

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

Acxel Stiven Quinteros Del Cid,

Petitioner,

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department of  
Homeland Security,

0:25-cv-03348 (PAM/DLM)

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.

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

## INTRODUCTION

Respondents' objections cannot sway the Court. Respondents fail to address the argument that the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2) is *ultra vires* and thereby seek to obfuscate the core issue in this case, which is the validity of that auto-stay provision. Instead, Respondents raise jurisdictional and statutory arguments identical to those that have been universally rejected in this district and beyond. The Court should grant the petition.

## ARGUMENT

### **I. This Court has Jurisdiction.**

Petitioner does not challenge Respondents' initiation of removal proceedings or their decision to detain him in the first place. Petitioner challenges the application of 8 C.F.R. § 1003.19(i)(2) to stay a bond that was ordered after he was detained.

8 U.S.C. § 1252(g) is in applicable because custody in no way impacts the initiation of proceedings. Whether custody is governed by 8 U.S.C. §§ 1225(b), 1226(a), or 1232(b), proceedings are initiated with the filing of a Notice to Appear under 8 U.S.C. § 1229. That section is titled "initiation of removal proceedings." 8 U.S.C. § 1229. Furthermore, "an application or request of a respondent regarding custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding." 8 C.F.R. § 1003.19(d). Custody is not the same as initiation. Even if this were not the case, there is "an

exception to § 1252(g) for a habeas claim raising a pure question of law.” *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017). Petitioner is raising a purely legal question *unrelated* to the removal process. 8 U.S.C. § 1252(g) cannot apply.

As for Respondents jurisdictional arguments related 8 U.S.C. §§ 1252(a)(5) and 1252(b)(9), they cite to Justice’s Thomas’s concurrence in part, which, by its own terms, “explicitly contradicts the plurality’s (and dissent’s) jurisdictional holding, as Justice Thomas himself recognized, ‘I am of a different view.’” ... [Thus,] Respondents’ reliance on a functionally dissenting opinion that contradicts the holding of the Court is obviously improper.” *Romero v. Hyde*, 2025 WL 2403827, at \*5 (D. Mass. Aug. 19, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 318 (Thomas, J., concurring in part and concurring in the judgment)). Indeed, contrary to Respondent’s suggestions, the *Jennings* court exercise jurisdiction over those challenges to the government’s detention authority, 583 U.S. at 294-95, much as this court must here. Moreover, Petitioner does not challenge the initial detention. Instead, he challenged the invocation of a regulation that would forbid his release after an individualized determination that he posed no danger or flight risk. As this is unrelated to the final order, *see supra*, it cannot be reviewed at the Circuit in a Petition for Review under 8 U.S.C. § 1252(a)(2)(D), so 8 U.S.C. §§ 1252(a)(5) and 1252(b)(9) are totally inapplicable.

Every court to review this precise fact pattern has found as much. *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Gunaydin v. Trump*, 2025 WL 1459154 (D. Minn. May 21, 2025); *Mohammed H. v. Trump*, 2025 WL 1692739 (D. Minn. June 17, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025, at \*8 (D. Md. Aug. 24, 2025).

## II. Respondents Substantive Arguments Are Unavailing.

### a. 8 C.F.R. § 1003.19(i)(2) is Ultra Vires and Unconstitutional

Respondents fail to address, in any way, how the unilateral exercise of power statutorily delegated to the Attorney General and the Department of Justice by a wholly separate agency, that is the Department of Homeland Security, is in any way consistent with the INA. Nor does it attempt to explain 8 C.F.R. § 1003.19(i)(2) is anything other than unconstitutional.<sup>1</sup>

Instead, they point to *Barajas Farias v. Garland*, No. 24-cv-04366 (MJD/LIB) (Dec. 6, 2024). That case addressed a separate provision, 8 C.F.R. § 1003.19(h)(2)(i)(C), which addresses how criminal detainees who must be detained

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<sup>1</sup> In their brief, Respondent's incorrectly suggest thus case is about 8 C.F.R. § 1003.19(h)(2)(i)(B). It is not, as Respondents expressly invoked 8 C.F.R. § 1003.19(i)(2). See Doc. 11, Ex. J.

throughout removal proceedings. However, that case made it clear that “8 U.S.C. § 1226(a) permits the Attorney General—and therefore permits immigration judges who work, ultimately, on behalf of the Attorney General, *see* 8 C.F.R. § 1003.10—to detain any person pending a decision whether that person should be removed from the United States.” *Id.* at \*3.<sup>2</sup>

This case is different. It challenges 8 C.F.R. § 1003.19(i)(2), which purports to allow the Department of Homeland Security to unilaterally overrule an immigration judge’s decision to grant bond. Therefore, none of the arguments about the Attorney General’s discretion in *Barajas Farias* apply. The Secretary of Homeland Security is not the Attorney General, and she has separate authority. Nothing in *Barajas Farias* or *Banyee* changes that. Moreover, Respondents omit that *Barajas* also held that “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 that lacks any right of review or individual assessment.

The Court should reject Respondents’ attempt to distinguish *Mohammed H. v. Trump*, 2025 WL 1692739 (D. Minn. June 17, 2025) and *Gunaydin v. Trump*, 2025 WL 1459154 (D. Minn. May 21, 2025). As Respondents note, “Judge

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<sup>2</sup> In so doing, Respondents appear to concede that 8 U.S.C. § 1226 is the applicable detention authority here.

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.'" Doc. 10, at 27. That is exactly the case here—Petitioner was detained, granted 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.

*Gunaydin* offers a detailed explication why the automatic stay procedures fail to satisfy a procedural due process test. 2025 WL 1459154, at \*5. *Gunaydin* focused on the problematic history of the automatic stay regulation, the *Mathews* factors, and how the immigration court granted relief. *Id.* at \*3-\*11. These attributes exist here equally. The Court must conclude Respondents cannot rationalize a regulation devoid of process that shifts power to detain to an adverse party.

*Banyee v. Garland*, changes none of this as that case dealt with a challenge to the *length of mandatory* detention under 8 U.S.C. § 1226(c), not the Department of Homeland Security's claim to unilateral authority to override the fact specific determinations made by the Department of Justice. 115 F.4th 928 (8th Cir. 2024). "The *why...*is more important than *how long.*" *Id.* at 932 (emphasis in original). *Banyee* challenged *how long*. Petitioner challenges *why*.

Moreover, as Judge Rubin from the District of Maryland recently found, where "the IJ has exercised his discretion to issue bond pursuant to his authority as

an appointee of the Attorney General, the automatic stay of 8 C.F.R. § 1003.19(i)(2) renders both the discretionary nature of Petitioner's detention and the IJ's authority a nullity. Therefore, the Government's application of 8 C.F.R. § 1003.19(i)(2) to continue to detain Petitioner following IJ [Ivany]'s order that he be 'released from custody under bond of \$[1,500.00] [sic] is ultra vires.' *Leal-Hernandez v. Noem*, 2025 WL 2430025, at \*14 (D. Md. Aug. 24, 2025). Essentially, the regulation renders a determination designated as discretionary by statute mandatory. That is *ultra vires*.

**b. The Record Confirms that Petitioner was Detained under 8 U.S.C. § 1226(a).**

While the Court need not address Respondents' underlying detention authority arguments, they are similarly meritless. First, Respondents have repeatedly indicated that Petitioner has been detained under 8 U.S.C. § 1226(a) and they cannot recast that for the purposes of litigation.

Petitioner was initially charged in Respondents' Notice to Appear as an "alien present in the United States who has not been admitted or paroled" and not as an "arriving alien." Dkt. 7, Exh. B. Respondents then issued an I-200, Warrant for Arrest of Alien to take Petitioner into custody "as authorized by section 236 of the Immigration and Nationality Act." Dkt. 11, Exh. B. When they detained him again in July of 2025, they once again issued a new Notice to Appear that once again referred to Petitioner as an "alien present in the United States who has not been

admitted or paroled.” Dkt. 7, Exh. E. This expressly invokes 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A).

In *Jose J.O.E., Martinez v. Hyde*, and *Rodriguez v. Perry*, courts in Minnesota, Massachusetts, and Washington, pointed to DHS’s own documents to establish that the noncitizen was detained under 8 U.S.C. § 1226(a), as opposed to 8 U.S.C. § 1225(b)(2), and therefore entitled to a bond hearing. 2025 WL 2466670 (D. Minn. Aug. 27, 2025); 2025 WL 2084238 (D. Mass. July 24, 2025); 747 F. Supp. 3d 911. See also *Rosada*, 2025 WL 2337099, at \*7 (D. Ariz. Aug. 11, 2025); *Ramirez Clavijo*, 2025 WL 2419263, at \*4 (N.D. Cal. Aug. 21, 2025); *Lopez Benitez*, 2025 WL 2371588, at \*4 (S.D.N.Y. Aug. 13, 2025). The same is true here.

*Jose J.O.E.* reflects as much. *Jose J.O.E.* ruled that that 8 U.S.C. § 1226 applied when “Respondents point[ed] to no record evidence suggesting that Jose was arrested and detained under § 1225” because he was “arrested on a warrant pursuant to § 1226 … and detained under authority of § 1226 and its implementing regulations.” 2025 WL 2466670, at \*8. Petitioner was similarly arrested on a warrant, see Dkt. 11, Exh. B, and he was previously detained “in accordance with section 236 of the Immigration and Nationality Act.” Dkt. 11, Exh. C. Therefore, 8 U.S.C. § 1226 applies. The Court has to hold Respondents to their determinations. They cannot abandon the record by claiming to adopt a new legal position.

In *Rodriguez*, the court held that “when ICE arrested and detained him in June

2023, he was an ‘alien present’ in the United States and was entitled to a bond hearing under § 1226(a),” in part, because ICE’s records … clearly state that Sandoval is subject to removal as an alien present under INA § 212(a)(6)(A)(i), and not as an arriving alien under § 212(a)(7)(A)(i)(I).” 747 F. Supp. 3d at 916. The same is true here. The 2021 and 2025 Notices to Appear designate Petitioner as an alien present under INA § 212(a)(6)(A)(i), and not an arriving alien under § 212(a)(7)(A)(i)(I). *See* Dkt. 11, Ex. B; Ex. F. Again, this Court too must hold Respondents to their records. The section 1182(a)(6)(A)(i) designation in the NTA, along with the specific notice that he was “present” rather than an “arriving alien” means that 8 U.S.C. § 1226(a) controls.

Similarly, in *Martinez*, the court found that 8 U.S.C. § 1226(a) controlled where Mr. Martinez’s “Order of Release does not indicate that she was examined or detained under section 1225 but instead explicitly premises her release on section 1226 (“[i]n accordance with section 236 of the Immigration and Nationality Act”).” 2025 WL 2084238, at \*3 (D. Mass. July 24, 2025). Here too, the Form I-286 Custody Determination expressly notes that detention was authorized “[p]ursuant to the authority contained in section 236 for the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations.” *See* Dkt. 11, Ex. C. The most recent I-213 also specifically references a prior “I-200.” *See* Dkt. 11, Ex. E.

Respondents have been clear in the underlying proceedings that they have

detained Petitioner under 8 U.S.C. § 1226(a)(2), not 8 U.S.C. § 1225(b)(2) as in *Jose J.O.E., Rodriguez and Martinez*. Yet, Respondents seek to rewrite this administrative history and invoke, for the first time, the mandatory detention provisions at 8 U.S.C. § 1225(b)(2). This attempt at revisionism is inconsistent with the statute and clear representations of Congressional intent, *see infra*, not to mention the record in this case. Given that the government has routinely invoked 8 U.S.C. § 1226(a)(2) to justify Respondent's detention, the Court must hold them to that now

**c. The Plain Text Illustrates that 8 U.S.C. § 1226(a) Clearly Applies to Petitioner.**

In 2021, Respondents was “taken into custody as authorized by section 236 of the Immigration and Nationality Act” on an I-200 “warrant of arrest.” *See* Dkt. 11, Ex. C. As such, he is clearly eligible for bond pursuant to 8 U.S.C. § 1226(a). The plain text at 8 U.S.C. § 1226(a) “establishes a discretionary detention framework for noncitizens arrested and detained ‘[o]n a warrant issued by the Attorney General.’” *Gomes*, 2025 WL 1869299, at \*6 (citing 8 U.S.C. § 1226(a)). “For such individuals, the Attorney General (1) *may* continue to detain the arrested alien”; (2) “*may* release the alien on … bond”; or (3) “*may* release the alien on … conditional parole.” 8 U.S.C. §§ 1226(a)(1), (a)(2)(A), (a)(2)(B). “The thrice-used permissive word ‘may’ indicates Congress’s intent to establish a discretionary, rather than mandatory, detention framework for noncitizens arrested on a warrant.” *Gomes*, 2025 WL 1869299, at \*6.

The statute then sets out a single exception to this discretionary framework, articulating that it applies “[e]xcept as provided in subsection (c).” 8 U.S.C. § 1226(a). Subsection (c), in turn, applies to certain “criminal” noncitizens, who are expressly exempted from this discretionary framework.” 8 U.S.C. § 1226(c). However, this framework does not similarly carve out noncitizens who would be subject to mandatory detention under Section 1225(b)(2).” *Gomes*, 2025 WL 1869299, at \*7. As the Supreme Court has noted, this sort of “express exception” to Section 1226(a)’s discretionary framework “implies that there are no *other* circumstances under which” detention is mandated for noncitizens, like Petitioner, who are subject to Section 1226(a), in that he was arrested on a warrant issued by the attorney general. *Jennings*, 583 U.S. at 300 (citing A. Scalia & B. Garner, *Reading Law* 107 (2012)).

Moreover, given that Petitioner was initially detained “on a warrant of arrest issued by the attorney general” and the second detention references that “I-200” as well, *see* Dkt. 11, Ex. C; Ex. E, his specific circumstances relate to an “arrest on a warrant issued by the attorney general.” So, to the extent 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*, 105 F.4th 1060, 1067 (8th Cir. 2024), this fact pattern is governed by the provision relating to “arrest on a warrant of arrest.” 8 U.S.C. § 1226(a). As such, Petitioner’s detention falls

within the discretionary bond framework governed by 8 U.S.C. § 1226(a). No one alleges that the exceptions to that framework articulated at 8 U.S.C. § 1226(c) apply here, so there is no basis to find that mandatory custody applies.

**d. The Plain Text Illustrates that 8 U.S.C. § 1225(b)(2)(A) Cannot Apply as Petitioner Was Not “Seeking Admission” When He Was Detained on July 31, 2025.**

The text and structure of the statute illustrate that 8 U.S.C. § 1225(b)(2) is totally inapplicable now, years after Petitioner first arrived and entered into the United States. As the Supreme Court has held, while “Section 1225(b) ‘authorizes the Government to detain certain aliens *seeking admission into the country*,’ Section 1226 ‘authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings.’” *Gomes*, 2025 WL 1869299, at \*2 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)). Petitioner was apprehended in Apple Valley, Minnesota, *see* Doc. 11, Ex. E, hundreds of miles from the nearest border and nowhere near a port of entry. He was not “seeking admission into the country.” He was, and is, already here.

Respondent’s argument hinges on the suggestion that “seeking admission” and “applying for admission” are somehow synonymous.<sup>3</sup> They are not. In fact, the

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<sup>3</sup> Respondents do not remain true to the statutory language, changing the noun “applicant for admission” into a verb, “appl[ying] for admission” to better suit their goals. Unfortunately for them “we start where we always do: with the text of the statute” as written. *Van Buren v. United States*, 593 U.S. 374 (2021).

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.

The text is clear on this point and “[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). “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). An “applicant for admission is” “[a]n alien present in the United States who has not been admitted or who arrives in the United States.” 8 U.S.C. § 1225(a)(1).

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). Thus, application of the mandatory detention provision at 8 U.S.C. § 1225(b)(2)(A) is limited to those seeking “entry of the alien into the United States after inspection and authorization by an immigration officer,” 8 U.S.C. § 1101(a)(13), that is those “coming from outside.” *Claussen*, 279 U.S. at 401.

Petitioner is not outside the United States, nor did his most recent apprehension occur at the threshold of the United States, nor has he been outside the country for years. He is not seeking admission into the country at this time, nor was he at the time of his 2025 detention, so 8 U.S.C. § 1226(b)(2) cannot apply.

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

An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission ... unless the alien-

- (i) has abandoned or relinquished that status,

- (ii) has been absent from the United States for a continuous period in excess of 180 days,
- (iii) has engaged in illegal activity after having departed the United States,
- (iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,
- (v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or
- (vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

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

Nor does Petitioner’s reading create a surplusage issue in which the 8 U.S.C. § 1225(b)(2) catchall is rendered “redundant and without any effect.” Doc. 10, at 21. While 8 U.S.C. § 1225(b)(1) expressly applies to those who are “arriving,” and 8 U.S.C. § 1225(b)(2)(A) expressly excludes those “to whom paragraph (1) applies,” 8 U.S.C. § 1225(b)(2)(B)(ii), there is a universe of “applicants for admission” who

are “seeking admission” from outside the United States that fall outside the scope of 8 U.S.C. § 1225(b)(1), and into the catchall at 8 U.S.C. § 1225(b)(2).

These include, most obviously any “alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.” 8 U.S.C. § 1225(b)(1)(F). These individuals are expressly exempted from 8 U.S.C. § 1225(b)(1). They fall into 8 U.S.C. § 1225(b)(2).

This group also includes “noncitizens who present some evidence they are entitled to entry” but who are not “clearly and beyond a reasonable doubt entitled to be admitted,” such as certain “legal permanent residents (LPRs) returning from travel abroad.” Joe Bianco, *Chance to Change: Jennings V. Rodriguez as a Chance to Bring Due Process to a Broken Detention System*, 13 DUKE J. CONST. L. & PUB. POL’Y SIDEBAR 37 (2018). As the Third Circuit has held, “[b]ecause § 235(b)(2) requires the INS to detain aliens ‘not clearly and beyond a doubt entitled to be admitted’ ... in practice, these provisions often result in the mandatory detention of returning lawful permanent residents at places of inspection.” *Tineo v. Ashcroft*, 350 F.3d 382, 387 (3d Cir. 2003). *See also Clark v. Martinez*, 543 U.S. 371, 373 (2005) (“An alien arriving in the United States must be inspected by an immigration official ... and, unless he is found ‘clearly and beyond a doubt entitled to be admitted,’ must generally undergo removal proceedings to determine admissibility, §

1225(b)(2)(A)."); *Kasneci v. Dir., Bureau of Immigr. & Customs Enf't*, 2012 WL 3639112, at \*3 (E.D. Mich. Aug. 23, 2012); *Bautista v. Sabol*, 2011 WL 5040894, at \*4 (M.D. Pa. Oct. 24, 2011).

This is reinforced by the government's regulation, which identifies the limited scope of § 1225(b)(2). It states, "Lawful permanent residents have verifiable entry documents ("green cards") which prevents them from being deemed clearly inadmissible. All aliens who are not clearly inadmissible, but are also not clearly admissible, are placed in regular removal proceedings. INA § 235(b)(2)." 8 C.F.R. § 235.3(b)(5)(ii). Petitioner's reading creates no redundancy.

Respondent's reading, on the other hand, would have the Court render the entire Laken Riley Act (LRA) superfluous. In the LRA, Congress added language to 8 U.S.C. § 1226(c) that directly references people who have entered without inspection or who are present without authorization. *See Laken Riley Act, PL 119-1, January 29, 2025, 139 Stat 3.* Pursuant to these amendments, an alien who "is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 212(a) of this title; and is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person" is subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(E).

If everyone inadmissible under 8 U.S.C. § 1182(a)(6)(A) is already subject to mandatory detention under 8 U.S.C. § 1225(b)(2), then there would be no need for the LRA at all. Those present without admission who commit crimes would not require a separate provision to mandate detention if they cannot be released anyways. That would render an entire provision of the INA surplusage and runs afoul of the maxim that “[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.” *Pierce Cnty. v. Guillen*, 537 U.S. 129, 145 (2003). This cannot stand and definitively illustrates that 8 U.S.C. § 1225(b)(2) is confined to the borders and ports of entry, and not to Petitioner.

The neighboring inadmissibility provision at 8 U.S.C. § 1182(a)(9)(A) reinforces section 1225’s limited application to the borders and ports of entry. This provision 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). 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 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.

The “catchall” nature of 8 U.S.C. § 1225(b)(2) also reinforces a limited reading cabined to the general parameters of 8 U.S.C. § 1225(b)(1). As the Supreme Court has noted, 8 U.S.C. § 1225(b)(2) is a “catchall” that “applies to most other applicants for admission not covered by § 1225(b)(1).” *Jennings v. Rodriguez*, 583 U.S. 281, 281 (2018). “The ejusdem canon applies when ‘a catchall phrase’ follows ‘an enumeration of specifics, as in dogs, cats, horses, cattle, and other animals.’” A. Scalia & B. Garner, READING LAW § 32, at 199 (2012). “We often interpret the catchall phrase to ‘embrace only objects similar in nature to those objects enumerated by the preceding specific words.’” *Fischer v. United States*, 603 U.S. 480, 509 (2024).

Here, the catchall at 8 U.S.C. § 1225(b)(2) follows in line with the more specific provisions contained at 8 U.S.C. § 1225(b)(1) in that it applies at and around the border and ports of entry. It is a catchall, not a force multiplier. This catchall provision would be an awfully odd place to hide the most far-reaching and consequential detention authority in the INA. “Congress does not ‘hide elephants in mouseholes.’” *Sackett v. Env’t Prot. Agency*, 598 U.S. 651, 677 (2023).

8 U.S.C. § 1225(a)(3) does not undercut this point. 8 U.S.C. § 1225(a)(3) defines who “shall be inspected by immigration officers.” 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 meritless. Instead, while “or” can “sometimes introduce an appositive … 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, they are not all subject to detention. *Romero v. Hyde* recently illustrated this poignantly. See 2025 WL 2403827, at \*10 (illustrative graph). Ultimately, 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 address different things.

Petitioner was arrested on a warrant, processed and released under 8 U.S.C. § 1226(a), then detained years later in an action referencing that same warrant

hundreds of miles from any border or port of entry. At that time, he was not, and still is not, seeking admission. Therefore, 8 U.S.C. § 1225(b)(2)(A) cannot apply.<sup>4</sup>

**e. Specific Legislative Statements Are Probative.**

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)*, 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. 10, at 23 (citing *id.* at 225). If, as Respondents contend, the specific controls the general, then Respondents arguments related to Congressional intent fail.

**f. *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) (citing *Edwards' Lessee v. Darby*, 25 U.S. 206 (1827)).

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<sup>4</sup> Petitioner is aware that the Board decided *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) late Friday afternoon. That decision is owed no deference under *Loper Bright*, 603 U.S. at 369, and simply regurgitates the same tired arguments that have been rejected by at least 20 district courts throughout the country.

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*.

**g. Respondents fail to properly represent the effect of his initial UAC designation and SIJ status.**

Respondents refer to Petitioner’s SIJS status as a “red herring.” Doc. 10, at 28. This is untrue as SIJS creates an important liberty interest. If that were not enough, the UAC designation, left unaddressed by Respondents, is also important.

When Petitioner was encountered in 2021, he was an unaccompanied alien child (“UAC”) as defined at 6 U.S.C. § 279(g)(2). “The custody of unaccompanied alien children … who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with subsection (b).” 8 U.S.C. § 1232(a)(3). Pursuant to that provision, “the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services.” 8 U.S.C. § 1232(b)(1). Once Health and human Services takes custody of the child, that “child shall not be placed in a secure facility absent a determination

that the child poses a danger to self or others or has been charged with having committed a criminal offense.” 8 U.S.C. § 1232(c)(2)(A). Furthermore, UACs “shall be promptly placed in the least restrictive setting that is in the best interest of the child.” 8 U.S.C. § 1232(c)(2)(A). Clearly, detention is not appropriate for most unaccompanied minors, so like other UACs, Petitioner was never subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

Petitioner’s current SIJS status has a similar effect. By statute, “a special immigrant described in section 1101(a)(27)(J) of this title … shall be deemed, for purposes of subsection (a), to have been paroled into the United States; and in determining the alien’s admissibility as an immigrant paragraphs (4), (5)(A), (6)(A), (6)(C), (6)(D), (7)(A), and (9)(B) of section 1182(a) of this title shall not apply.” 8 U.S.C. § 1255(h).

Notably, the charge levelled against those to whom 8 U.S.C. § 1225(b) applies is the charge found at 8 U.S.C. § 1182(a)(7)(A), for those who are “not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document … at the time of application for admission.” 8 U.S.C. § 1182(a)(7)(A). SIJS holders are expressly exempt from that provision, *see* 8 U.S.C. § 1255(h)(2)(A), suggesting that the procedures outlined at 8 U.S.C. § 1225(b)(2) do not apply to those with SIJS status.

Moreover, Petitioner is simply waiting for a visa to become available before becoming a lawful permanent resident. Petitioner was awarded SIJ status due to his presence within the United States, which is a requirement for this status. *See* 8 USC § 1101(a)(27)(K). “Congress also afforded these aliens a host of procedural rights designed to sustain their relationship to the United States and to ensure they would not be stripped of SIJ protections without due process.” *Rodriguez v. Perry*, 747 F. Supp. 3d 911, 918 (E.D. Va. 2024) (citing *Osorio-Martinez v. Attorney Gen.*, 893 F.3d 153, 170 (3d Cir. 2018)). In *Rodriguez v. Perry*, the Eastern District of Virginia held that “a bond hearing in June 2023 under § 1226(a)” was one of these rights. 747 F. Supp. 3d 911, 916 (E.D. Va. 2024). This is because Petitioner was, and remains, an “alien present in the United States,” not one “seeking admission,” prior to and following his acquisition of SIJS status.

Thus, just as in *Rodriguez*, Petitioner “is an SIJ designee who is accorded significant benefits and procedural protections that put him ‘a hair’s breadth from being able to adjust [his] status,’” and “he is entitled to procedural due process under the Fifth Amendment, [which] mandates that [he] receive a prompt, individualized bond hearing.” *Rodriguez*, 747 F. Supp. at 919. The Court must grant to maintain the due process interest of Petitioner.

### **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*, 2025 WL 1459154, at \*7. Petitioner is detained in Freeborn County jail, alongside criminal inmates under conditions indistinguishable from criminal incarceration. This favors preliminary relief.

Respondents next claim that “[j]udicial intervention would only disrupt the status quo” and assert a “compelling interest in the steady enforcement of its immigration laws.” Doc. 10, at 31. The first statement is false. Petitioner was out of custody, then Respondents disturbed the status quo by detaining him. A judge granted bond, then Respondents disturbed the status quo through invocation of 8 C.F.R. § 1003.19(i)(2). The second claim is laughable. For 29 years Respondents took Petitioner’s position and even if that were not the case “[t]here is generally no public interest in the perpetuation of unlawful agency action.” *Missouri v. Trump*, 128 F.4th 979, 997 (8th Cir. 2025).

## **CONCLUSION**

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

Respectfully submitted,

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**September 5, 2025**

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**CERTIFICATE OF SERVICE**

I, **David Wilson**, hereby certify that on September 5, 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**

September 5, 2025

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