

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

Belsai Dominguez Sanchez,

Petitioner,

v.

Pamela Bondi, Attorney General,

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

0:25-cv-03682-KMM-EMB

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,

Joel Brott, Sheriff of Sherburne County.

Respondents.

**TRAVERSE
MEMORANDUM IN
RESPONSE TO
RESPONDENTS' RETURN
TO ORDER TO SHOW
CAUSE AND IN
OPPOSITION TO HABEAS
PETITION**

INTRODUCTION

Petitioner is entitled to a bond hearing. To steal Respondents' turn of phrase, *there is a better way*. It is the path charted by at least 45 district courts around the country. It is a way consistent with the record in this case, the plain text of the statute, faithful to statutory maxims, applies Congressionally supplied definitions, and presume that when Congress passes a bill, that bill is meant to have some substantive effect. It is also the path consistent with 29 years of bipartisan agreement on this issue and the position Respondents embraced since the passage of this law in 1996 up until July. Respondents' arguments to the contrary cannot win the day.

I. THE RECORD CONFIRMS THAT PETITIONER WAS DETAINED UNDER 8 U.S.C. § 1226(A), NOT 8 U.S.C. § 1225(B)(2)(A).

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. When Respondents detained Petitioner on August 11, 2025, they did so based on a "U.S. Department of Homeland Security Warrant for Arrest of Alien." *See* Doc. No. 8, at Ex. C. Then, when Respondents charged Petitioner with a Notice to Appear, they designated him as an "alien present in the United States who has not been admitted or paroled" and not as an "arriving alien." *See* Doc. No. 12-2, at Ex. A. All this expressly invokes 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A).

In their memorandum, Respondents contend that "a specific provision

applying with particularity to a matter should govern over a more general provision encompassing that same matter.” Doc. No. No. 11, at 18 (citing *Hughes v. Canadian Nat’l Ry. Co.*, 105 F.4th 1060, 1067 (8th Cir. 2024)). They cite this general precept for proposition that 8 U.S.C. § 1225(b)(2)(A) narrowly governs “applicants for admission,” while 8 U.S.C. § 1226 governs those “‘arrested and detained pending a decision’ on removal.” Doc. No. 11, at 18.

What they fail to point out is that 8 U.S.C. § 1226(a) governs the “Arrest, detention, and release” of citizens “[o]n a warrant issued by the Attorney General.” 8 U.S.C. § 1226(a). Petitioner was arrested on an administrative “Warrant for Arrest of Alien” issued by the Attorney General. *See* Doc. No. 8, at Exh. C. Given that 8 U.S.C. § 1226(a) applies to detention “[o]n a warrant issued by the Attorney General,” and 8 U.S.C. § 1225(b)(2)(A) requires no such warrant,¹ the specific provision that governs the facts of this case is 8 U.S.C. § 1226(a). *Cf.* 8 U.S.C. § 1327(a)(2).

The designation of inadmissibility under 8 U.S.C. § 1182(a)(6)(A), rather than 8 U.S.C. § 1182(a)(7)(A)(i)(I), is also relevant. While Respondents contend that understanding § 1225(b)(2) to apply only to arriving noncitizens seeking admission

¹ This is likely because it applies “at the Nation's borders and ports of entry,” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018), and “border searches [are] not subject to the warrant provisions of the Fourth Amendment.” *United States v. Ramsey*, 431 U.S. 606, 617 (1977)

would “render the provision redundant to (b)(1),” ECF no. 11, at 18, nothing could be further from the truth. 8 U.S.C. § 1182(a)(6)(A) applies to “[a]n alien present in the United States without being admitted or paroled.” 8 U.S.C. § 1182(a)(6)(A). Noncitizens like Petitioner who crossed into the United States surreptitiously and are now present without admission are subject to this provision.

In contrast, 8 U.S.C. § 1182(a)(7)(A)(i)(I) applies “at the time of application for admission.” 8 U.S.C. § 1182(a)(7)(A)(i). As the Fifth, Ninth, and Eleventh Circuits have all held, the language “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.” *Torres v. Barr*, 976 F.3d 918, 924 (9th Cir. 2020). *See also 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).

These provisions are not redundant. Instead, consistent with the rulings of all circuits that have reviewed the issue, the provision that Respondents applied here applies to noncitizens like Petitioner who are inside the country, while the other, which Respondents did not employ here, is applicable to non-citizens seeking entry from abroad but who lack proper documentation. Thus, the charge under 8 U.S.C. § 1182(a)(6)(A) here supports the argument that 8 U.S.C. § 1226(a) governs Petitioner’s detention.

This position has been widely embraced. *See Jose J.O.E. v. Bondi*, No. 25-

CV-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rodriguez v. Perry*, 747 F. Supp. 3d 911 (E.D. Va. 2024); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *7 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *4 (N.D. Cal. Aug. 21, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *4 (S.D.N.Y. Aug. 13, 2025). The same is true here.

J.O.E. reflects the logic that Petitioner propounds here. *J.O.E.* ruled 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. There is no distinction in this record. Petitioner was arrested on a warrant, *see* Doc. No. 8, at Ex. C. Therefore, 8 U.S.C. § 1226 applies. The Court must hold Respondents to their determinations, and they cannot abandon a record solely to embrace a more advantageous legal position.

Rodriguez similarly held that 8 U.S.C. § 1226(a) governed detention where “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 Notice to Appear designated 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* Doc. No. 12-2, at Ex. A. This Court too must hold Respondents to their records.

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), just as in *Jose J.O.E.*, 2025 WL 2466670 and *Rodriguez*. Yet, Respondents seek to rewrite this administrative history and invoke, the mandatory detention provisions at 8 U.S.C. § 1225(b)(2). This attempt at revisionism is inconsistent with the statute, the regulations, and Congressional intent. *See infra*. Respondents’ own records contradict Respondents. Given that Respondents have routinely invoked 8 U.S.C. § 1226(a)(2) to justify Petitioner’s detention, the Court must hold them to that now.

II. THE PLAIN TEXT LIMITS 8 U.S.C. § 1225(B)(2)(A) TO THOSE “SEEKING ADMISSION” INTO THE COUNTRY AT A BORDER OR PORT OF ENTRY.

Respondents’ reading would strike “seeking admission” from 8 U.S.C. § 1225(b)(2)(A) while ascribing a new meaning to the term “admission” despite the statutory definition. *See* 8 U.S.C. § 1101(a)(13)(A). They cobble together tenuous support from adjoining provisions to suggest that every “applicant for admission” is forever, in perpetuity, “seeking admission.” Respondents, however, neglect to

explain why, in the provision at issue here, Congress saw fit to limit the “applicants for admission” who are subject to mandatory detention to those who are “seeking admission.”

The full text is instructive.

Subject to subparagraphs (B) and (C), in the case of **an alien who is an applicant for admission**, if the examining immigration officer determines that **an alien seeking admission** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

8 U.S.C. § 1225(b)(2)(A).

8 U.S.C. § 1225(b)(2)(A) starts with the general proposition that it applies to aliens who are applicants for admission. Congress saw fit to define an “[a]n alien present in the United States who has not been admitted” as an “applicant for admission.” 8 U.S.C. § 1225(a)(1). Petitioner is a noncitizen present without admission in the interior of the United States. He shares some characteristics of an “applicant for admission.” Traits are not actions. If attributes controlled, Respondents might be correct. But § 1225(b)(2)(A) requires two more things – both of which are absent - “aliens who [are] applicant[s] for admission” that are subject to mandatory custody are those “alien[s] seeking admission.” 8 U.S.C. § 1225(b)(2)(A). The phrase “an alien seeking admission” clearly modifies, and narrows, the phrase “an alien who is an applicant for admission.” “An alien seeking admission” is a subset of the class of “aliens who [are] applicant[s] for admission.”

Only the subset “seeking admission” are subject to mandatory detention. They must also under “examination.”

Given that ‘the cardinal principle of statutory construction [is] that courts must give effect, if possible, to every clause and word of a statute, this Court must give independent meaning to both’ the terms “applicant for admission” and “seeking admission.” *Williams v. Taylor*, 529 U.S. 362, 364 (2000).

Indeed, the statute uses “an alien” to introduce each of the disparate phrases “who is an applicant for admission” and “seeking admission.” Surely, if Congress had meant those two phrases to mean the same thing, it would have used the same language. “Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely.” *Kucana v. Holder*, 558 U.S. 233, 249 (2010). Congress could have written the second clause to mirror the first such that “if the examining immigration officer determines that the applicant for admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained” or even such that “if the examining immigration officer determines that such alien is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained.” That nevertheless is not the statute Congress wrote.

“When ‘a statute includes an explicit definition’ of a term, ‘we must follow that definition.’” *Van Buren v. United States*, 593 U.S. 374, 387 (2021). “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 expressly applies “[a]s used in [] chapter” 8 of the United States federal code, 8 U.S.C. § 1101(a), and is augmented by long-held interpretations of “[t]he word ‘entry’ [which] by its own force implies a coming from outside.” *U.S. ex rel. Claussen v. Day*, 279 U.S. 398, 401 (1929).

Furthermore, where a “term is not statutorily defined, we consider its ordinary dictionary definition,” *Iverson v. United States*, 973 F.3d 843, 848 (8th Cir. 2020), and Merriam Webster’s defines “Seeking” as, alternatively, “to go in search of,” “to ask for,” “to try to acquire or gain,” or “to make an attempt.” *Seek*, MERRIAM WEBSTER’S ENGLISH DICTIONARY (11th Ed. 2020). Thus, applying the plain language, to be “seeking admission” one must be “asking for lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13); MERRIAM WEBSTER’S ENGLISH DICTIONARY (11th Ed. 2020). Petitioner is not doing, and has not done, any such thing.

The Court must reject Respondents’ contention that the phrases “applicants for admission” and “seeking admission” are “merely two ways to say the same thing.” Congress itself has said otherwise. The term “applicant for admission” has a different definition than the term “admission” as used in “seeking admission.” Congress separately defined those different terms and phrases at 8 U.S.C. § 1225(a)

and 1101(a)(13) respectively. This Court, like at least 45 other courts before it, should adopt Petitioner's proposed reading.

Respondents next fixate on the word "deemed." Petitioner has not argued that he is not properly "deemed" an applicant for admission. He seemingly satisfies the "shall be deemed an applicant" standard, but "applicant for admission" is a noun, describing an individual belonging to a group of people. To satisfy 8 U.S.C. § 1225(b)(2)(A), that qualifying person must also engage in the active verb of "applying for admission", or more correctly, *seek*.

Respondents' argument that "seeking admission" and "apply[ing] for admission" are synonymous lacks textual support. First, under the plain text, to be an "applicant for admission," one must be "present in the United States" or otherwise "arriv[ing] in the United States." 8 U.S.C. § 1225(a)(1). In other words, to be an "applicant for admission," one must be either in the United States or at its door. In contrast, "one can 'seek admission' from anywhere in the world, 'for example, by applying for a visa at a consulate abroad.'" *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025) (citing *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 741 (BIA 2012)). An individual seeking admission can (indeed, "shall") be inspected whether or not they are present or arriving in the United States, i.e., whether or not they are an "applicant for admission." *See, e.g.*, 8 U.S.C. § 1225a(a) (requiring pre-inspection at certain

foreign airports); 19 U.S.C. § 1629 (authorizing inspection of persons and merchandise “prior to their arrival in ... the United States”). These terms are not the same.

Second, “admission” carries a statutory definition that applies throughout the act. *See* 8 U.S.C. § 1101(a)(13), so while it is true that in many cases, the “interpretive canon *noscitur a sociis*” suggests that “a word is known by the company it keeps” *McDonnell v. United States*, 579 U.S. 550, 569 (2016), such “canons of construction are not ‘conclusive.’” *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 244 (2008). What is conclusive is the statutory definition at 8 U.S.C. § 1101(a)(13), because, again, when “ ‘a statute includes an explicit definition’ of a term, ‘we must follow that definition.’” *Van Buren*, 593 U.S. at 387. Congress defined “admission,” so unless it specifically defined it differently in this context, and nothing suggests that it did, then the definition at 8 U.S.C. § 1101(a)(13) controls.

Respondents tries to pivot by grasping onto 8 U.S.C. § 1225(a)(3) for the proposition that “applicant for admission” and “seeking admission” are “two ways to say the same thing.” Doc. No. 11, at 17. The text is clear that anyone who is an “applicant for admission,” as well as anyone “otherwise seeking admission” must be inspected. 8 U.S.C. § 1225(a)(3). Thus, while some “applicants for admission” are “seeking admission” and some who are not “applicants for admission” are

“otherwise seeking admission,” and all those people are subject to inspection. However, only those who are both an “applicant for admission” and “seeking admission ... shall be detained.” 8 U.S.C. § 1225(b)(2)(A).

While 8 U.S.C. § 1225(a)(3) covers all possible groups in the Venn diagram, 8 U.S.C. § 1225(b)(2)(A) covers only the overlap between the two groups. *Romero*, 2025 WL 2403827 convincingly illustrated this point.. *See also Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390, at *7 (D.N.H. Sept. 8, 2025).

More to the point, the provision that Respondents point to governs who “shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3). It does not govern who “shall be detained.” If anything, § 1225(a)(3) reinforces how precedents in other circuits have limited admission to the point of entering the country exclusively. This is also consistent with the dichotomy identified in *Jennings v. Rodriguez*. 8 U.S.C. § 1225(b)(2)(A) only applies to “an alien who is an applicant for admission” if that person is also simultaneously “seeking admission.” 8 U.S.C. § 1225(b)(2)(A). The Court should grant this Petition.

III. THE STRUCTURE OF THE INA SUPPORTS PETITIONER’S READING

The structure of 8 U.S.C. § 1225, and the INA more generally, supports Petitioner’s reading. As a starting point, the Court should not look past 8 U.S.C. § 1357(a). 8 U.S.C. § 1357(a) limits the authority of officers to apprehend without a

warrant based on proximity to port of entry, waterway, or 25 miles near the border who is attempting to enter or is in the act of entering the country. The very distinction in authority that Respondents contend does not exist is in fact embedded in the Act. *See* § 1357(a)(2) (requiring “examination before an officer” after when arresting without a warrant consistent with § 1225b (2)); § 1357(a)(3) (limiting warrantless authority up to 25 miles from border or modes of transportation to prevent illegal entry). These dynamics are congruent with § 1225(b)(2). The important takeaway is that Congress limited this authority to a particular time and place – initial entry at the border or a port of entry. This authority does not persist in perpetuity. The reference to examination plainly links to “examine” in § 1225(b)(2). This shows that § 1225(b)(2) is limited to a particular time and place, and not someone discovered years later in the middle of the country.

Furthermore, § 1225 is titled “[i]nspection by immigration officers; expedited removal of inadmissible arriving aliens; [and] referral for hearing.” 8 U.S.C. § 1225. All of this is squarely related to inspection at a point of entry, not interior enforcement against aliens who have been present for years. This is important because, while they do not supplant the statutory text, “statutory titles and section headings ‘are tools available for the resolution of a doubt about the meaning of a statute.’” *Fla. Dep’t of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008)

(citing *Porter v. Nussle*, 534 U.S. 516, 528 (2002)). Here, the title very clearly contemplates inspection of arriving aliens.

The “catchall” nature of 8 U.S.C. § 1225(b)(2) also reinforces Petitioner’s reading because, “[w]e 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) (citing *Cir. City Stores, Inc. v. Adams*, 532 U.S. 105, 115, 121 (2001)). As Respondents contend, 8 U.S.C. § 1225(b)(1) is limited to those “arriving in the United States,” but it very clearly does not include everyone “seeking entry” from outside. *See, e.g.*, 8 U.S.C. § 1225(b)(1)(F).

As the catchall, 8 U.S.C. § 1225(b)(2) follows in line with the specificity contained in 8 U.S.C. § 1225(b)(1). The “catchall” reflects the general parameters set forth at 8 U.S.C. § 1225(b)(2) by responding to the similarly situated individuals seeking entry who do not fit within the confines of 8 U.S.C. § 1225(b)(1). In so doing, it sweeps up those “seeking admission” who are not inadmissible for lack of documents or fraud under 8 U.S.C. § 1182(a)(6)(C) and 1182(a)(7), respectively, as well as “native[s] or citizen[s] 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).

Respondents contend otherwise, suggesting that the “catchall” does most of the lifting because it applies to “applicants who are not covered by § 1225(b)(1).” Doc. No. 11, at 18. They treat the detention provisions as a force multiplier. This is particularly inappropriate given the breathtaking scope of the detention authority that Respondents are asserting. This catchall provision would be an 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). It did not do so here. 8 U.S.C. § 1225(b)(2) has clear limits. It addresses a person who presents some evidence he or she is entitled to entry, but the examining officer is not clearly and beyond a reasonable doubt convinced. For example, Respondents invoke this provision frequently to LPRs returning from travel abroad. This is borne out clearly at 8 U.S.C. § 1101(a)(13)(C), which states which returning LPRs are “seeking an admission.” As identified in statute, this provision applies to noncitizens such as returning LPRs, who are definitionally “seeking admission” but are not necessarily inadmissible for fraud or a lack of travel documents under 8 U.S.C. § 1182(a)(6)(C); 1182(a)(7), and people from “countr[ies] 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 noncitizens do not fall within the provisions of 8 U.S.C. § 1225(b)(1)(A), but

they are still “seeking admission,” so they fall into 8 U.S.C. § 1225(b)(2)(A)’s catchall. All provisions thus serve their proper purpose.

Precedent has long recognized the limited role of “§ 235(b)(2) [§ 1225(b)(2), which] 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 Kasneci v. Dir., Bureau of Immigr. & Customs Enft*, No. 12-12349, 2012 WL 3639112, at *3 (E.D. Mich. Aug. 23, 2012); *Bautista v. Sabol*, No. 3:11CV1611, 2011 WL 5040894, at *4 (M.D. Pa. Oct. 24, 2011).

Even the Supreme Court recognized the limited reach of § 1225(b)(2) when it held that “[a]n alien arriving in the United States must be inspected by an immigration official, unless he is found ‘clearly and beyond a doubt entitled to be admitted,’ must generally undergo removal proceedings to determine admissibility.” *Clark v. Martinez*, 543 U.S. 371, 373 (2005) (citing 8 U.S.C. § 1225(b)(2)(A)). This is also precisely how the Supreme Court characterized 8 U.S.C. § 1225 more recently in *Jennings*, 583 U.S. 281, where it asserted that the provision applied “at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). In contrast, the Supreme Court also noted that “[s]ection 1226

generally governs the process of arresting and detaining ...an alien present in the country.” *Id.* at 288.

Beyond the immediate provision at 8 U.S.C. § 1225, the broader structure of the INA drives this point home. Tellingly, the remainder of the INA’s definition of “admission” reinforces the conclusion that “admission” contemplates entry from outside. The provisions related to when a lawful permanent resident (“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)(A), an alien must be entering from abroad. The provision clearly applies at and immediately around the border.

If that were not enough, the “[a]dmission of immigrants into the United States” is governed under INA § 211, which requires “a valid unexpired immigrant visa ... and [] a valid unexpired passport or other suitable travel document” and those seeking admission are “admitted into the United States.” 8 U.S.C. § 1181(a) (emphasis added). This also necessarily contemplates an alien “seeking entry” from outside the United States.

IV. THE CANON AGAINST SURPLUSAGE SUPPORTS PETITIONER’S READING

As articulated *supra* § II, Respondents’ reading presents significant surplusage issues by reading “seeking admission” out of the provision at 8 U.S.C. § 1225(b)(2)(A). That has been discussed, *supra*, but that is far from the only surplusage issue created by Respondents’ reading. It also would render the entire Laken Riley Act, passed in 2025, a dead letter.

Generally, courts do not “adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law.” *Sudan v. Harrison*, 139

S. Ct. 1048, 1058 (2019). In fact, this “canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.” *City of Chicago, Illinois v. Fulton*, 592 U.S. 154 (2021) (quoting *Yates v. United States*, 574 U.S. 528, 543 (2015)).

Interpreting 8 U.S.C. § 1225(b)(2) as Respondents asks renders 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. Those present without admission who commit crimes would not require a separate provision to mandate detention. That would render an entire provision of the INA surplusage and run 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., Wash. 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 borders and ports of entry. It does not apply to Petitioner.

Respondents’ only response to this assertion is that the mandatory detention provisions of the LRA “cannot shrink the scope of mandatory detention under an altogether different statute.” Doc. No. 11, at 19. This is a non-response. It fails to explain how the detention provisions of the LRA comport with Respondents’ contention that all applicants for admission are already subject to mandatory detention under § 1225. Respondents are essentially suggesting anyone with a criminal arrest is supposed to be “doubly” detained. Such a reading makes no sense. 8 U.S.C. § 1225 was designed to address the inspection and detention of those arriving and/or seeking entry into the country, whereas the LRA addresses the custody of some noncitizens accused of crimes who are present without admission or parole.

Respondents next latch onto the phrase “arriving” to suggest that Petitioner’s reading would conflate the terms “arriving” and “seeking admission.” It does not. As articulated, *supra* § II, “one can ‘seek admission’ from anywhere in the world, ‘for example, by applying for a visa at a consulate abroad.’” *Romero*, 2025 WL 2403827, at *9 (citing *Matter of Lemus-Losa*, 25 I. & N. Dec. at 741). Under

Petitioner's reading, all of the terms, that is "arriving," "seeking admission," and "applicant for admission" take on slightly different, but significant meanings. "Arriving" applies to those literally at the border or port of entry. "Seeking admission" are those attempting to enter from outside the country. "Applicant for admission" takes on the meaning set forth at 8 U.S.C. § 1225(a). While these terms have some overlap, each has an independent meaning consistent with the mandate that we "give effect, if possible, to every clause and word of a statute." *Williams*, 529 U.S. at 364.

Notably, Petitioner's reading does not read "applicant for admission" out of the provisions at 8 U.S.C. § 1225(b)(2)(A). Under the plain language, an alien must be an "applicant for admission" and actively "seeking admission" for mandatory detention to apply. Petitioner is an applicant for admission, but he is not, and was not at the time of his apprehension, seeking admission. Respondents' position, on the other hand, would write the "seeking admission" requirement out of the statute by treating it identically to "applicant for admission." That is improper as the terms are separately defined. *Compare* 8 U.S.C. § 1225(a), *with* 8 U.S.C. § 1101(a)(13)(A). Mandatory detention requires both, *see* 8 U.S.C. § 1225(b)(2)(A), yet Respondents would collapse them into one. That would render "seeking admission" "inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009). That is improper. The Court should grant this Petition.

V. THE LEGISLATIVE HISTORY REINFORCES PETITIONER'S READING

Petitioner's reading is also consistent with the statutory and legislative history surrounding the codification of this provision. Congress spoke to this issue specifically in house reports surrounding the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which codified the language relevant to this petition. *See* Pub. L. 104–208 302(b)(2)(A), 110 Stat. 3009-582 (Sept. 30, 1996) (“IIRIRA”). At the time, legislators noted how the simultaneously enacted detention authority that now lives at 8 U.S.C. § 1226(a) merely “restates the [then] current provisions in section 242(a)(1) [8 U.S.C. § 1252(a)] regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same). As courts in this district have previously recognized, “[s]ection 1226(a)’s predecessor statute, § 1252(a), included discretionary release on bond.” *Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *11 (D. Minn. Aug. 15, 2025) (citing 8 U.S.C. § 1252(a) (1994)). Clearly, Congress contemplated this issue and decided that noncitizens present without admission would be eligible for bond.

This is important because the provisions that now live at 8 U.S.C. § 1225(b)(2)(A) and 1226(a) were created in the same Act. *See* IIRIRA, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 3009-585 (1996). It seems preposterous

that Congress would enact one provision, at 8 U.S.C. § 1226(a)(2)(A), for the purpose of authorizing “the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States” just one section after enacting a provision that DHS now claims subjects those exact same people to mandatory detention. *See* 8 U.S.C. § 1225(b)(2).

The history of the INA further reinforces Petitioner’s point. Prior to IIRIRA, the INA had long distinguished between aliens present in the United States and those seeking to enter. Before 1997, “[t]he deportation hearing [was] the usual means of proceeding against an alien already physically in the United States, and the exclusion hearing [was] the usual means of proceeding against an alien outside the United States seeking admission.” *Landon v. Plasencia*, 459 U.S. 21, 25 (1982). Indeed, the term “seeking admission” was plucked from former 8 U.S.C. § 1225, which governed “exclusion proceedings” and the “[t]he inspection ... of aliens (including alien crewmen) seeking admission or readmission to ... the United States” who, then as now, were “examined by one or more immigration officers at the discretion of the Attorney General and under such regulations as he may prescribe....” 8 U.S.C. § 1225(a) (1994). Under the prior regime, those who were “seeking admission” were those “outside the United States seeking admission.” *Landon v. Plasencia*, 459 U.S. 21, 25 (1982).

Given that this language, now codified at 8 U.S.C. § 1225, came from the former 8 U.S.C. § 1225, which also governed the “inspection of aliens,” the well-established legal principle applies: “[w]hen a statutory term is ‘obviously transplanted from another legal source,’ it ‘brings the old soil with it,’” *Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019). Then as now, those “seeking admission” are those at the border or a port of entry, not those simply present in the United States without admission. By contrast, long-tenured aliens like Petitioner are not “seeking admission” when they are detained by ICE. While they may be “applicants for admission” under 8 U.S.C. § 1225(a)(1), to “seek admission” they would need to present at a border or port of entry and request “admission into the United States.” 8 U.S.C. § 1181.

Respondents claim otherwise, citing out of circuit caselaw for the proposition that IIRIRA “intended to replace *certain* aspects of the [then-]current ‘entry doctrine.’” Doc. No. 11, at 21 (citing H.R. Rep. 104-469, pt. 1, at 225) (emphasis added). Notably, Respondents cite the same house report that specifically indicated how “the Attorney General [was empowered] to arrest, detain, and release on bond an alien who is not lawfully in the United States.” *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996). If, as Respondents contend, the “specific provision applying with particularity to a matter should govern over a more general provision encompassing that same matter,” Doc. No. 11, at 18 (citing *Hughes*, 105 F.4th at 1067), then the

specific determination that noncitizens present without admission like Petitioner are eligible for bond controls over contentions that certain, though not all, aspects of the entry doctrine were to be replaced.

VI. OVERWHELMING PRECEDENT AND HISTORICAL PRACTICE REINFORCE PETITIONER'S POSITION.

At least 45 courts have ordered the government to provide identically situated petitioners with a bond hearing. *See, e.g., Jose J.O.E.*, 2025 WL 2466670; *Maldonado*, 2025 WL 2374411; *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, No. 1:25-CV-12094-IT, 2025 WL 2576819

(D. Mass. Sept. 5, 2025); *Romero*, 2025 WL 2403827; *Martinez*, 2025 WL 2084238; *dos Santos v. Noem*, No. 1:25-CV-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Choglio Chafla v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Chiliquinga Yumbillo v. Stamper*, No. 2:25-CV-00479-SDN, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Lopez Benitez*, 2025 WL 2371588; *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal.

Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-CV-01789-ODW (DFMX), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Jabara Oliveros v. Kaiser*, 2025 WL 2677125 (N.D. Cal. Sept. 18, 2025); *Castellanos v. Kaiser*, No. 25-CV-07962, 2025 WL 2689853 (N.D. Cal. Sept. 18, 2025); *Leon Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025); *Rosado*, 2025 WL 2337099.

If all that were not enough, from 1996 to 2025, Respondents explicitly contended that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10323, 62 FR 10312-01, 10323. They have since also promulgated regulations recognizing § 1225(b)(2)(A)’s limited scope, which note how “[l]awful 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).

Respondents object, contending that “[p]rior agency practices carry little weight under *Loper Bright*.” Doc. No. 11, at 22. What *Loper Bright* actually says is that “[t]he 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,” particularly “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). Here, Respondents’ long-held agency practice was first articulated precisely when the law was codified. The position remained uniform for 29 years. This reinforces Petitioner’s position. He is eligible for bond.

Respondents instead urge the Court to follow the Department of Justice’s recent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). See Doc. No. 11, at 20. *Matter of Yajure Hurtado* was issued by the Board of Immigration Appeals, which is a subdivision of the Department of Justice. See 8 C.F.R. § 1003.1(a)(1). Unsurprisingly, *Matter of Yajure Hurtado* embraces all of Respondents’ preferred positions. It is as if counsel for petitioner published a law review article and then cited to that article to support his arguments. *Matter of Yajure*

Hurtado is nothing more than a policy position articulated by counsel for a party in this litigation. It is no more convincing than their briefing and it must fail.

VII. FURTHER LEGAL AND EQUITABLE RELIEF IS APPROPRIATE

Petitioner respectfully requests that the Court set aside *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025), within the confines of the Fort Snelling Immigration Court and declare that the practice of denying bond eligibility to noncitizens like Petitioner who have been present in the United States without admission or parole for more than two years is contrary to the mandate of 8 U.S.C. § 1226(a). It is time to establish the law that should control Respondents within the district going forward.

As Justice Kavanaugh pointed out in his *CASA* concurrence, “in cases under the Administrative Procedure Act, plaintiffs may ask a court to preliminarily ‘set aside’ a new agency rule.” *Trump v. CASA, Inc.*, 606 U.S. 831, 869 (2025) (Kavanaugh, J., concurring). He noted that courts may do so on a “statewide” basis. *Id.* This is consistent with the plain text of the APA, which permits courts to “set aside agency action, findings, and conclusions found to be ... contrary to constitutional right, power, privilege, or immunity [or] in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2). This court may set aside agency action on a statewide basis at the Fort Snelling Immigration court.

This is important because Respondents have not appealed any of the 45 adverse decisions on this matter, suggesting that they are less concerned with uniformly applying the law than they are with using this dubious legal theory to pressure thousands of noncitizens into “voluntarily” departing the United States rather than facing the prospect of months or even years in detention while their immigration cases are adjudicated. Respondents insulate their perpetual malfeasance without a declaration of what the law requires, at least within this district. .

Child Trends, Inc. v. United States Dep't of Educ., No. CV 25-1154-BAH, 2025 WL 2379688, at *19 (D. Md. Aug. 15, 2025), w astutely articulated how *CASA* is not as far reaching as Respondents imply. The court in *Child Trends* stated,

Though Defendants argue that the Supreme Court's recent decision in *Trump*, 606 U.S. 831 precludes the Court's ability to provide relief that reaches beyond the Parties, the *CASA* decision explicitly did not extend to the APA. **The majority opinion unambiguously stated that nothing in the decision “resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate agency action.”** *Id.* at 2554 n.10 (citing 5 U.S.C. § 706(2)).

And Justice Kavanaugh's concurrence emphasized that in the wake of *CASA*, **plaintiffs seeking to challenge the legality of a new federal statute or executive action could, where appropriate, continue to bring suits asking courts to “preliminarily ‘set aside’ a new agency rule.”** *Id.* at 2567 (Kavanaugh, J., concurring) (citing *West Virginia v. EPA*, 577 U.S. 1126, 136 S.Ct. 1000, 194 L.Ed.2d 17 (2016) and *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 826–42 (2024) (Kavanaugh, J., concurring)); *see also Purl v. United States Dep't of Health & Hum. Servs.*, No. 2:24-CV-228-Z, 2025 WL 1708137, at *27–*28 (N.D. Tex. June 18, 2025) (explaining the

differences between vacatur and national injunction, though in advance of the Supreme Court's decision in *CASA*); *Cabrera v. U.S. Dep't of Lab.*, No. 25-CV-1909 (DLF), 2025 WL 2092026, at *8 (D.D.C. July 25, 2025) (again differentiating vacatur from national injunctions, this time post-*CASA*). Further, that non-parties may reap a benefit from a Court's decision, as may be the case here, was expressly contemplated in *CASA*. See 606 U.S. at —; see also *Nat'l Fair Hous. All. v. U.S. Dep't of Hous. & Urb. Dev.*, No. CV 25-1965 (SLS), 2025 WL 2105567, at *13 (D.D.C. July 28, 2025) (“So the Court is left providing a remedy with incidental benefits to applicants not before the Court.”).

Id. See also *Drs. for Am. v. Off. of Pers. Mgmt.*, No. CV 25-322 (JDB), 2025 WL 1836009, at *22 (D.D.C. July 3, 2025) (rejecting invoking *CASA* when “defendants do not argue that more tailored relief is even possible here, let alone appropriate. And as this is a case involving APA vacatur, not a universal or national injunction.”). Other courts have also subsequently resolved after *CASA* that “unsupported agency action normally warrants vacatur.” *Id.* (quoting *Advocs. for Highway & Auto Safety v. Fed. Motor Carrier Safety Admin.*, 429 F.3d 1136, 1151 (D.C. Cir. 2005).

Drs. for Am. v. Off. of Pers. Mgmt., No. CV 25-322 (JDB), 2025 WL 1836009, at *22 (D.D.C. July 3, 2025). See also *W.M.M. v. Trump*, No. 25-10534, 2025 WL 2508869, at *2 (5th Cir. Sept. 2, 2025) (issuing preliminary injunction in response to executive branch’s erroneous interpretation of the law).²

²A search of decisions does not reveal that this district has engaged with *CASA* yet. *Shaik v. Noem*, No. CV 25-1584 (JRT/DJF), 2025 WL 2307619, at *2 (D. Minn. Aug. 11, 2025) specifically determined that there was no need to do so based on the relief sought in the matter.

Likewise, Petitioner is not seeking relief beyond the parties. Petitioner intentionally restrained the relief sought against the Executive Office for Immigration – a named party in this matter - to the Fort Snelling Immigration Court. The Fort Snelling Immigration Court rotates which immigration judge will preside over a particular bond hearing, so it is not possible to scale the judgment as applied more narrowly. Petitioner through count 1 is requesting a declaratory judgment that informs this particular party – the Executive Office for Immigration Review - that Fort Snelling immigration judges have § 1226 authority to conduct a discretionary bond redetermination hearing for individuals placed in § 1229(a) proceedings after detention in the interior of the United States. This will be particularly important in the event Respondents do take Petitioner back into custody, as he will be subject to the jurisdiction of the Fort Snelling Immigration Court, the party against which he seeks the APA set aside action.

Respondents contend otherwise, citing to *Trump v. J.G.G.*, for the proposition that claims challenging detention “fall within the ‘core’ of the writ of habeas corpus and thus must be brought in habeas.” Doc. No. 11, at 14 (citing 604 U.S. 670, 672 (2025)). That is what Petitioner did. He filed a habeas petition seeking release.

However, Petitioner is also challenging an “agency action,” which “includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13). Under the plain language,

the decision in *Matter of Yajure Hurtado* is an agency rule as it is “binding on all officers and employees of DHS or immigration judges.” 8 C.F.R. § 1003.1(g). As a matter of plain language, such rules may be “set aside.” 5 U.S.C. § 706(2). Ultimately, the Court rested on the holding that habeas “venue lies in the district of confinement” and dismissed on that basis. *Trump v. J. G. G.*, 604 U.S. 670, 673 (2025). There, the habeas actions had been dismissed and the Court said nothing about the propriety of bringing APA and habeas claims in a single suit. It is not instructive here and neither the majority, nor the concurrence, said anything about the ability to join these sorts of claims.

Respondents’ final objection is to the form of the pleading, calling it a “Frankenstein pleading” and asking the court to discard the APA claims. Doc. No. 11, at 15. The issue for Respondents is that “[a] party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.” Fed. R. Civ. P. 18(a). These claims involve the same parties and may be brought in a single suit.

The district court precedent cited to support the position that habeas and APA claims cannot be brought in a single action appears to rest on convenience for the courts related to service and response rules, but it is not binding. The Second Circuit’s holding in *Thompson v. Choinski*, 525 F.3d 205 (2d Cir. 2008), finding that “we know of [no support] for the view that a petitioner may not seek relief under

both a habeas statute and § 1983 in a single pleading” finds much more textual support in the rules expressly permitting the joinder of claims. *Thompson*, 525 F.3d at 210. This position also finds support from the First, Third, Fourth, Sixth, and D.C. Circuits. See *United States v. DeLeon*, 444 F.3d 41, 59 (1st Cir. 2006); *Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 242 n. 5 (3d Cir. 2005); *McNair v. McCune*, 527 F.2d 874, 875 (4th Cir. 1975); *Adams v. Bradshaw*, 644 F.3d 481, 482–83 (6th Cir. 2011); *Aamer v. Obama*, 742 F.3d 1023 (D.C. Cir. 2014).

Notably, this joinder is not foreclosed under *Spencer v. Haynes*, 774 F.3d 467 (8th Cir. 2014) or *Trump v. J. G. G.*, 604 U.S. 670 (2025). *Spencer* did not deal with joinder but only held that a habeas action could not challenge conditions of confinement, which was properly brought under a *Bivens* claim. 774 F.3d at 471. It did not say a *Bivens* and habeas claim could not be joined. The rules plainly indicate that they can, and they ought to be here.

CONCLUSION

Respondents’ policy articulated in *Matter of Yajure Hurtado* is a clear violation of the INA. The Court must grant Petitioner’s writ of habeas corpus, order Respondents to provide him with a bond hearing consistent with 8 U.S.C. § 1226(a) within five business days and set aside the Fort Snelling Immigration Court’s practice of denying bond eligibility to noncitizens like Petitioner who have been present without admission or parole for more than two years.

Respectfully submitted,

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