

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

Joaquin Herrera Avila,

Petitioner,

v.

Pamela Bondi, Attorney General,

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

0:25-cv-3741-JRT-SGE

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.

**PETITIONER'S
TRAVERSE
MEMORANDUM IN
SUPPORT OF PETITION
FOR HABEAS CORPUS**

INTRODUCTION

Petitioner is entitled to a bond hearing. To do so is to tread the path charted by at least 45 district courts around the country. It is also consistent with the record in this case, the plain text of the statute, and faithful to statutory maxims requiring that we apply 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 embraced by Respondents themselves from 1996 up until July of this year. Respondents' artful arguments to the contrary cannot win the day.

I. THIS COURT HAS JURISDICTION.

This Court has jurisdiction to review whether Petitioner is in "custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Nothing at 8 U.S.C. § 1252 changes that and the Supreme Court has held as much clearly. Petitioner is not challenging the government's decision or action to "commence proceedings, adjudicate cases, or execute removal orders," so 8 U.S.C. § 1252(g) does not bar review. He is not challenging anything related to an action or proceeding brought to "remove him from the United States," so 8 U.S.C. § 1252(b)(9) is inapplicable. Nor does he challenge anything to do with a "final order of removal," so 8 U.S.C. § 1252(b)(5) cannot apply.

Once again, custody is “separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding.” 8 C.F.R. 1003.19(d). *Compare also* 8 U.S.C. 1229(a), *with* 8 USC 1226(a). As such, custody is separate from the removal proceedings and has no bearing on those proceedings in any legally relevant manner. They are separate statutes, separate inquiries, and separate records.

Finding otherwise would contravene the express language of the Supreme Court and the Eighth Circuit. Indeed, the Supreme Court rejected the precise “expansive interpretation of § 1252(b)(9)” proffered up by Respondents as it “would lead to staggering results.” *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018). These arguments have been shot down repeatedly by the Court.

In *Reno v. Am.-Arab Anti-Discrimination Comm.*, the Supreme Court held that “§ 1252(g) applies to only a limited subset of deportation claims.” 525 U.S. 471, 487 (1999). It is a “narrow[] ... provision [that] applies only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, *adjudicate* cases, or *execute* removal orders.”” *Id.* at 482 (emphasis in original). “There are of course many other decisions or actions that may be part of the deportation process.” *Id.* Custody is such a reviewable action.

This was spelled out with clarity in *I.N.S. v. St. Cyr* and *Zadvydas v. Davis*. 533 U.S. 289 (2001); 533 U.S. 678, 688 (2001). In *I.N.S. v. St. Cyr*, the Court held

that “[t]he writ of habeas corpus has always been available to review the legality of Executive detention.” 533 U.S. at 305. Then, in *Zadvydas*, the Court added that, despite the limitations on judicial review at 8 USC § 1252, “§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention.” *Zadvydas*, 533 U.S. at 688. While this case involves pre-removal detention, the logic remains the same. Detention is independent of removal and can be reviewed in a habeas action.

If that were not enough, the Court walked through the history of appellate review in removal cases and noted that the “statutory changes left habeas untouched as the basic method for obtaining review of continued *custody*,” before adding that 8 U.S.C. § 1252(g) did not apply to strip jurisdiction where the petitioner challenged custody. *Zadvydas*, 533 U.S. at 687–88 (emphasis in original). Once again, habeas remained as a vehicle to challenge detention.

If the fallacy of Respondents’ position was not clear from *A.A.A.D.C.*, *St. Cyr*, and *Zadvydas*, the Court was emphatic as to jurisdiction in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). In *Jennings*, the Court noted that it was charged with “decid[ing] ... whether, ... certain statutory provisions require detention without a bond hearing.” *Id.* at 292. That is precisely what Petitioner requests here: a determination as to whether mandatory custody applies. Just as in *Jennings*, Petitioner is “not asking for review of an order of removal; [he is] not challenging

the decision to detain [him] in the first place or to seek removal; and [he is] not even challenging any part of the process by which [his] removability will be determined.” *Id.* at 294.

Notably, the broad reading of “arising from” proffered by Respondents was emphatically rejected by the Supreme Court. In *Jennings*, Court’s plurality even acknowledged Respondents’ current argument, noting that “[i]t may be argued that” detention arises from the decision to commence proceedings “in the sense that if those actions had never been taken, the aliens would not be in custody at all. But [rejected] this expansive interpretation of § 1252(b)(9) [as it] would lead to staggering results.” *Id.* at 293. Thus, the Court explicitly “did not interpret this language to sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General. Instead, **we read the language to refer to just those three specific actions themselves.**” *Id.* at 294 (2018) (citing *A.A.A.D.C.*, 525 U.S. at 482-83).

A review of the concurring and dissenting opinions makes this even clearer. Respondents cite to Justice Thomas’s concurrence for the proposition that “detention is an ‘action taken ... to remove’ an alien,” *id.* at 318 (J. Thomas, concurring), but that portion of the concurrence was joined by just one other justice and Justice Thomas acknowledged that his position departed from the plurality as to jurisdiction. *See id.* (“I am of a different view.”). Like the plurality, the dissent

noted that “[j]urisdiction also is unaffected by 8 U.S.C. § 1252(b)(9) [because] ... [t]he respondents challenge their detention without bail, not an order of removal.” *Id.* at 355 (J. Breyer, dissenting). Three justices joined the dissent, and Justice Kagan did not participate in the decision, so simple arithmetic indicates that six justices agreed that habeas jurisdiction over the availability of bond remained unaffected by 8 U.S.C. §§ 1252(b)(9) and 1252(g). That binds this Court.

Even if that were not the case, the Eighth Circuit has expressly noted that “§ 1252(g) does not proscribe review over even the generality of deportation matters.” *Sabhari v. Reno*, 197 F.3d 938, 942 (8th Cir. 1999). Expanding on this holding, the Court held that it has “carved out an exception to § 1252(g) for a **habeas claim raising a pure question of law**.” *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (citing *Jama v. I.N.S.*, 329 F.3d 630 (8th Cir. 2003)). At oral arguments on September 16, 2025, counsel for Respondents stated that Petitioner was asking this court to answer a “pure question of law.” If for no other reason than that, this court has jurisdiction.

If Respondents own representations in this case did not suffice, in *Jennings*, the Supreme Court described issues concerning “detention without a bond hearing” as “questions of law.” *Jennings*, 583 U.S. at 292. In this district, a “‘pure’ question of law” has been described “as ‘something the court of appeals could decide quickly and cleanly without having to study the record’—or ‘an abstract issue of

law ... suitable for determination by an appellate court without a trial record.’’
Nicholas L. L. v. Barr, 2019 WL 4929795, at *4 (D. Minn. Oct. 7, 2019) (citing
Ahrenholz v. University of Illinois, 219 F.3d 674, 676–77 (7th Cir. 2000).

In *Nicholas L. L.*, Judge Tostrud recognized that:

Whether a T-visa applicant lawfully may be removed before a bona fide determination has been made seems to be a purely legal question. It is an abstract question and answering it does not require consideration of Nicholas's circumstances, apart from merely recognizing the fact (necessary for standing) that he is a T-visa applicant facing imminent removal. There is subject-matter jurisdiction over this claim.

Id. at *5. Here too, the only relevant facts are that Petitioner was, and remains, detained without bond after apprehension years after arriving in the United States and hundreds of miles from the border. As in *Nichoas L.L.*, these facts are necessary for standing, and the applicability of 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a), is a purely legal concern. This court has jurisdiction.

Given this precedent, Respondents' arguments are expressly foreclosed. While it is true that noncitizens “cannot entertain challenges to the enumerated executive branch decisions or actions,” *E.F.L. v. Prim*, 986 F.3d 959, 964 (7th Cir. 2021), this is not a challenge to any of the enumerated provisions. It is a challenge to the denial of a statutory guaranteed right to have a bond hearing. *See* 8 U.S.C. § 1226(a). That custody matter is “separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding.” 8 CFR 1003.19(d). As such, it

does not fit within the narrow confines of 8 U.S.C. § 1252(g), nor does it relate to a removal order under 8 U.S.C. §§ 1252(b)(5) or (b)(9).

None of Respondents' caselaw is instructive and *Aguilar v. U.S. Immigr. & Customs Enft Div. of Dep't of Homeland Sec.* squarely contradicts them by "read[ing] the words 'arising from' in section 1252(b)(9) to exclude claims that are independent of, or wholly collateral to, the removal process" and that "removal proceedings are *confined to determining whether a particular alien should be deported.*" 510 F.3d 1, 11 (1st Cir. 2007) (emphasis added). The same is true here. Petitioner challenges detention without bail, not his initial detention.

E.F.L. v. Prim, Tazu v. Att'y Gen. involved an attempt to directly enjoin the execution of a removal order. 986 F.3d 959, 964 (7th Cir. 2021) (foreclosed "challenge [to] DHS's decision to execute her removal order while [the petitioner] seeks administrative relief."). That was a direct challenges to the execution of order, a concern completely unrelated to Petitioner's case.

Respondents' remaining cases involved *Bivens* and Federal Tort Claims actions seeking damages for the decision to detain plaintiffs in the first instance. *See Alvarez v. U.S. Immigr. & Customs Enft*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("at its core he 'challenges ICE's decision to lodge a detainer against him."); *Sissoko v. Rocha*, 509 F.3d 947, 948 (9th Cir. 2007) ("Fourth Amendment-based damages claim for false arrest"); *Valencia-Mejia v. United States*, 2008 WL

4286979, at *1 (C.D. Cal. Sept. 15, 2008) (same); *Wang v. United States*, 2010 WL 11463156, at *1 (C.D. Cal. Aug. 18, 2010) (same). None of these cases sought to vitiate a statutory right to bond or any sort of release. They sought monetary damages for the decision to detain in the first instance. That is not what Petitioner is seeking here. Instead, he seeks access to what the statute guarantees: a bond hearing.

Respondents' arguments also face Suspension Clause issues. This is because immigration custody is never reviewable on a petition for review, and even if it was it would be impossible for an applicant to obtain any meaningful relief. The Supreme Court noted as much in *Jennings*, holding that:

Interpreting "arising from" in this extreme way would also make claims of prolonged detention effectively unreviewable. By the time a final order of removal was eventually entered, the allegedly excessive detention would have already taken place. And of course, it is possible that no such order would ever be entered in a particular case, depriving that detainee of any meaningful chance for judicial review.

Jennings, 583 U.S. at 293. As such, Respondents' channeling argument is disingenuous. While they claim 8 U.S.C. § 1252(b)(9) channels custody review to the applicable circuit, they are actually arguing that it be channeled into the dustbin of irrelevancy.

Ultimately, Respondents advance a reading of 8 U.S.C. § 1252(g) that the Supreme Court derided as "lead[ing] to staggering results." *Jennings*, 583 U.S. at

293. It is the reading that the Supreme Court has rejected time and again. *See Jennings*, 583 U.S. at 281; *Zadvydas*, 533 U.S. at 678; *St. Cyr*, 533 U.S. at 289; *A.A.A.D.*, 525 U.S. at 471.

This is why, of all courts, save for one, that Counsel is aware to have reviewed this issue, have found that they possessed subject matter jurisdiction. *See, e.g., J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *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*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025) ; *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Arce v. Trump*, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Sampiao v. Hyde*, 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*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14,

2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Choglio Chafla v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Hasan v. Crawford*, 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*, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Lepe v. Andrews*, No. 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*, 2025 WL 2689853 (N.D. Cal. Sept. 18, 2025); *Leon*

Espinoza v. Kaiser, 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025). *But see S.Q.D.C. v. Bondi*, 2025 WL 2617973 (D. Minn. Sept. 9, 2025). Respondents cite the outlier. It is not convincing.

Ultimately, if this Court cannot review Petitioner's claim, then no court anywhere ever can. This Court possesses habeas jurisdiction.¹

II. 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 29, 2025, they charged Petitioner with a Notice to Appear, which 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. 7-1, at Ex. A. 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.” ECF No. 10, at 17 (citing *Hughes v. Canadian Nat'l*

¹ Respondents devote more than two pages to the proper parties in this suit but never indicate that Pamela Bondi, Kristi Noem, Todd M. Lyons, Samuel Olson, or Joel Brott were not proper parties. The issue is immaterial and as for the APA related assertions, joinder of claims is certainly appropriate here. *Infra* VIII.

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.” ECF No. 10, at 16.

What they fail to point out is that 8 U.S.C. § 1226(a) actually 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. 7-2. 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,² the specific provision that governs the facts of this case is 8 U.S.C. § 1226(a).

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. 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

² This is likely because it applies “at the Nation's borders and ports of entry,” *Jennings*, 583 U.S. at 287, and “border searches [are] not subject to the warrant provisions of the Fourth Amendment.” *United States v. Ramsey*, 431 U.S. 606, 617 (1977)

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). Thus, 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 J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rodriguez v. Perry*, 747 F. Supp. 3d 911 (E.D. Va. 2024); *Rosado v. Figueroa*, 2025 WL 2337099 *7 (D. Ariz. Aug. 11, 2025); *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263 *4 (N.D. Cal. Aug. 21, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 *4 (S.D.N.Y. Aug. 13, 2025). The same is true here.

Judge Tostrud’s decision in *J.O.E.* reflects the logic that Petitioner propounds here. Judge Tostrud 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* ECF No. 11-1, at Ex. A. 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.

In *Rodriguez*, the court 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* ECF No. 11-2, at Ex. B. This Court too must hold Respondents to their records.

Even Respondents’ briefing, as it relates to jurisdiction, appears to support this position. At page ten of its memorandum, Respondents’ suggest that Petitioner’s detention resulted from “ICE’s *choice* to detain him pursuant to § 1225(b)(2) rather than § 1226.” ECF No. 10, at 10 (emphasis added). The thrust of their remaining argument appears to be that Petitioner is subject to mandatory

custody. *See* ECF No. 10, at 7, 8, 14, 17. If this was indeed a *choice*, then 8 U.S.C. § 1226(a) controls.

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 *J.O.E.* and *Rodriguez*. 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, 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.

III. PETITIONER IS CORRECT ON THE MERITS.

The plain text argues in favor of Petitioner's position. Respondents' reading would strike "seeking admission" from 8 U.S.C. § 1225(b)(2)(A) and ascribe a new meaning to the term "admission," which is specifically defined throughout the INA. *See* 8 U.S.C. § 1101(a)(13)(A). They seek guidance from adjoining provisions for the proposition that every "applicant for admission" is forever, in perpetuity, "seeking admission," see ECF No. 10, at 16, but offer no explanation as to 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).

The statute 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 is an “applicant for admission.” Fair enough.

If that were the end of the statute, then Respondents might be correct. But that is not the end of the statute. It goes on, quite clearly, to clarify that the only “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.

Nowhere in their memorandum do Respondents address this core deficiency in their reading. 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 but “[w]here 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 would lend much further credence to Respondents’ contentions, but that is not the statute Congress wrote, and we must faithfully apply the language on the page.

More to the point, “[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, 387 (2021). By statute, “[t]he 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 and emphatically 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.

Respondents’ argument that “seeking admission” and “applicant for admission” are “merely two ways to say the same thing” is also entirely unavailing. ECF no. 10, at 16. 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*, 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), and the statutory definition at 8 U.S.C. § 1101(a)(13), because, again, “[w]hen ‘a statute includes an explicit definition’ of a term, ‘we **must** follow that definition.’” *Van Buren*, 593 U.S. at 387 (emphasis added). Congress defined “admission,” so unless it specifically defined it differently in this context, and nothing in the plain text says that it did, then the definition at 8 U.S.C. § 1101(a)(13) controls.

Respondents’ reliance on 8 U.S.C. § 1225(a)(3) is similarly misguided. ECF No. 10, at 16. That provision governs who “shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3). It does not govern who “shall be detained,” which is governed by 8 U.S.C. § 1225(b)(2)(A). 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. This was explained beautifully in *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (illustrative graph). See also *Jimenez v. FCI Berlin*, 2025 WL 2639390, at *7 (D.N.H. Sept. 8, 2025). Respondents offer no explanation as to why both terms are employed in 8 U.S.C. § 1225(b)(2)(A) itself. The Court should grant this Petition.

Respondents’ references to structure and *Jennings* are without merit as well. ECF No. 10, at 17. In fact, in *Jennings*, the Court lent credence to Petitioner’s position in noting that 8 U.S.C. § 1225 applies “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*, 583 U.S. at 287. 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.

Nor does Petitioner’s reading “render the provision [at (b)(2)(A)] redundant to (b)(1).” ECF No 10, at 17. Indeed, Section 1225(b)(1) does not apply to all “arriving” noncitizens. It does not apply to 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). It does not apply to Lawful Permanent Residents returning from travel abroad. *See* 8 U.S.C. § 1101(a)(13)(C). It does not apply to those who are not inadmissible for fraud or lack of documents under 8 U.S.C. §§ 1182(a)(6)(C) or 1182(a)(7). *See* 8 U.S.C. § 1225(b)(1).

Section 1225(b)(2), then, 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. The government routinely invokes this provision with regards to returning lawful permanent residents, *see* 8 U.S.C. § 1101(a)(13)(C), Cubans, Nicaraguans, Venezuelans, and Bolivians arriving by plane, 8 U.S.C. § 1225(b)(1)(F), and anyone with entry documents who may be inadmissible for some reason other than fraud. *See* 8 U.S.C. § 1225(b)(1)(A)(i). There is plenty of work for it to do.

Precedent has long recognized the limited role of “§ 235(b)(2) [8 U.S.C. 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 (3rd Cir. 2003); *see also 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).

Respondents then turn to *Vargas Lopez v. Trump*, 2025 WL 2780351, at *7 (D. Neb. Sept. 30, 2025). ECF No. 10, at 18. There, the court “conclude[d] that Vargas Lopez fails to meet his burden to show that he falls under § 1226(a), so his Petition fails **regardless of the parties’ arguments about the scope of § 1225(b) and § 1226(a).**” *Id.* at *6 (emphasis added). In fact, the core of its holding was “that the mistakes in the Petition, including the failure of Vargas Lopez to attach certain referenced exhibits, prevent Vargas Lopez from meeting his burden to show he is entitled to habeas relief.” *Id.* at *2. While the court did engage with the statute and seems to largely endorse respondents’ positions, more than fifty courts have gone the other way. Compare string cite *supra* § I, with *Vargas Lopez v. Trump*, 2025 WL 2780351, at *7.³ Finally, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), decided by the Department of Justice, is no more convincing that Respondents’ brief. Indeed, both documents were authored by the Department of Justice, *see* 8 C.F.R. § 1003.1(a)(1), so the lack of light between them is unsurprising and both ought to be unpersuasive.

³ *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025) was a poorly pled case seeking release, not a bond hearing, and it, like *Vargas Lopez*, totally failed to account for the “seeking admission” language at 8 U.S.C. § 1225(b)(2)(A).

IV. LEGISLATIVE HISTORY AND PRIOR PRACTICE REINFORCE PETITIONER'S READING

Respondents urge the Court to ignore Congressional Reports specifically noting that 8 U.S.C. § 1226(a) merely “restates the [then] current provisions in section 242(a)(1) 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), 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.’” ECF No. 10, at 20-21 (citing *id.* at 225). If, as Respondents contend, the specific controls the general, ECF No. 17, then Respondents arguments related to Congressional intent must fail.

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. This is a clear, contemporaneous, statement of meaning.

Respondents object, contending that “[p]rior agency practices carry little weight under *Loper Bright*.” ECF No. 10, at 21. 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 and, in light of all the arguments made *supra*, he is eligible for bond.

V. 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 enjoin 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. It is important to rein in Respondents’ flagrant and repeated violations of law despite near uniform condemnation from federal courts. *See supra* § I.

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). It is clear that 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. By refusing to appeal, the government has ensured that no article III court can strike down this practice in any judicial circuit, insidiously permitting it to perpetuate this conduct despite the overwhelming consensus as to its illegality. This refusal to defend their practice at the circuits also undermines Respondents’ credibility before this court and further reinforces the erroneousness of their position. An APA set aside remedies this conduct.

This path was charted by the District of Maryland in *Child Trends, Inc. v. United States Dep't of Educ.*, 2025 WL 2379688, at *19 (D. Md. Aug. 15, 2025),

where the court 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 v. CASA, Inc.*, 606 U.S. —, 145 S. Ct. 2540, --- L.Ed.2d — (2025) 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*, 603 U.S. 799, 826–42, 144 S.Ct. 2440, 219 L.Ed.2d 1139 (2024) (Kavanaugh, J., concurring)); *see also Purl v. Dep't of Health & Hum. Servs.*, No. 2:24-CV-228, — F. Supp. 3d —, —, —, 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. Dep't of Lab.*, No. 25-CV-1909, — F. Supp. 3d —, —, —, 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 —, 145 S.Ct. at 2557; *see also Nat'l Fair Hous. All. v. Dep't of Hous. & Urb. Dev.*, Civ. No. 25-1965, 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*, -- F.4th --, 2025 WL 2508869, at *2 (5th Cir. Sept. 2, 2025) (issuing preliminary injunction in response to executive branch’s erroneous interpretation of the law).⁴

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

⁴ A 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.

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, suggesting that “the requested relief goes well beyond [Petitioner’s] detention; an APA lawsuit is entirely different and subject to different procedures.” ECF no. 10, at 13. They cite 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.” ECF No. 10, at 13 (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. *J.G.G.*, 604 U.S. at 673. 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, comparing it to a previously filed habeas labelled as a "Frankenstein pleading." ECF No. 10, at 14. 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*, 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. 525 F.3d 205, 210 (2d Cir. 2008). 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.

VI. REMAINING DATAPHASE FACTORS

To the extent that they are relevant given that this is both a traverse brief and a TRO reply memorandum, the remaining factors support injunctive relief. Respondents do not suggest that ongoing unlawful detention without, absent bond hearing, would not be irreparable harm, nor could they. It is the quintessential harm. *See Zadvydas*, 533 U.S. at 679; *Matacua*, 308 F. Supp. 3d at 1025. The suggestion that “a compelling interest in the steady enforcement of its immigration laws” and the maintenance of “the status quo” augur against a TRO are unconvincing. First, this policy is a departure from 29 years of practice. Respondents have upset the apple cart and engaged in anything other than the steady enforcement of the laws. Moreover, to suggest that continued unlawful custody is an appropriate status quo to maintain would mean that a TRO granting release on a habeas would never be

appropriate, regardless of the egregiousness of the unlawful detention. That is obviously inappropriate.

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 three 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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