UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Pedro Rodrigo Rodas Rodas,

Petitioner,

v.

Pamela Bondi, Attorney General;

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

Department of Homeland Security;

Todd M. Lyons, Acting Director of Immigration and Customs Enforcement,

Immigration and Customs Enforcement,

Sirce Owen, Acting Director for Executive Office for Immigration Review,

Executive Office for Immigration Review,

Samuel Olson, Director, St. Paul Field Office Immigration and Customs Enforcement;

and,

Ryan Shea, Sheriff of Freeborn County.

Respondents.

0:25-cv-03432-JRT-LIB

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER AND TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

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 despite the record. The Court should enter a preliminary injunction and subsequently grant this 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 grant that was ordered after he was detained.

8 U.S.C. § 1252(g) is inapplicable because detention 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. Petitioner also does not challenge the authority to detain or apprehend individuals such as Petitioner. This Petition is exclusively about whether Respondents must afford Petitioner a hearing so he may apply for his release. This Petition is about interpreting the law to determine whether a statutory right exists. Even if this were not the case, there is "an exception to § 1252(g) for a habeas claim raising a pure question of law." S*ilva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017). Petitioner is raising a purely legal question *unrelated* to the removal process. The Board of Immigration Appeals very recently affirmed that a removal proceeding is a separate legal proceeding. *See Matter of E-Y-F-G-*, 29 I. & N. Dec. 103 (BIA 2025). 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.[1]

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 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.[2]

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. §

[1] In their brief, Respondent's incorrectly suggest this 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* Dkt. 13-8, Exh. H.

[2] In so doing, Respondents appear to concede that 8 U.S.C. § 1226 is the applicable detention authority here.

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 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. 11, at 26. 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. 6, Exh. B. Upon entering the United States, Petitioner was in the custody of the U.S. Department of Health and Human Services Office of Refugee Resettlement Division of Unaccompanied Children Operations before being released to a relative on March 1, 2019.

Several years later, on July 10, 2025, upon detaining Petitioner in his own home, Respondents 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. 13-5, Exh. E. On the I-200, Respondents indicate that there is probable cause to believe Petitioner is removeable from the United States based on "the pendency of ongoing removal proceedings against the subject." 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. 13-5, 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 2018 Notice to Appear designates 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. 6, Ex. B. 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. 6, Ex. F.

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 2025, Petitioner was "taken into custody as authorized by section 236 of the Immigration and Nationality Act" on an I-200 "warrant of arrest." *See* Dkt. 13-5, Ex. E. 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 detained "on a warrant of arrest issued by the attorney general," *see* Dkt. 13-5, 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 government 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 10, 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 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 Blaine, Minnesota, *see* Doc. 6, 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.

Respondents' argument hinges on the suggestion that "seeking admission" and "applying for admission" are somehow synonymous.[3] They are not. In fact, the Fifth, Ninth, and Eleventh Circuits have uniformly rejected that argument that the term "application for admission" is not synonymous with "applicant for admission." *Torres v. Barr*, 976 F.3d 918, 924 (9th Cir. 2020) ("the phrase 'at the time of application for admission' … refers to the particular point in time when a noncitizen submits an application to physically enter into the United States"); *Marques v. Lynch*, 834 F.3d 549, 561 (5th Cir. 2016); *Ortiz-Bouchet v. U.S. Atty. Gen.*, 714 F.3d 1353, 1356 (11th Cir. 2013)). If an "application for admission" is not a continuing process engaged in by all "applicants for admission," then surely the more textually distinct act of "seeking admission" cannot be synonymous with "applicant for admission" either.

[3] 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).

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.

Respondents' 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 placed in the custody of the Department of Health and Human Services, Office of Refugee Resettlement, Division of Unaccompanied Children Operations at the border, processed and released under 6 U.S.C. § 279 (section 462 of the Homeland Security Act of 2002) and 8 U.S.C. § 1232 (section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008). Dkt. 6, Exh. C. He was then detained years later pursuant to a warrant under § 236 of the INA, 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.[4]

[4] Petitioner is aware that the Board decided *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) on September 5, 2025. It made the arguments Respondents propound here Respondents' national policy. The Court now undoubtedly has jurisdiction under 5 U.S.C. § 706 to determine the legality of Respondents' position and to enforce the correct application of the law. That decision is owed no

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. 11, at 22 (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.

Loper Bright Enters. v. Raimondo, 603 U.S. 369, 386 (2024) (citing *Edwards' Lessee v. Darby*, 25 U.S. 206 (1827)).

In 1996, Respondents explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled

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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.

(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.

Respondents fail to address Petitioner's UAC designation, which further bolsters the inapplicability of mandatory detention in this case.

When Petitioner was encountered in 2018, 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 ("HHS") 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). The programs afforded under section 412(d) include "foster care maintenance," 8 U.S.C. § 1522(d)(2)(A), and the statute points to placement with a family member, 8 U.S.C. § 1232(c)(2)(A). It could not be more clear that the statutes contemplate release from physical custody, bringing UACs out of the ambit of 8 U.S.C. § 1225(b)(2). Like other UACs, Petitioner was never subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

Respondent was a UAC when he was initially placed in HHS custody in 2018, so 8 U.S.C. § 1255(b)(2) plainly did not apply at the time of entry and initial contact. Furthermore, the transitional provisions make it clear that Petitioner did not revert to custody under 8 U.S.C. 1225(b)(2) upon reaching his eighteenth birthday. Instead,

> If a minor described in subparagraph (A) reaches 18 years of age and is transferred to the custody of the Secretary of Homeland Security, the Secretary shall consider placement in the least restrictive setting available after taking into account the alien's danger to self, danger to the community, and risk of flight. Such aliens shall be eligible to participate in alternative to detention programs, utilizing a continuum of alternatives based on the alien's need for supervision, which may include placement of the alien with an individual or an organizational sponsor, or in a supervised group home.

8 U.S.C. § 1232(c)(3) (emphasis added). Prolonged detention in an adult penal institution facially violates this mandate. Clearly, mandatory detention does not apply to UACs, like Petitioner, who age out. In fact, they are to be placed in the least

restrictive setting. i.e. not detention, unless DHS shows that they pose a danger to themselves or the community, or they pose a flight risk.

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. 13-5, at 32-33. 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 temporary restraining order and issue the writ of habeas corpus accordingly.

Respectfully submitted,

/s/ David L. Wilson **September 12, 2025**
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CERTIFICATE OF SERVICE

I, **Sierra Paulsen**, hereby certify that on September 12, 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/ Sierra Paulsen **September 12, 2025**

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