UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 25-cv-03381-JWB-DJF

Eliseo Aguilar Alvarado

Plaintiffs,

v.

Samuel J. Olson, Field Office Director of Enforcement and Removal Operations, St. Paul Field Office, Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; U.S. Dept. of Homeland Security; Eric Tollefson, Kandiyohi County Jail Sheriff,

Defendants.

COMBINED MEMORANDUM IN OPPOSITION TO MOTION FOR TRO AND PRELIMINARY INJUNCTION AND IN RESPONSE TO HABEAS PETITION

Pursuant to the Court's orders, *see* ECF Nos. 4 and 12, Federal Respondents[1] respectfully submit this memorandum in opposition to Petitioner's Motion for a Temporary Restraining Order and Preliminary Injunction, *see* ECF No. 6, and in response to the Petition for Writ of Habeas Corpus, ECF No. 1.[2] The Court should dismiss the Petition for

[1] This response is filed on behalf of all Respondents except Eric Tollefson.

[2] The Court ordered Respondents to file their response to the habeas petition by Wednesday, September 10, 2025. ECF No. 12. Previously, the Court had granted in part Petitioner's TRO Motion, in an Order that expires on September 12, 2025. *See* ECF No. 9 p. 4. Federal Respondents submit this combined response to both the Petition and the unresolved aspects of the TRO Motion (which also seeks preliminary injunctive relief). 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).

lack of jurisdiction, because Congress has not empowered federal district courts to address the issues raised. In any event, it should also dismiss the Petition on its merits, because Petitioner's detention is authorized—indeed mandated—by statute. Finally, as Petitioner cannot meet his heavy burden to establish entitlement to the extraordinary relief he seeks, the Court should deny all unresolved aspects of Petitioner's motion seeking a TRO and preliminary injunction.

BACKGROUND

I. Facts and Procedural History

Petitioner Eliseo Aguilar-Alvarado (Aguilar) is a native and citizen of Mexico who claims to have entered the United States at or near Douglas, Arizona, on or about September 1, 2003, without admission or parole. Declaration of John D. Ligon (Ligon Decl.) ¶ 4.

On August 17, 2013, members of U.S. Immigration and Customs Enforcement's (ICE) office of Enforcement and Removal Operations out of St. Paul, Minnesota (ERO St. Paul) encountered Aguilar at the Hennepin County jail following his arrest for a traffic violation. Ligon Decl. ¶ 5. ERO St. Paul arrested Aguilar two days later at the jail and issued him a Notice to Appear charging removability under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA). *Id.* ¶ 6. On the same date, ERO St. Paul released Aguilar on an Order of Recognizance. *Id.* & Ex. A and B.

On September 2, 2014, an Immigration Judge (IJ) at Fort Snelling, Minnesota administratively closed Aguilar's case. Ligon Decl. ¶ 7. Immigration Judges are part of the Department of Justice's Executive Office for Immigration Review (EOIR). *Id.*

This past summer, ICE sought to resume the pending immigration proceedings involving Aguilar. Specifically, on June 26, 2025, the St. Paul Office of Principal Legal Advisor filed a Motion to Recalendar Administratively Closed Proceedings with EOIR Fort Snelling. Ligon Decl. ¶ 8 & Ed. C. Aguilar was arrested on his pre-existing immigration violations in St. Paul on August 7, and his attorney filed a Motion for Bond Hearing with EOIR Fort Snelling on August 19, 2025. Ligon Decl. ¶¶ 9-10.

On August 21, 2025, an Immigration Judge at Fort Snelling granted the Department of Homeland Security's (DHS) Motion to Recalendar and granted Aguilar a $5,000 bond. Ligon Decl. ¶ 11 & Ex. D. DHS reserved appeal. *See id.* DHS then filed a Notice of ICE Intent to Appeal Custody Redetermination. *Id.* Ex. E. The next day, DHS filed its appeal of the custody redetermination with the Board of Immigration Appeals (BIA). *Id.* ¶ 12 & Ex. F.

Aguilar filed his habeas petition with this Court on August 27, 2025. ECF 1. Shortly thereafter, he moved for temporary injunctive relief, which the Court promptly granted in part. ECF 6, 9. The Court then entered a briefing schedule. ECF 12.

Although DHS's BIA appeal of Augilar's particular case remains pending, on September 5, 2025 the BIA issued a decision squarely addressing the key legal issue raised in this case. *See Matter of Yahure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This recent administrative ruling is addressed below.

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 aliens as removable from the country, arrest those subject to

removal, and detain them 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* aliens 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 aliens 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 "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* an alien "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 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 aliens"[3] initially determined to be inadmissible because of fraud, misrepresentation, or lack of valid documentation. *Id.* § 1225(b)(1)(A)(i), (iii). Those 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 person "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.* § 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 person 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).

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[3] The "certain other aliens" 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 an individual 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 the alien 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 expressly confirms its inspection procedures apply to those already in the country, including for a period of years.

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 alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *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 aliens 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). 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, aliens do not have an absolute right to remain here. For example, an alien 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 aliens pending their removal." *Id.* Applicable "[o]n a warrant issued by the Attorney General," it provides that "an alien may be arrested and detained pending a decision" on the removal. 8 U.S.C. §

1226(a). For those arrested under §1226(a), the Attorney General and DHS have broad discretionary detention authority during removal proceedings.[4] *See* 8 U.S.C. § 1226(a)(1).

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 alien" during the pendency of removal proceedings. 8 U.S.C. § 1226(a)(1). "To secure release, the alien 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 (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 person, 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 an individual 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,

[4] 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 administrative 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 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).

based on a variety of factors that account for ties to the United States and the possible risks of flight or danger to the community. *See In re 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 v. Landon*, 342 U.S. 524, 534 (1952)). 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 an alien 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 the 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 limits 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. *Id.* Upon referral to the Attorney General, the 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 under three weeks.

ARGUMENT

I. Standard of Review

A. Immigration Generally

Congress has limited judicial review of immigration matters, including of detention issues. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("[T]he power over aliens is of a political character and therefore subject only to narrow judicial review."). The Supreme Court has thus "underscore[d] the limited scope of inquiry into immigration legislation," and "has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo*, 420 U.S. at 792 (internal quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the

Government's political departments largely immune from judicial control."); *Carlson*, 342 U.S. at 538 ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.").

The Court's review is limited to the constitutionality of Petitioner's detention, and not the merits of removal proceedings before the IJ or the BIA. The INA states, "The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole." INA § 236(e), 8 U.S.C. § 1226(e); *see also Demore,* 538 U.S. at 517 (Section 1226(e) precludes review of Attorney General's discretionary detention decisions in a particular case).

B. Injunctive Relief

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 jurisdictionally and on the merits.

This Court does not have jurisdiction to review Petitioner's claims. Even if the Court assumes jurisdiction, Petitioner's interpretation of § 1225(b) contradicts the statute's plain text. This dooms his Petition and requires denying all unresolved aspects of the request for injunctive relief. *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.

A. The Court lacks jurisdiction over Petitioner's claims.

As a threshold matter, and as Judge Magnuson correctly concluded in an order issued just yesterday in a similar case, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Petitioner's claims. *See Acxel S.Q.D.C. v. Bondi, et al.*, 25-cv-3348 (PAM/DLM), Doc. 17, 2025 U.S. Dist. LEXIS 175957 (Sept. 9, 2025 Memorandum and Order). Accordingly, the case should be dismissed for lack of jurisdiction and Petitioner is certainly unable to show a likelihood of success on the merits.

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) broadly 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." Except as provided in § 1252, courts "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 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). *See Acxel S.Q.D.C.*, 25-cv-3348, Doc. 17, at 5 (noting that Section 1252(g)'s exception for "pure questions of law" is "narrow" and does not apply). The Court should dismiss for lack of jurisdiction.[5]

[5] 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. Federal Respondents also 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.

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)); *see also Acxel S.Q.D.C.*, 25-cv-3348, Doc. 17, at 6 (holding Section 1252(b)(9) applies to bar jurisdiction where, as here, "Petitioner precisely challenges Respondents' decision to detain him").

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 an alien 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 there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). Accordingly, 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). *See Acxel S.Q.D.C.*, 25-cv-3348, Doc. 17, at 6.

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.

Even if the Court assumes jurisdiction, it should reject Petitioner's argument that § 1226(a) governs his detention instead of § 1225(b)(2). Petitioner does not dispute that he is deemed an "applicant for admission" under § 1225(a)(1). *E.g.,* Ligon Decl. Ex. A (alleging Petitioner was "not . . . admitted or paroled after inspection" when he entered the United States). 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 ¶¶ 31-37, 48; ECF 6 at 10-11.[6] He emphasizes the words "seeking admission" and suggests that this text further narrows the

[6] To whatever extent Petitioner also challenges the automatic-stay provision of the regulations, the Court should reject such a challenge. 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.

category of "applicants for admission" subject to mandatory detention under § 1225(b)(2) to only those aliens inspected at a port of entry. ECF 1 ¶ 36. 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 aliens "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 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 "alien seeking admission" limits the universe of applicants for admission to those entering or "arriving in the United States." ECF 1 ¶ 36. This argument wrongly conflates aliens "seeking admission" with "arriving aliens." Congress used the simple phrase "arriving alien" (or one "who is arriving") elsewhere throughout § 1225. *E.g.*, 8 U.S.C. § 1225(a)(2), (b)(1), (c), (d)(2). That phrase plainly distinguishes one 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 aliens," it could have simply used that phrase, like it did in § 1225(b)(1). Instead, Congress used the phrase "alien 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" individuals—"in the case of an alien 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 aliens 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 aliens" 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 those "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is narrower, applying only to those who are "applicants for admission,"—a specially defined subset of aliens that expressly includes those "present in the United States who ha[ve] not been 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 aliens as 'applicants for admission,' and § 1225(b) mandates detention of these aliens throughout their removal proceedings. Section 1226(a), by contrast, states in general terms that detention of aliens pending removal is discretionary unless the alien is a criminal alien."). 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).[7]

[7] The mandatory-detention provision of § 1226(c) recently enacted in the Laken Riley Act is not superfluous under the government's interpretation. *See* 8 U.S.C. § 1226(c)(1)(E). That provision requires mandatory detention of those charged with, arrested for, or convicted of particular crimes—facts not at issue here—"when the alien is released." 8 U.S.C. § 1226(c)(1)(E). This provision plainly mandates detention of certain alien criminals upon release from criminal custody and does not shrink the scope of mandatory detention under an altogether different statutory provision.

A court in Massachusetts recently confirmed that an alien, 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 individual's "continued detention" 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.* (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 aliens 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 aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens 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 individuals like him who "crossed the border unlawfully" in a better position than those "who present themselves for inspection at a port of entry." *Id.* Immigrants 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, ECF 1 ¶¶ 26-27, but that prior 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). Moreover, Section 1225 is not ambiguous, as explained above.

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. Ligon Decl., Ex. E at 2 (certification by the Chief Counsel that a non-frivolous argument under Section 1225 is the basis for ICE's appeal); *id.* Ex. F (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 Section 1226 clearly gave discretion to the Attorney General under Section 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 were this Court 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 finding invocation of the automatic stay 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), this Court's decision was premised on a finding that "Petitioner remained in custody only because the Government invoked the automatic stay provision." But unlike here, the Petitioner in the Mohammed H. case had initially 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 Section 1225, which expressly does *not* allow for a bond hearing, 8 C.F.R. § 1003.19(h).[8] 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.

The Eighth Circuit's *Banyee* decision makes 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

[8] The United States has appealed this decision. *See supra*, n. 5.

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 Petitioner is subject to ongoing detention, there is no due process violation.

F. The BIA very recently decided IJ's lack authority to hear bond requests in cases like this one.

On September 5, 2025, the BIA decided *Matter of Yahure Hurtado*, 29 I&N Dec. 216 (BIA 2025). It is binding on Immigration Judges—"Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission."[9]

As noted above, Petitioner's temporary detention pursuant to the automatic stay of 8 C.F.R. § 1003.19(i)(2) is reinforced by Congress's command to detain the Petitioner throughout the removal proceedings pursuant to 8 U.S.C. § 1225(b)(2). And the precise issue of §1225's application has now been resolved by the BIA. Indeed, §1225 applies to aliens who are present in the country *even for years* and who have not been admitted. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 226 (BIA 2025) ("the statutory text of the INA . . . is instead clear and explicit in requiring mandatory detention of all aliens who are

[9] The BIA has not yet reached DHS's appeal involving this Petitioner, but the Federal Respondents suggest the legal issue on appeal before the BIA is the same and would expect *Hurtado* to control, requiring reversal of the Immigration Judge.

applicants for admission, without regard to how many years the alien has been residing in the United States without lawful status." (citing 8 U.S.C. §1225)).

In *Hurtado*, the BIA affirmed the decision of the Immigration Judge finding the Immigration Court lacked jurisdiction to conduct a bond hearing because the alien who was present in the United States for almost three years but was never admitted shall be detained under 8 U.S.C. §1225 for the duration of his removal proceedings. *Id.* The case involved an alien who unlawfully entered the United States in 2022 and was granted temporary protected status in 2024. *Id.* at 216-17. However, that status was revoked in 2025, and the alien was subsequently apprehended and placed in removal proceedings. *Id.* at 217. It is clear from the decision, the alien was initially served with a Notice of Custody Determination, informing him of his detention under 8 U.S.C. § 122**6** and his ability to request bond, like the Petitioner was in this case. *Id.* at 226. However, when the alien sought a redetermination of his custody status, the Immigration Judge held the Court did not have jurisdiction under § 1225. *Id.* at 216. The alien appealed to the BIA. *Id.*

In affirming the decision of the Immigration Judge who determined he lacked jurisdiction, the BIA found § 1225 clear and unambiguous as explained above. Thus, because the alien was present in the United States (regardless of how long) and because he was never admitted, he shall be detained during his removal proceedings. *See id.* at 228. In doing so, the BIA rejected the same arguments raised by Petitioner and by other similar petitioners in this District. For example, the BIA rejected the "legal conundrum" postulated by the alien that while he may be an applicant for admission under the statute, he is

somehow not actually "seeking admission." *Id.* at 221. The BIA explained that such a leap did not make sense and violated the plain meaning of the statute. *See id.*

Next, the BIA rejected the alien's argument that the mandatory detention scheme under § 1225 rendered the recent amendment to § 1226 under the Laken Riley Act superfluous. *Id.* The BIA explained, "nothing in the statutory text of section 236(c), including the text of the amendments made by the Laken Riley Act, purports to alter or undermine the provisions of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), requiring that aliens who fall within the definition of the statute "shall be detained for [removal proceedings]." *Id.* at 222. The BIA explained further that any redundancy between the two statutes does not give license to "rewrite or eviscerate" one of the statutes. *See id.* (quoting *Barton v. Barr*, 590 U.S. 222, 239 (2020)).

Also, the BIA reasoned that it doesn't matter that the alien was initially served with a warrant listing § 1226 and informing him of his ability to seek bond. *See id.* at 226-27. The Immigration Court cannot bestow jurisdiction upon itself with that initial paperwork when jurisdiction has been specifically revoked by Congress in § 1225. *Id.* (explaining "the mere issuance of an arrest warrant does not endow an Immigration Judge with authority to set bond for an alien who falls under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A)."). The BIA further pointed out, "Our acknowledgement that "aliens detained under section 236(a) may be eligible for discretionary release on bond" does not mean that *all* aliens detained while in the United States with a warrant of arrest are detained under section 236(a) and entitled to a bond hearing before the Immigration Judge, regardless of whether they are applicants for admission under section 235(b)(2)(A) of the

INA, 8 U.S.C. § 1225(b)(2)(A)." *Id.* at 227. Thus, the BIA rejected this and every argument raised by the alien to find § 1225 applied to him despite residing in the country for years. *Id.*

So now, the BIA mandate is clear: "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission." *Id.* at 225. Indeed, this ruling emphasizes that § 1225 applies to aliens like the Petitioner who is also present in the United States but has not been admitted.

As argued above, the operative automatic stay of release pending appeal at issue in this case merely ensures that DHS has an opportunity to vindicate Congress's mandatory detention scheme. Because Petitioner shall be detained during removal proceedings and the proceedings are uncontrovertibly ongoing, the temporary detention is lawful. As noted, Federal Respondents are aware of prior rulings in the District rejecting this argument, but respectfully maintain §1225 straightforwardly applies to Petitioner, as reinforced by the BIA in *Hurtado*, and especially in light of *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (explaining "an alien who arrives in the United States," or "is present" in this country but "has not been admitted" is treated as "an applicant for admission." § 1225(a)(1)).

The only significant factual difference between the present case and *Hurtado* is that the IJ here rejected DHS's argument that the IJ did not have jurisdiction under § 1225, necessitating DHS's invocation of the automatic stay. Based upon the BIA's decision in *Hurtado*, the IJ's decision granting this Petitioner a bond is likely to be reversed soon. And

if § 1225 lawfully applies, the invocation of the automatic stay becomes irrelevant. Indeed, Petitioner's arguments that the automatic stay violates Due Process weakens when it is likely the IJ erred in authorizing the release to begin with because § 1225 called for mandatory detention.

III. The remaining *Dataphase* factors do not support further injunctive relief.

This Court should decline to extend its order partially granting Petitioner's TRO motion for the additional reasons that Petitioner has not established sufficient irreparable harm, and the public interest and balance of the equities favor the United States's 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 of 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's irreparable-harm argument focuses almost entirely on his contention that the detention is unconstitutional and/or otherwise illegal. ECF 6 at 18-19. To that extent, this factor collapses into the likelihood-of-success factor and must be discounted if the detention is in fact lawful. Furthermore, separation from family, while obviously significant, is generally incident to all detentions; and to the extent Petitioner relies on the fact of detention in support of his argument regarding irreparable harm, Federal 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.").

Further 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" into the process as laid out by Congress. *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.; compare* Ligon Decl. Ex. F.

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that the Court decline to extend the temporary restraining order or convert it to a preliminary injunction, deny the habeas petition, and dismiss the case.

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