UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Jose Andres Robles Encalada,

Petitioner,

v.

Pamela Bondi, Attorney General,

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

Department of Homeland Security,

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

Immigration and Customs Enforcement,

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

and,

Ryan Shea,
Sheriff of Freeborn County.

Respondents.

0:25-cv-3946 (NEB / DLM)

COMBINED REPLY AND TRAVERSE AND IN SUPPORT OF TRO AND WRIT OF HABEAS CORPUS

INTRODUCTION

This Court has already determined that it had jurisdiction over a case involving nearly identical facts and issued a TRO finding that a petitioner in nearly identical situation was detained pursuant to 8 U.S.C. § 1226(a), and entitled to a bond hearing, rather than under 8 U.S.C. § 1225(b)(2)(A), as the government contends. *See Ferrera Bejarano v. Bondi*, 25-cv-03236 (NEB/JFD). The facts here are indistinguishable given that Petitioner was detained in the interior of the United States, years after entering without inspection, and Respondents detained him "pursuant to a warrant of arrest." This is supported by at least 72 district court decisions from around the country. The writ must be issued, and Petitioner must be provided with a prompt bond hearing within three days.

ARGUMENT

I. THE COURT HAS JURISDICTION.

"A person challenging the lawfulness of immigration-related detention may also avail themselves of a writ of habeas corpus." *Maldonado v. Olson*, 2025 WL 2374411, at *4 (D. Minn. Aug. 15, 2025) (citing *Deng Chol A. v. Barr*, 455 F. Supp. 3d 896, 900–01 (D. Minn. 2020)). Respondents trot out the same tired arguments that the court lacks jurisdiction. None is availing, and all have been roundly rejected more than 70 times, including by this Court. *See Ferrera Bejarano v. Bondi*, 25-cv-03236 (NEB/JFD); *Belsai v. Bondi*, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *A.A.*

v. Olson, 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 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); *Herrera Avila v. Bondi*, 25-cv-03741 (D. Minn. Oct. 21, 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); *Chogllo Chafla v. Scott*, 2025 WL 2688541 (D. Me. Sept. 22, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Chang Barrios v. Shepley*, 2025 WL 2772579 (D. Me. Sept. 29, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2783642 (D. Me.

Sept. 30, 2025); *Chanaguano Caiza v. Scott*, 2025 WL 2806416 (D. Me. Oct. 2, 2025); *Ayala Casun v. Hyde*, 2025 WL 2806769 (D.R.I. Oct. 2, 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); *Zumba v. Bondi*, 2025 WL 2753496 (D.N.J. Sept. 26, 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); *Padron Covarubias, v. Vergara*, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Luna Quispe v. Crawford*, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Quispe-Ardiles v. Noem*, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *S.D.B.B. v. Johnson*, WL 2845170 (M.D.N.C. Oct. 7, 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); *Sanchez Ballestros v. Noem*, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Mejia v. Woosley*, 2025 WL 2933852 (W.D. Ky. Oct. 15, 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); *Contreras-Cervantes, v. Raycraft*, 2025 WL 2952796 (E.D. Mich. Oct. 17, 2025); *Morales Chavez v. Director of Detroit Field Office*, 2025 WL 2959617 (N.D. Ohio Oct. 20, 2025); *Sanchez Alvarez v. Noem*, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct.

11, 2025); *B.D.V.S. v. Forestal*, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); *Ochoa Ochoa v. Noem*, 2025 WL 2938779 (N.D. Ill. Oct. 16, 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); *Cordero Pelico v. Kaiser*, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Ortiz Donis v. Chestnut*, 2025 WL 2879514 (E.D. Cal. Oct. 9, 2025); *Sabi Polo v. Chestnut*, 2025 WL 2959346 (E.D. Cal. Oct. 17, 2025); *Alvarez Chavez v. Kaiser*, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025); *Cerritos Echevarria v. Bondi*, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Cardin Alvarez v. Rivas*, 2025 WL 2898389 (D. Ariz. Oct. 7, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Mendoza Guitierrez v. Baltasar*, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Aguilar Merino v. Ripa*, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025).

It is clear that 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.

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). 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. 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 Respondent's 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 Respondent's 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).

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, Respondent's 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 Respondent's caselaw is instructive and *Aguilar v. ICE* 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 of *Velasco Lopez v. Decker*, where the Second Circuit exercised jurisdiction over a "challenge not to his initial detention but to the procedures that resulted in his prolonged incarceration without a determination that he poses a heightened bail risk." 978 F.3d 842, 850 (2d Cir. 2020).

The same is true here. Contrary to Respondents' contentions, Petitioner challenges detention without bail, not his initial detention. He is simply asking for a bond hearing after all. Similarly, in *Ruiz v. Mukasey*, which predates *Jennings*, the Second Circuit said that "[n]either 8 U.S.C. § 1252(b)(9) nor 8 U.S.C. § 1252(a)(5) is applicable" where the issue before the court was an I-130 visa petition, 552 F.3d 269, 274 n.3 (2d Cir. 2009), suggesting, contrary to

Respondents' position, that not everything related to immigration is barred from review.

E.F.L. v. Prim, *Tazu v. Att'y Gen.* and *Ajlani v. Chertoff* involved attempts to directly enjoin the execution of removal orders. 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."); 975 F.3d 292, 295 (3d Cir. 2020) (foreclosing "a stay of removal"); 545 F.3d 229, 233 (2d Cir. 2008) ("Ajlani also requested that the district court enjoin defendants from removing him from the United States."). Those were direct challenges to the execution of orders, concerns completely unrelated to Petitioner's case.

The channeling concerns at play in *J.E.F.M. v. Lynch*, arose because plaintiffs had sought to vitiate "a right to government-appointed counsel *in removal proceedings*." 837 F.3d 1026, 1029 (9th Cir. 2016) (emphasis added). The same was true in *Delgado v. Quarantillo*, where the plaintiff "indirectly challeng[ed] her reinstated order of removal." 643 F.3d 52, 55 (2d Cir. 2011). *Xiao Ji Chen v. U.S. Dep't of Just.*, which made no jurisdictional holding at all, merely suggests that the "primary effect of the REAL ID Act … is to convert habeas corpus petitions filed by criminal aliens seeking review of their *removal orders* into petitions for review." 434 F.3d 144, 151 (2d Cir. 2006) (emphasis added).

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. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("at its core he 'challenges ICE's decision to lodge a detainer against him."); *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.[1]

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:

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[1] In *Saadulloev v. Garland*, the Petitioner, as in *Pena*, requested immediate release, rather than a bond hearing, something the court could not grant. 2024 WL 1076106, at *2 (W.D. Pa. Mar. 12, 2024). More importantly, that district court's finding that "[e]very act of which Saadulloev complains flowed directly from the agents' discretionary decision to commence removal proceedings and the actions those agents took to effectuate that decision" *id.* at *3 flatly violates the Supreme Court command that 1252(g) "did not … sweep in any claim that can technically be said to 'arise from' the three listed actions … [but i]nstead … refer[s] to just those three specific actions themselves." *Jennings*, 583 U.S. at 294 (citing *A.A.A.D.C.*, 525 U.S. at 482-83).

> 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, Respondent's 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 court has jurisdiction.

II. LIKELIHOOD OF SUCCESS ON THE MERITS

As articulated above, at least 72 cases have exercised jurisdiction and subsequently found that the detention of individuals in materially identical positions with Petitioner was improper under 8 U.S.C. § 1225(a)(2)(B). Those individuals, like Petitioner, were entitled to bond hearings under 8 U.S.C. § 1226(a). Respondents point to two contrary decisions. The weight of the authority, consistent with the record, plain text, context, congressional intent, and long held practice all illustrate why this writ must issue.

a. The Record in this case compels a conclusion that Petitioner is detained under 8 U.S.C. § 1226(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. Petitioner was detained "pursuant to sections 236 and 287 of the Immigration and Nationality Act" on an I-200 "warrant of arrest." *See* Doc. No. 13-3. As such, he is clearly eligible for bond pursuant to 8 U.S.C. § 1226(a). The plain text at 8 U.S.C. § 1226(a) "establishes a discretionary detention framework for noncitizens arrested and detained '[o]n a warrant issued by the Attorney General.'" *Gomes*, 2025 WL 1869299, at *6 (citing 8 U.S.C. § 1226(a)). "For such individuals, the Attorney General (1) *may* continue to detain the arrested alien"; (2) "*may* release the alien on ... bond"; or (3) "*may* release the alien on ... conditional parole." 8 U.S.C. §§ 1226(a)(1), (a)(2)(A), (a)(2)(B). "The thrice-used permissive word 'may' indicates Congress's intent to establish a discretionary, rather than mandatory, detention framework for noncitizens arrested on a warrant." *Gomes*, 2025 WL 1869299, at *6.

The statute then sets out a single exception to this discretionary framework, articulating that it applies "[e]xcept as provided in subsection (c)." 8 U.S.C. § 1226(a). Subsection (c), in turn, applies to certain "criminal" noncitizens, who are expressly exempted from this discretionary framework." 8 U.S.C. § 1226(c). However, this framework does not similarly carve out noncitizens who would be

subject to mandatory detention under Section 1225(b)(2)." *Gomes*, 2025 WL 1869299, at *7. As the Supreme Court has noted, this sort of "express exception" to Section 1226(a)'s discretionary framework "implies that there are no *other* circumstances under which" detention is mandated for noncitizens, like Petitioner, who are subject to Section 1226(a), in that he was arrested on a warrant issued by the attorney general. *Jennings*, 583 U.S. at 300 (citing A. Scalia & B. Garner, Reading Law 107 (2012)).

Moreover, given that Petitioner was detained "on a warrant of arrest issued by the attorney general," *see* Doc. No. 13-3, his specific circumstances relate to an "arrest on a warrant issued by the attorney general." 8 U.S.C. § 1226(a). So, to the extent that "the specific governs over the general," *Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1015 (9th Cir. 2017), this fact pattern is governed by the provision relating to detention "on a warrant of arrest." 8 U.S.C. § 1226(a). As such, Petitioner's detention falls within the discretionary bond framework governed by 8 U.S.C. § 1226(a). No one alleges that the exceptions to that framework articulated at 8 U.S.C. § 1226(c) applies, so there is no basis for a mandatory custody finding.

This precise fact pattern led judge Tostrud to rule that 8 U.S.C. § 1226 applied when "Respondents point[ed] to no record evidence suggesting that [the petitioner] 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." *J.O.E. v. Bondi*, 2025 WL 2466670, at *8 (D. Minn. Aug. 27, 2025). There is no distinction in this record. Petitioner was arrested on a warrant, *see* ECF No. 13-3. Therefore, 8 U.S.C. § 1226 applies. The Court must hold Respondents to their determinations. They cannot abandon a record by claiming to adopt a new legal position. The record controls.

Respondents have been clear that they have detained Petitioner under 8 U.S.C. § 1226(a)(2), not 8 U.S.C. § 1225(b)(2), just as they did in *J.O.E.* 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 a host of clear representation of Congressional intent. *See infra*. Respondents' own records contradict Respondents. Given that the government has routinely invoked 8 U.S.C. § 1226(a)(2) to justify Petitioner's detention, *see* Doc. No. 13-3, the Court must hold them to that now.

a. The Plain Text Illustrates that 8 U.S.C. § 1225(b)(2)(A) Cannot Apply as Petitioner Was Not "Seeking Admission" When He Was Detained on September 30, 2025.

The government raises three arguments. None is availing. First, they argue that all "applicants for admission" are perpetually "seeking admission." ECF No. 12, at 19. They point to 8 U.S.C. § 1225(a)(3) and *United States v. Woods*, 571 U.S. 31, 45 (2013) for the proposition that "or" "introduce[s] an appositive–a word or phrase

that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." ECF No. 12, at 19.

Even the government's citation here is misleading. What *Woods* actually said was that the word "or" "is almost always disjunctive, that is, the words it connects are to 'be given separate meanings.'" 571 U.S. at 45 (2013) (citing *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979)). In other words, "or" is generally disjunctive and here, some "applicants for admission" are "seeking admission" and some who are not "applicants for admission" may be "otherwise seeking admission," and all those people are subject to inspection. However, only those who are both an "applicant for admission" and "seeking admission … shall be detained." 8 U.S.C. § 1225(b)(2)(A). This was explained beautifully in *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (illustrative graph). Moreover, 8 U.S.C. § 1225(a)(3) defines who "shall be inspected by immigration officers." It does not define who "shall be detained." Ultimately, only those who are both an "applicant for admission" and "seeking admission … shall be detained." 8 U.S.C. § 1225(b)(2)(A). The provisions are different and address different things. The Court must ensure it gives each an independent meaning.

Second, Respondents argue that Petitioner "reads 'applicant for admission' out of § 1225(b)(2)(A)." ECF No. 12, at 19. He does not. Under the plain language of 8 U.S.C. § 1225(b)(2)(A), an alien must be an "applicant for admission" and

actively "seeking admission" for mandatory detention to apply. Petitioner appears to be an "applicant for admission," but he is not, and was not at the time of his apprehension, "seeking admission." Respondent's 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). Mandary 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 more significant surplusage issue is Respondents' wholescale abrogation of the Laken Riley Act. As a rule, 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." *Chicago v. Fulton*, 141 S. Ct. 585, 591 (2021) (quoting *Yates v. United States*, 574 U.S. 528, 543 (2015)). As previously briefed, Respondents' reading would render the entire LRA surplusage. It would swallow the narrow mandatory detention provisions aimed at some people present without admission or parole whole, *see* 8 U.S.C. § 1226(c)(E), by subjecting all such

individuals to mandatory detention. That is obviously improper.

Third, Respondents point to *Florida v. United States,* 660 F.Supp.3d 1239 (N.D. Fla. 2023). ECF No. 12, at 20. That case is in no way instructive. There, the court limited its inquiry to "aliens arriving at the Southwest Border into the country *en masse*." 2025 WL 2108913, at 1249. In that case, where individuals were caught crossing the southwest border of the United States, that is "seeking entry" into the United States. Those people were properly categorized under 8 U.S.C. § 1225(b), but Petitioner was apprehended inside the country, hundreds of miles from any border. The case is totally dissimilar

The final two cases to which Respondents point are equally unconvincing. In *Vargas Lopez v. Trump*, the court's ultimate 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." 2025 WL 2780351, at *2 (D. Neb. Sept. 30, 2025). While the court parroted Respondents' briefing, its ruling rested on faulty pleadings. As for *Pena v. Hyde*, there, a district court refused to unconditionally release a petitioner who failed to ask for bond and argued that an approved I-130 was a visa. 2025 WL 2108913, at *1 (D. Mass. July 28, 2025). The petition was based on a fundamental misunderstanding of the law and asked for relief that was unavailable to the petitioner. Neither case moves the needle.

b. Legislative History Cuts Against Respondents.

Respondents cite out of circuit caselaw for the proposition that IIRIRA was "intended to replace *certain* aspects of the [then-]current 'entry doctrine.'" ECF No. 12, at 21 (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). Notably, Respondents also 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); ECF No. 12, at 21. If, as Respondents contend, the "the specific governs over the general," ECF no. 12, at 16 (citing *Karczewski*, 862 F.3d at 1015), 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.

c. Prior Conduct is Stil Relevant

Respondents contend that "[p]rior agency practices carry little weight under Loper Bright." ECF No. 12, 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 and, in light of all the arguments made *supra*, he is eligible for bond.

III. REMAINING *DATAPHASE* FACTORS

Respondents make no arguments regarding the harm of ongoing illegal detention absent a bond hearing. Nor could they as "[f]reedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001). Indeed, "a loss of liberty … is perhaps the best example of irreparable harm." *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018). Irreparable harm has been established.

As for the equities, the government claims an interest in the "steady enforcement of immigration laws," maintenance of the status quo, and an "institutional interest" in solving these matters in house. ECF No. 12, at 28. This is laughable. The government overturned the apple cart after 29 years of "steady enforcement" of immigration laws. This is an erratic departure from that. As for the status quo, Petitioner was out of custody until Respondents detained him, and moreover, accepting illegal detention as an acceptable status quo is anathema to the very principle of habeas corpus and ordered liberty. Finally, the government has cemented this position at the administrative level through the publication of *Matter*

of Yajure Hurtado, 29 I. & N. Dec. 2016 (BIA 2025); 8 C.F.R. § 1003.1(g)(1). This, despite at least 72 adverse district court rulings, all of which the government has failed to appeal. Whatever "institutional interest" the government has in this matter has been forfeit.

CONCLUSION

Petitioner has demonstrated that his detention absent a bond hearing is illegal. A writ must issue. If the Court requires additional time to mull the matter, he has illustrated a strong likelihood of success on the merits, will suffer significantly and irreparably in the absence of a TRO or PI, and the equities weigh in his favor. As such, either a writ or a TRO or PI must be granted ordering Respondents to provide Petitioner with a bond hearing within three days.

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Respectfully submitted,

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