255(h)(1).[4]

SIJS may be revoked automatically if either of two events occurs before final adjustment to LPR status: (1) "[r]eunification of the beneficiary with one or both parents by virtue of a juvenile court order, where a juvenile court previously deemed reunification with

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[4] Like the discretionary parole discussed above in connection with section 1225(b) detention, being deemed paroled for purposes of adjustment of status as a result of SIJS does not constitute admission or confer any lawful immigration status, *see United States v. Granados-Alvarado*, 350 F. Supp. 3d 355, 361-65 (D. Md. 2018); *see also* ECF 1 ¶ 217—contrary to Petitioner's mischaracterization of the word "status" in the applicable statute and certain case law. ECF ¶ 165.

that parent, or both parents, not viable due to abuse, neglect, abandonment, or a similar basis under State law," or (2) "[a]dministrative or judicial proceedings determine that it is in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of their parent(s)." 8 C.F.R. § 204.11(j)(1). Otherwise, U.S. Citizenship and Immigration Services("USCIS") may revoke SIJS on notice "for good and sufficient cause" in compliance with 8 C.F.R. § 205.2. *Id.* § 204.11(j)(2).

ARGUMENT

I. Standard of Review

Injunctive relief is "an extraordinary remedy never awarded as a right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 23 (2008). A court may grant interim relief only if a movant shows: (1) he is likely to succeed on the merits, (2) he will suffer imminent, irreparable harm absent interim relief, (3) that harm outweighs the harm an injunction would cause other parties, and (4) the public interest favors interim relief. *Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109, 113-14 (8th Cir. 1981) (en banc). The movant bears the burden of proof for each factor, *Gelco v. Coniston Partners*, 811 F.2d 414, 418 (8th Cir. 1987), "a heavy burden" and a "difficult task." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). The exacting burden is further heightened when a party seeks a mandatory preliminary injunction—one which "alters the status quo by commanding some positive act, as opposed to a prohibitory injunction seeking only to maintain the status quo." *TruStone Fin. Fed. Credit Union v. Fiserv, Inc.*, No. 14-CV-424 (SRN/SER), 2014 WL 12603061, at *1 (D. Minn. Feb. 24, 2014). "Mandatory preliminary injunctions are to be cautiously viewed and sparingly used." *Id.*

II. Petitioner's claim fails on the merits.

This Court does not have jurisdiction to review Petitioner's claims. Even if this Court assumes jurisdiction, Petitioner's interpretation of § 1225(b) contradicts the statute's plain text. This dooms his Petition and requires denying the TRO. *See Shrink Mo. Gov't PAC v. Adams*, 151 F.3d 763, 764 (8th Cir. 1998) (characterizing the likelihood-of-success-on-the-merits factor as "[t]he most important of the *Dataphase* factors."). The Court should deny interim relief and dismiss the Petition on the merits.

A. This Court does not have jurisdiction over Petitioner's claims.

As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Petitioner's claims. Accordingly, Petitioner is unable to show a likelihood of success on the merits. The motion for the temporary restraining order should be denied and the Petition dismissed.

First, Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to [1] *commence proceedings*, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title."[5] Except as provided in § 1252, courts

[5] Congress initially passed § 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and

"cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

Section 1252(g) also bars district courts from hearing challenges to the *method* by which the Secretary of Homeland Security chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

Petitioner's claim stems from his detention during removal proceedings. That detention arises from the decision to commence such proceedings. *See, e.g.*, *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings[.]"); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to execute removal order).

As other courts have held, "[f]or the purposes of § 1252, the Attorney General commences proceedings against an alien when the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). "The Attorney General may arrest

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sections 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Id.* at *3. "Thus, an alien's detention throughout this process arises from the Attorney General's decision to commence proceedings" and review of claims arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). As such, judicial review of the claim that Petitioner is entitled to bond is barred by § 1252(g). The Court should dismiss for lack of jurisdiction.[6]

Second, under § 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate federal court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

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[6] Several recent cases in this district in which the district court found jurisdiction in habeas over detention claims are on appeal to the Eighth Circuit. *See* Notice of Appeal, *Mohammed H. v. Trump*, No. 25-cv-1576 (JWB/DTS) (D. Minn. July 29, 2025) (ECF 38); 25-2516 (8th Cir.); Notice of Appeal, *Aditya H. v. Trump*, No. 25-cv-1976 (KMM/JFD) (D. Minn. July 11, 2025) (ECF 24); 25-2413 (8th Cir.). Opening briefs have not yet been filed in either case. The Respondents respectfully submit that the decision in *Antonia M. v. Olson*, 25-cv-3142 (SRN/SGE), 2025 WL 2374411 (Aug. 15, 2025), should not be adopted here because 8 U.S.C.§ 1226(e) does not apply at all in the context of detention under 1225. Congress mandated detention here as part of the process of removing Petitioner.

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings:

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the apple" (internal quotation marks omitted)).

Critically, "[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before

the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions 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. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]"). Here, Petitioner challenges the government's decision and action to detain, which arises from DHS's decision to commence removal proceedings against an arriving alien and is thus an "action taken . . . to remove [them] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). As such, the Court lacks jurisdiction over this action.

The reasoning in *Jennings* outlines why Petitioner's claims are unreviewable here. While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that "§1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, Petitioner *does* challenge the government's decision to detain him in the first place. Though Petitioner may attempt to frame this challenge as one relating to detention authority, rather than a challenge to DHS's decision to detain him pending his removal proceedings in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

Indeed, the fact that Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because "detention *is* an 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petition for lack of jurisdiction under § 1252(b)(9). Petitioner must present his claims before the appropriate federal court of appeals because they challenge the government's decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

B. Petitioner must be detained pending his removal proceedings under the plain text of § 1225.

The Court should reject Petitioner's argument that § 1226(a) governs his detention instead of § 1225(b)(2). Petitioner cannot dispute that he is deemed an "applicant for admission" under § 1225(a)(1). *E.g.*, ECF 1 ¶¶ 46, 54 (admitting Petitioner is "present

without admission or parole" and "entered the United States without inspection"). He argues instead that, unlike other applicants for admission, he cannot be subjected to § 1225(b)(2)'s mandatory-detention provision because he has been present in the interior of the United States. *See, e.g.*, ECF 1 ¶¶ 137-138, 141; ECF 6 at 2 n.1.[7] He emphasizes the words "seeking admission" and suggests that this text further narrows the category of "applicants for admission" subject to mandatory detention under § 1225(b)(2) to only those noncitizens inspected at a port of entry. ECF 1 ¶ 138. This reading fails several basic canons of interpretation.

First, consider the plain text. Statutory language "is known by the company it keeps." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). "Seeking admission" and "appl[ying] for admission," in this context, are plainly synonymous. Congress linked these two variations of the same phrase in § 1225(a)(3), which requires all noncitizens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive—a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013). As a result, a person "seeking admission" is just another way of saying someone is applying for admission—that is, he is an "applicant for admission"—which includes both those individuals arriving

[7] Petitioner argues that this Court should address only the automatic stay provision of the regulations and not the underlying statutory basis for detention. Respondents disagree. The automatic stay provision is not a detention statute, it is merely a means for review of an immigration judge's decision. Respondents' authority to detain here, which is the relevant inquiry in habeas, comes directly from 8 U.S.C. § 1225.

in the United States and those already present without admission. *See* 8 U.S.C. § 1225(a)(1); *Lemus-Losa*, 25 I. & N. Dec. at 743.

Yet Petitioner insists the phrase "[noncitizen] seeking admission" limits the universe of applicants for admission to those entering or "arriving in the United States." ECF 1 ¶¶ 137-145 This argument wrongly conflates noncitizens "seeking admission" with "arriving" noncitizens. Congress used the simple phrase "arriving" noncitizen (or noncitizen "who is arriving") elsewhere throughout § 1225. *E.g.*, 8 U.S.C. § 1225(a)(2), (b)(1), (c), (d)(2). That phrase plainly distinguishes a noncitizen presently or recently "arriving" in the United States from other "applicants for admission" who, like Petitioner, have been present in the United States without having been admitted. But Congress *did not* use the word "arriving" to limit the scope of § 1225(b)(2)'s mandatory-detention provision. If Congress meant to limit § 1225(b)(2)'s scope to "arriving" noncitizens, it could have simply used that phrase, like it did in § 1225(b)(1). Instead, Congress used the phrase "[noncitizen] seeking admission" as a plain synonym for "applicant for admission."

Second, consider the statutory structure of § 1225(b). To be sure, § 1225(b)(1) applies to applicants for admission who are "arriving in the United States" (or those who have been present for less than two years) and provides for expedited removal proceedings. It also contains its own mandatory-detention provision applicable during those expedited proceedings. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Section 1225(b)(2), by contrast, applies to "other" noncitizens—"in the case of [a noncitizen] who is an applicant for admission"—those *not* subject to expedited removal under (b)(1). They too must "be detained" but instead for a more typical removal "proceeding under section 1229a of this title." 8 U.S.C.

§ 1225(b)(2)(A). Properly understood, § 1225(b) applies to two groups of "applicants for admission": (b)(1) applies to "arriving" or recently arrived noncitizens who must be detained pending *expedited* removal proceedings; and (b)(2) is a "catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)," *Jennings*, 583 U.S. at 287, who, like Petitioner, must be "detained for a [*non-expedited*] proceeding under section 1229a of this title," 8 U.S.C. § 1225(b)(2). A contrary interpretation limiting (b)(2) to "arriving" noncitizens would render it redundant and without any effect.

And *third*, compare § 1225's mandatory-detention provisions alongside the discretionary-detention provisions of § 1226. "A basic canon of statutory construction" is that "a specific provision applying with particularity to a matter should govern over a more general provision encompassing that same matter." *Hughes v. Canadian Nat'l Ry. Co.*, 105 F.4th 1060, 1067 (8th Cir. 2024). Section 1226(a) applies to noncitizens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is narrower, applying only to noncitizens who are "applicants for admission,"—a specially defined subset of noncitizens that explicitly includes those "present in the United States who ha[ve] not be admitted." *Id.* § 1225(a). *See also Florida v. United States,* 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) ("§ 1225(a) treats a specific class of [noncitizens] as 'applicants for admission,' and § 1225(b) mandates detention of these [noncitizens] throughout their removal proceedings. Section 1226(a), by contrast, states in general terms that detention of [noncitizens] pending removal is discretionary unless the [noncitizen] is a criminal [noncitizen]."). Because Petitioner falls squarely within the definition of

individuals deemed to be "applicants for admission," the specific detention authority under § 1225(b) governs over the general authority found at § 1226(a).[8]

A court in Massachusetts recently confirmed that a noncitizen, unlawfully present in the country for approximately 20 years, was nonetheless an "applicant for admission." *See Pena v. Hyde*, Civ. Action No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025). The court explained this resulted in the "continued detention" of a noncitizen during removal proceedings as commanded by statute. *Id.* And the BIA has long recognized that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012).

C. Congress did not intend to treat individuals who unlawfully enter the country better than those who appear at a port of entry.

When the plain text of a statute is clear, that meaning is controlling and courts "need not examine legislative history." *Doe v. Dep't of Veterans Affs. of U.S.*, 519 F.3d 456, 461 (8th Cir. 2008). Indeed, "in interpreting a statute a court should always turn first to one, cardinal canon before all others." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). The Supreme Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Id.*

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[8] Petitioner points to the mandatory-detention provisions of § 1226(c), recently enacted in the Laken Riley Act and argues those recent changes would be superfluous under the government's interpretation. ECF 1 ¶¶ 129-130 (citing 8 U.S.C. § 1226(c)(1)(E)). But that provision requires mandatory-detention of noncitizens who are charged with, arrested for, or convicted of particular crimes—facts not at issue here—"when the [noncitizen] is released." 8 U.S.C. § 1226(c)(1)(E). This provision plainly mandates detention of certain noncitizen criminals upon release from criminal custody and does not shrink the scope of mandatory detention under an altogether different statutory provision.

(citations omitted). Thus, "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Id.* (citing *Rubin v. United States*, 449 U.S. 424 at 430 (1981)).

Even if legislative history were relevant, nothing within it "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Indeed, the legislative history and evidence regarding the purpose of § 1225(b)(2) show that Congress did not mean to treat noncitizens arriving at ports of entry worse than those who successfully entered the nation's interior without inspection.

Congress passed IIRIRA to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It "intended to replace certain aspects of the [then-]current 'entry doctrine,' under which illegal [noncitizens] who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to [noncitizens] who present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). The Court should reject the Petitioner's interpretation because it would put noncitizens like him who "crossed the border unlawfully" in a better position than those "who present themselves for inspection at a port of entry." *Id.* Noncitizens who presented at ports of entry would be subject to mandatory detention under § 1225, while those who successfully evaded detection and crossed without inspection would be eligible for bond under § 1226(a).

D. Prior agency practices are not entitled to deference under *Loper Bright.*

Petitioner cites earlier agency practice, Pet., ¶ 78, but that prior agency practice carries little weight under *Loper Bright*. The weight given to agency interpretations "must always 'depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 432–33 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)). And here, the agency provided no analysis to support its reasoning. *See* 62 Fed. Reg. at 10323; *see also Maldonado v. Bostock*, No. 2:23-cv-00760-LK-BAT, 2023 WL 5804021, at *3, 4 (W.D. Wash. Aug. 8, 2023) (noting the agency provided "no authority" to support its reading of the statute).

To be sure, "when the best reading of the statute is that it delegates discretionary authority to an agency," the Court must "independently interpret the statute and effectuate the will of Congress." *Loper Bright*, 603 U.S. at 395 (cleaned up). But "read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297 (cleaned up). Petitioner thus cannot succeed on the merits.

E. The invocation of the automatic stay provision does not change the constitutionality of Petitioner's detention.

The fact that DHS has invoked the automatic stay provision to keep Petitioner in detention during DHS's bond appeal does not change the constitutionality of the detention. The automatic stay was invoked in support of the statutory scheme implemented by Congress under 8 U.S.C. § 1225, which requires mandatory detention. Pryd Decl., Ex. J

at 2 (certification by the Chief Counsel that a non-frivolous argument under section 1225 is the basis for ICE's appeal); Pryd Decl., Ex. K (outlining the good faith legal basis for the appeal).

Judge Davis recently rejected a constitutional challenge to the same provision of the regulations implementing the exercise of the Secretary's discretion related to bond under § 1226(a). Order, *Ernesto Ruben Barajas Farias* v. *Garland, et al.*, No. 24-cv04366 (MJD/LIB) (Dec. 6, 2024) (ECF No. 18, hereinafter Order Denying Petition). There, Judge Davis was considering a challenge 8 C.F.R. § 1003.19(h)(2)(i)(C), which allowed DHS to exempt a category of individuals from receiving any bond hearing under 1226(a). The provision at issue here is the preceding subsection, § 1003.19(h)(2)(i)(B).

Judge Davis explained the statutory structure of immigration detention as set out in Section 1226 and the accompanying DOJ regulations. Order to Show Cause, 24-cv-4366 (MJD/LIB) (Dec. 4, 2024) (ECF No. 14, hereinafter "Order to Show Cause"). Congress's scheme in 1226 clearly gave discretion to the Attorney General under 1226(a) to make detention decisions for the individuals in removal proceedings. Judge Davis wrote:

> In exercising that discretion, the Attorney General has decided that some detainees . . . will not be released on bond, while other detainees will be given a more granular determination. This appears entirely consistent with the delegation of authority to the Attorney General effected by 1226(a).

Order to Show Cause at 3. Judge Davis recognized that this statutory structure was like one Congress set up for the Bureau of Prisons that the Supreme Court upheld in *Lopez v. Davis*, 531 U.S. 230 (2001). Order to Show Cause at 3-4. There, the Supreme Court upheld a BOP regulation categorically denying a sentence reduction provision to a category of

inmates, as an exercise of discretion given to it by Congress. Order to Show Cause at 4 (citing *Lopez*, 531 U.S. at 233, 244).

In his Order Denying the Petition, Judge Davis carefully considered and rejected several arguments made by the petitioner. Judge Davis's reasoning focused on the text of section 1226, "which expressly commits" detention authority to the Attorney General's discretion. Order Denying Petition at 4. The Attorney General's further delegation, via regulation, to immigration judges is constrained by the Attorney General's finding that for individuals charged under section 1227(a)(4), no IJ review is allowed. *Id.* at 5. Judge Davis rejected an argument that *Lopez* was not applicable because this detention is in the civil context. *Id.* at 6-7.

Finally, Judge Davis highlighted the Eighth Circuit's very recent precedent in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024), *rehearing by panel and en banc denied*, *Banyee v. Bondi*, No. 22-2252, 2025 WL 837914 (8th Cir. Mar. 18, 2025). The *Banyee* decision rejects a constitutional challenge to mandatory detention under 1226(c) for the length of an individual's removal proceedings. 115 F. 4th at 931 ("The rule has been clear for decades: '[d]etention during deportation proceedings [i]s ... constitutionally valid.'") (citing *Demore*, 538 U.S. at 523). The only other Eighth Circuit case that has addressed detention during removal proceedings also highlighted that detention during removal proceedings is not, on its face, unconstitutional. *Farass Ali v. Brott, et al.*, No. 19-1244, 2019 WL 1748712 (8th Cir. Apr. 16, 2019) (holding that detention for over a year after an IJ denial of bond was constitutional without consideration of reasonableness factors imposed by district court). Even if this Court were to consider the merits of the detention

question here, there is no question that this short period of detention, coupled with the process afforded in the regulations, is constitutionally valid. ICE's appeal is allowed so that the important question of detention can be resolved.

The present case is distinct from other recent cases in this district in which invocation of the automatic stay has been found to be a constitutional violation. In *Mohammed H. v. Trump*, No. CV 25-1576 (JWB/DTS), 2025 WL 1692739, at *5 (D. Minn. June 17, 2025), Judge Blackwell's decision 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), a statutory scheme that expressly allows for a bond hearing in front of an Immigration Judge, 8 C.F.R. § 1003.19(a), not 1225, which expressly does not allow for a bond hearing, 8 C.F.R. § 1003.19(h).[9] In *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at *6 (D. Minn. May 21, 2025), the question presented by the Petition was distinct: "whether a regulation can permit an agency official to unilaterally detain a person after a judge has ordered the person's release and after a judge has dismissed the underlying proceedings." The court's decision was heavily dependent on the fact that Gunaydin's proceedings had been terminated—a critical fact not present here. The more recent decision in *Antonia M. v. Olson*, 25-cv-3142 (SRN/SGE), 2025 WL 2374411 (Aug. 15, 2025), adopts *Gunaydin*'s analysis with no discussion of the fact that detention here is coextensive with ongoing removal proceedings.

[9] The United States has appealed this decision. *See, supra*, n. 6.

Banyee make clear that this Court's review of the detention is constrained and that mandatory detention is not constitutionally objectionable for the limited time period needed to complete removal proceedings. Judge Davis distinguished and disagreed with out-of-district authority to the contrary (Order to Show Cause at 7), and the more recent cases from this district are factually distinguishable and otherwise not consistent with *Banyee*. This Court should adopt Judge Davis's reasoning and find that Petitioner's detention is constitutional as removal proceedings progress. Though the bond order is stayed, and he is subject to ongoing detention, there is no due process violation. The Court should deny the motion for a temporary restraining order and dismiss the Petition.

F. Petitioner is not entitled to any additional process because he is a SIJS recipient.

The fact that Petitioner arrived as a UAC and has an approved SIJS application, does not give *any* due process interest to Petitioner. Thus, the non-binding case on which Petitioner primarily relies for this argument (ECF 1 ¶ 166-168), *Osorio-Martinez v. Attorney General*, held only that the SIJS recipients there had a sufficient interest in that status justifying invocation of the Suspension Clause to assert habeas claims challenging their *expedited removal proceedings*, which proceedings effectively revoked the benefits conferred by SIJS. *See* 893 F.3d 153, 170-74 (3d Cir. 2018). Here, Petitioner is not in expedited removal proceedings, and his present detention does not effectively revoke any SIJS benefit; on the contrary, Petitioner admits that he is currently pursuing exactly the adjustment-of-status process that SIJS affords him. *E.g.*, Pet. ¶ 39. SIJS is thus a red herring as concerns Petitioner's putative liberty interest here.

III. The remaining *Dataphase* factors do not support a temporary restraining order.

This Court should deny Petitioner's motion because he has not established sufficient irreparable harm, and the public interest and balance of the equities favor the United States' position. As a threshold matter, the Court need not even reach these factors, given Petitioner's failure to show a likelihood of success on the merits of his claim. *See Devisme v. City of Duluth*, No. 21-CV-1195 (WMW/LIB), 2022 WL 507391, at *4 (D. Minn. Feb. 18, 2022) ("Because Devisme has not demonstrated a likelihood of success on the merits, the Court need not address the remaining *Dataphase* factors."). But even if the Court were to consider the other factors, Petitioner's claim fails.

A. Irreparable Harm

Regardless of the merits his or her claims, a plaintiff must show "that irreparable injury is likely in the absence of an injunction." *Singh v. Carter*, 185 F. Supp. 3d 11, 20 (D.D.C. 2016). To be considered "irreparable," a plaintiff must show that absent granting the preliminary relief, the injury will be "'both certain and great,' 'actual and not theoretical,' 'beyond remediation,' and 'of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm.'" *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)). The significance of the alleged harm is also relevant to a court's determination of whether to grant injunctive relief. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982) ("[A] federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of law."); *E.B. v. Dep't of State*, 422 F. Supp. 3d 81, 88 (D.D.C. 2019) ("While 'there is some appeal to the

proposition that any damage, however slight, which cannot be made whole at a later time, should justify injunctive relief,' the Court cannot ignore that 'some concept of magnitude of injury is implicit in the [preliminary injunction] standards.'") (quoting *Gulf Oil Corp. v. Dep't of Energy*, 514 F. Supp. 1019, 1026 (D.D.C. 1981)).

Petitioner cites the potential negative consequences of being further from his counsel as a basis for irreparable harm. ECF 6 at 12. Because ICE has, subject to a 72-hour reservation of rights, agreed not to move Petitioner out of the District of Minnesota during pendency of the habeas matter, Pryd Decl. ¶ 23, this assertion of irreparable harm is moot. To the extent Petitioner relies on the fact of detention in support of his argument regarding irreparable harm, Respondents note that it is mandatory under the statute for the duration of removal proceedings. Detention is not indefinite, particularly during the time period in which it is under review at the BIA.

B. Public Interest, Balance of the Equities

The two remaining *Dataphase* factors—the public interest and the balance of harms—also weigh against injunctive relief. "For practical purposes, these factors 'merge' when a plaintiff seeks injunctive relief against the government." *Let Them Play MN v. Walz*, 517 F. Supp. 3d 870, 888 (D. Minn. 2021).

Under the balance of harms factor, "[t]he goal is to assess the harm the movant would suffer absent an injunction, as well as the harm other interested parties and the public would experience if the injunction issued." *Katch, LLC v. Sweetser*, 143 F. Supp. 3d 854, 875 (D. Minn. 2015) (citing *Pottgen v. Missouri State High Sch. Activities Ass'n*, 40 F.3d 926, 928 (8th Cir. 1994)). When balancing the harms, courts will also consider whether a

proposed injunction would alter the status quo, finding that such proposals weigh against injunctive relief. *See, e.g., Katch, LLC*, 143 F. Supp. 3d at 875; *Amigo Gift Ass'n v. Exec. Props., Ltd.*, 588 F. Supp. 654, 660 (W.D. Mo. 1984) ("[B]ecause Amigo is not seeking the mere preservation of the status quo but rather is asking the Court to drastically alter the status quo pending a resolution of the merits, the Court finds that the balance of the equities tips decidedly in favor of Executive Properties.").

Importantly, the Court must take into consideration the public consequences of injunctive relief against the government. *See Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008) (cautioning that the Court "should pay particular regard for the public consequences" of injunctive relief). The government has a compelling interest in the steady enforcement of its immigration laws. *See Miranda v. Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022) (vacating an injunction that required a "broad change" in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) ("the public interest in the United States' enforcement of its immigration laws is high"); *United States v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7, 2015) ("the Government's interest in enforcing immigration laws is enormous.").

Judicial intervention would only disrupt the status quo. *See, e.g., Slaughter v. White*, No. C16-1067-RSM-JPD, 2017 WL 7360411, at * 2 (W.D. Wash. Nov. 2, 2017) ("[T]he purpose of a preliminary injunction is to preserve the status quo pending a determination on the merits."). The Court should avoid a path that "inject[s] a degree of uncertainty" in the process. *USA Farm Labor, Inc. v. Su*, 694 F. Supp. 3d 693, 714 (W.D.N.C. 2023). The

BIA exists to resolve disputes like the one regarding Petitioner's detention. *See* 8 C.F.R. § 1003.1(d)(1). By regulation it must "provide clear and uniform guidance" "through precedent decisions" to "DHS [and] immigration judges." *Id.* Respondents respectfully ask that the Court allow the established process to continue without disruption.

The BIA also has an "institutional interest" to protect its "administrative agency authority." *See McCarthy v. Madigan*, 503 U.S. 140, 145, 146 (1992) *superseded by statute as recognized in Porter v. Nussle*, 534 U.S. 516 (2002). "Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review." *Global Rescue Jets, LLC v. Kaiser Foundation Health Plan, Inc.*, 30 F.4th 905, 913 (9th Cir. 2022) (quoting *Weinberger v. Salfi*, 422 U.S. 749, 765 (1975)). Indeed, "agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer." *McCarthy*, 503 U.S. at 145. The Court should allow the BIA the opportunity to weigh in on these issues raised in Petitioner's BIA appeal—which are the same issues raised in this action. *See id.* The Court should deny the motion and dismiss the Petition.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny Petitioner's motion for temporary restraining order, deny his habeas petition, and dismiss the case.

Dated: September 3, 2025

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