UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Santos Morente Cahuec,

Petitioner,

v.

Samuel J. Olson *et al.*,

Respondents.

No. 0:25-cv-04264-PJS-DJF

FEDERAL RESPONDENTS' CONSOLIDATED RESPONSE TO PETITION FOR A WRIT OF HABEAS CORPUS AND MOTION FOR TEMPORARY RESTRAINING ORDER

Pursuant to the Court's Order, ECF No. 6, Federal Respondents[1] respectfully submit this consolidated response to the Petition for Writ of Habeas Corpus, *see* ECF No. 1 ("Petition"), and Motion for Temporary Restraining Order, *see* ECF Nos. 3-4 ("TRO Motion"). The Court should dismiss the Petition for lack of jurisdiction as Congress has not empowered federal district courts to address the issues Petitioner raises. On the merits, Petition and TRO Motion should be denied, as Petitioner Santos M.C. is not eligible for release. His present detention under 8 U.S.C. § 1225 is mandatory as Petitioner is an applicant for admission "present in the United States who has not been admitted," 8 U.S.C. § 1225(a)(1), and "shall be detained for [his] removal proceeding." § 1225(b)(2)(A). Insofar as Petitioner seeks an order requiring either release or an additional bond redetermination hearing under 8 U.S.C. § 1226(a), as recently as August 21, 2025, the BIA

[1] Federal Respondents are Kristi Noem, Secretary of the United States Department of Homeland Security ("DHS"); Pamela Bondi, U.S. Attorney General; Todd Lyons, Acting Director of U.S. Immigration and Customs Enforcement, and Samuel J. Olson, Field Office Director of Enforcement and Removal Operations, Saint Paul Field Office. This response is filed on behalf of Federal Respondents, not on behalf of respondent Shea.

found him to be "ineligible for bond" based on his domestic violence incident and prior DUI conviction. ECF 1-3 at 4 (ordering him "detained on no bond."). Thus, even if Petitioner's detention were treated as falling under § 1226(a) rather than § 1225, the Petition and TRO Motion should be denied.

BACKGROUND

Respondents draw the following background from the Petition, the Declaration of Deportation Officer Xiong Lee ("Lee Decl.") and their accompanying exhibits.[2]

I. Facts and Procedural History

Petitioner Santos M.C. is a Guatemalan citizen who entered the United States at an unknown date without inspection. *See* ECF No. 1-1 ("2023 I-213") at 1.[3] Petitioner claims to have last entered the United States in October of 2009, Petition ¶ 47, but was not inspected, admitted, or paroled by an immigration officer. 2023 I-213. at 3. As such he is present in the United States without having been admitted. *See* Lee Decl. Ex. C at 1.

United States Immigration and Customs Enforcement ("ICE") first encountered Petitioner on July 19, 2023, at the Wadena County Jail in Minnesota following his arrest for domestic assault and breaking and entering. *See* 2023 I-213 at 2; Lee Decl. ¶ 6. Based on the domestic violence incident precipitating that arrest, Petitioner was charged with Domestic Assault and Disorderly Conduct, ultimately pled guilty to the latter charge, and was sentenced to 90 days in jail. *See State of Minnesota vs Santos Morente Cahuec*, 80-

[2] Exhibits to the Lee Declaration are hereafter referred to as "Lee Decl. Ex. __."
[3] Unless otherwise noted, citations to page numbers in documents refer to ECF pagination rather than internal pagination.

CR-23-619; *see also* ECF No. 1-4 ("2025 I-213") at 4. The incident report from that evening reflects that police responded to a call from Petitioner's wife reporting that he was attempting to break into her residence late at night following a separation. *See* Lee Decl. Ex. A at 7; 2023 I-213 at 3. Based on damage near the door jamb, police noted that the door to the home appeared to have been forcibly opened. Lee Decl. Ex. A at 8. The dispatcher also advised that she could hear a young child phone "asking his 'daddy' not to hurt his 'mommy'." *Id.* When police encountered Petitioner, he "smelled extremely strong[ly] of an alcoholic beverage and . . . had slurred speech," and police also found a bottle of alcohol in the back seat of his car. *Id.* The police report reflects that at least one witness reported fear of harm at that time. *Id.*

This was not the first time Petitioner was arrested while intoxicated. Previously he was convicted in South Dakota in September of 2015 of Driving or Controlling [a] vehicle with Alcohol in Blood and sentenced to 30 days in jail. 2023 I-213 at 2; Lee Decl. ¶ 5.

On July 20, 2023, Petitioner was arrested by ICE in Grand Forks North Dakota upon his release from Wadena County Jail. 2023 I-213 at 2; Lee Decl. ¶ 8. The government initiated removal proceedings by issuing a Notice to Appear Form I-862, charging Petitioner as inadmissible under the Immigration and Nationality Act's § 212(a)(6)(A)(i), as amended, codified as 8 U.S.C. § 1182(a)(6)(A)(i), for being an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *See* Lee Decl. Ex. C. That same day, DHS also determined that pending final administrative review of his case, Petitioner was to be detained. *See* Lee Decl. Ex. E at 2; 8 U.S.C. § 1226(a).

On August 9, 2023, Petitioner filed a Motion for Reconsideration of Bond. Lee Decl. ¶ 11. It included arguments that during the July 19, 2023, domestic violence incident, Petitioner's wife did not intend for him to be arrested, was "never in any fear of harm from [him]," and that the two were "in the process of trying to resolve their differences and get back together . . . . even talking about [Petitioner] moving back into the marital home," Lee Decl. Ex. D at 3-6, and attached an affidavit from her containing similar supporting statements. *See* Lee Decl. Ex. E at 3-4 (quoting affidavit). In arguing he was not a danger to the community, Petitioner claimed then that neither the 2015 criminal complaint nor the 2023 criminal complaint mentioned harm to other persons or property and said he had complied with sentence requirements related to his DUI. Lee Decl. Ex. D at 7-8.

On August 10, 2023, following a bond redetermination hearing, an Immigration Judge ("IJ") ordered Petitioner released on a bond. *See* Lee Decl. ¶ 12. DHS reserved appeal, and Petitioner was released on August 15, 2023. *Id.* ¶¶ 12, 14.

DHS appealed the IJ's bond order to the Board of Immigration Appeals ("BIA") precipitating a written Memorandum of Bond decision from the IJ. *Id.* ¶¶ 13, 15; *see id.* Ex. E. The memorandum reflects that the IJ concluded, among other things, that Petitioner "met his burden to demonstrate that he would not pose a danger to the community . . . ." *Id.* Ex. E at 4. On appeal, the government argued that given the 2015 DUI conviction and the facts and recency of the 2023 incident, the IJ erred in concluding Petitioner met his burden of proof with respect to lack of dangerousness. *See* Lee Decl. Ex. F at 2.

On August 21, 2025, the BIA issued a decision sustaining the government's appeal, finding Petitioner "did not meet his burden of establishing that he does not pose a danger

if released," citing his September 2015 DUI violation and misdemeanor domestic assault charge and associated police report, which reflected damage from forcible entry, a statement from a young child reflecting fear of harm to his mother, and evidence that Petitioner had slurred speech and smelled strongly of alcohol. ECF No. 1-3 at 4. Noting that in bond proceedings, criminal conduct not resulting in a conviction may be considered in assessing whether an alien is a danger to the community, the BIA held given the nature, circumstances, and recency of the domestic violence incident and prior conviction for driving under the influence, Petitioner had not carried his burden with respect to lack of danger and was "thus ineligible for bond." Thus, on August 21st of this year, the BIA vacated the IJ's bond decision and ordered Petitioner "detained on no bond." *Id.*

Since that BIA order, the BIA has also ruled that immigration judges lack authority to grant bond to noncitizens, like Petitioner, who are present in the United States without having been admitted under INA Section 235(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 224 (BIA 2025).

On September 26, 2025, ICE arrested Petitioner in Fort Snelling, Minnesota and issued an I-200 Warrant of Arrest. *See* Lee Decl. ¶ 17; *id.* Ex. G. At the time, it also issued an updated Form I-213. *See* Lee Decl. ¶ 18; 2025 I-213.

On October 7, 2025, Petitioner filed a new bond redetermination request in immigration court. *See* Lee Decl. ¶ 19.

On October 14, 2025, DHS filed Form I-261, adding an additional charge of inadmissibility/deportability under section 212 (a)(7)(A)(i)(I) of the Immigration and Nationality Act, as Petitioner is an immigrant who, at the time of application for admission,

is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act. *Id.* ¶ 19; *see* ECF No. 1-5. That charge was in addition to, not lodged instead of, Petitioner's existing charge in his initial Notice to Appear. *See id.*; Lee Decl. Ex. C.

On October 15, 2025, an IJ issued an order denying Petitioner's latest custody redetermination request. *See* Dkt. No. 1-6. Its order noted the BIA's recent "decision finding that Petitioner did not establish that he is not a danger [to the community] based upon his criminal record," as well as finding that Petitioner is "properly categorized as an applicant for admission" who "the Court does not have authority to release . . . under INA Section 235(b)(2). *Id.* (citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)).

Petitioner remains in ICE custody in Freeborn County Jail pending the outcome of his removal proceedings. Lee Decl. ¶ 22; *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 224 (citing and discussing 8 U.S.C. § 1225(b)(2)).

II. Statutory Background on Immigration Detention

For more than a century, this country's immigration laws have authorized immigration officials to charge noncitizens[4] as removable from the country, arrest noncitizens subject to removal, and detain noncitizens during removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960). "The rule has been clear for decades: '[d]etention during deportation proceedings [i]s . . . constitutionally valid.'" *Banyee v.*

[4] Federal law refers to people who are not citizens or nationals of the United States using the term "alien." 8 U.S.C. § 1101(a)(3). Federal Respondents will use the term "noncitizen" instead. *See Nasrallah v. Barr*, 590 U.S. 573, 578 n.2 (2020).

Garland, 115 F.4th 928 (8th Cir. 2024) (quoting *Demore v. Kim*, 538 U.S. 510, 523 (2003)), *rehearing denied*, No. 22-2252, 2025 WL 837914 (8th Cir. Mar. 18, 2025); *see Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Demore*, 538 U.S. at 523 n.7 ("In fact, prior to 1907 there was no provision permitting bail for any [noncitizens] during the pendency of their deportation proceedings."). Indeed, removal proceedings "'would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

"To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering." *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Congress has therefore enacted a multi-layered statutory scheme for the inspection and civil detention of noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. At bottom, the Petition and TRO Motion in this case challenge which of two statutes governs Petitioner's present detention—§ 1225 or § 1226—arguing that the latter applies and DHS's charging decision, custody determination, and the BIA's *Matter of Yajure Hurtado* decision violate the INA, APA, and his Due Process Rights. *See* Petition.

A. Inspection and Detention under 8 U.S.C. § 1225

Section 1225 governs inspection, the initial step in deciding who can enter the country and who can stay after entering. The statute states that all noncitizens "who are applicants for admission . . . shall be inspected by immigration officers." 8 U.S.C.

§ 1225(a)(3). Congress specifically chose to deem *any* noncitizen "present in the United States who has not been admitted *or* who arrives in the United States" as an "applicant for admission" for purposes of 8 U.S.C. ch. 12. *Id.* § 1225(a)(1) (emphasis added). Petitioner satisfies that definition and is therefore an "applicant for admission."

Section 1225 sets out the inspection procedures applicable to applicants for admission. They "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Subsection (b)(1) applies to those "arriving in the United States" and "certain other"[5] noncitizens "initially determined to be inadmissible because of fraud, misrepresentation, or lack of valid documentation." Noncitizens falling under this first provision are generally subject to expedited removal proceedings "without further hearing or review." *See* 8 U.S.C. § 1225(b)(1)(A)(i). But where the applicant "indicates an intention to apply for asylum . . . or a fear of persecution," then immigration officers will refer him or her for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An applicant "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If he or she does not indicate an intent to apply for asylum, express

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[5] The "certain other" noncitizens referred to are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to apply (b)(1)'s expedited procedures to a noncitizen who "has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that [he or she] has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," subject to an exception inapplicable here. The statute therefore explicitly confirms application of its inspection procedures for those already in the country, including for a period of years.

a fear of persecution, or is "found not to have such a fear," he or she is detained until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Subsection (b)(2) is broader, serving as a catchall provision for applicants who are not covered by § 1225(b)(1). Petitioner falls into this category: he is an applicant for admission but is not covered under (b)(1) because, as he concedes, he is not "arriving" in the United States—he has been here for over a decade. *See* Petition ¶ 47. Subject to exceptions not applicable here, "if the examining immigration officer determines that [the noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall* be detained for a removal proceeding." *Id.* § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("[F]or [noncitizens] arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'" (citing *Jennings*, 583 U.S. at 299)). DHS retains sole discretionary authority to temporarily release on parole "any alien applying for admission" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

B. Apprehension and Discretionary Detention under 8 U.S.C. § 1226(a)

Even after initial inspection, the government retains the authority to arrest and detain noncitizens present in the country pending removal proceedings. "Section 1226 generally governs the process of arresting and detaining that group of [noncitizens] pending their removal." *Jennings*, 583 U.S. at 288. It states that a noncitizen, "[o]n warrant issued by the

Attorney general . . . may be arrested and detained pending a decision" on the removal. 8 U.S.C. § 1226(a).[6] For noncitizens arrested under §1226(a), the government has broad discretionary authority to detain them during removal proceedings. *See id.* § 1226(a)(1) (DHS "may continue to detain the arrested" noncitizen during the pendency of removal proceedings).

Following apprehension under § 1226(a), a DHS officer makes an initial discretionary determination concerning release. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the" noncitizen. 8 U.S.C. § 1226(a)(1). "To secure release, the [noncitizen] must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)). DHS may set a bond or condition a noncitizen's release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).

But if DHS determines that a noncitizen should remain detained during the pendency of removal proceedings, he may request a bond hearing before an immigration judge, within the Department of Justice's Executive Office for Immigration Review. *See* 8

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[6] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for noncitizens under section 1226(a) is "one of the authorities he retains . . . this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). An IJ conducts a bond hearing and decides whether release is warranted based on a variety of factors that account for the noncitizen's ties to the United States and the possible risks of flight or danger to the community. *See In re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (identifying nine non-exhaustive factors); 8 C.F.R. § 1003.19(d) ("The determination . . . as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the [noncitizen] or [DHS].").

Section 1226(a) does not grant "any *right* to release on bond." *Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does it address the applicable burden of proof or particular factors that must be considered. *See generally* 8 U.S.C. § 1226(a). Rather, it grants DHS and the Attorney General broad discretionary authority to determine, after arrest, whether to detain or release a noncitizen during removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

ARGUMENT

The parties' disagreement in this case comes down to whether Petitioner is currently detained pursuant to § 1225 or § 1226. ICE says it's § 1225, which governs the detention of noncitizens who are "applicants for admission." 8 U.S.C. § 1225(a)(3). Congress says so too, expressly directing that noncitizens like Petitioner who get into the United States without being inspected "shall be deemed for purposes of this chapter an applicant for admission" and detained pursuant to § 1225(b)(1) or § 1225(b)(2). *Id.* § 1225(a)(1). Under

a straightforward reading of the statute, Petitioner is subject to mandatory detention under § 1225(b)(2). He is not entitled to a bond hearing under that statute, and the Court should deny the habeas Petition and TRO Motion on that basis. Moreover, even were the Court to find that Petitioner's detention falls under 1226(a), Petitioner, who has already received a bond hearing, ultimately resulting in a recent BIA order that he be "detained on no bond," Dkt. No. 1-3 at 4, would not be entitled to relief.

I. Standard of Review

Injunctive relief is "an extraordinary remedy never awarded as a right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 23 (2008). A court may grant interim relief only if a movant shows: (1) he is likely to succeed on the merits, (2) he will suffer imminent, irreparable harm absent interim relief, (3) that harm outweighs the harm an injunction would cause other parties, and (4) the public interest favors interim relief. *Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109, 113-14 (8th Cir. 1981) (en banc). The movant bears the burden of proof for each factor, *Gelco v. Coniston Partners*, 811 F.2d 414, 418 (8th Cir. 1987), "a heavy burden" and a "difficult task." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). That exacting burden is further heightened when a party seeks a mandatory preliminary injunction—one which "alters the status quo by commanding some positive act, as opposed to a prohibitory injunction seeking only to maintain the status quo." *TruStone Fin. Fed. Credit Union v. Fiserv, Inc.*, No. 14-CV-424 (SRN/SER), 2014 WL 12603061, at *1 (D. Minn. Feb. 24, 2014). "Mandatory preliminary injunctions are to be cautiously viewed and sparingly used." *Id.*

II. Threshold Issues

Before turning to the merits, there are two threshold issues to resolve. First, the Court lacks habeas jurisdiction to review Petitioner's detention because it arises from the government's decisions and actions to commence removal proceedings against him. Congress stripped federal courts of the power to review such decisions and actions, *see* 8 U.S.C. § 1252(g), and Petitioner fails to grapple with this jurisdiction stripping provision in the Petition or TRO Motion. Second, Kristi Noem, Todd Lyons, and Pam Bondi are not proper parties to this case. Petitioner seemingly included them for purposes attempting to obtain APA-style relief. *See* Petition ¶¶ 69-74. That is improper, and the Court should dismiss them no matter how it resolves the Petition. The proper respondent in a habeas case is the "person who has custody over the petitioner." *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004). In this case, that person is ICE St. Paul Field Office Director Olson.

A. Jurisdiction

First, the Court lacks jurisdiction, as the Petition challenges the government's decision to commence removal proceedings against Petitioner. *See* 8 U.S.C. § 1252(g).

Congress has deprived courts of jurisdiction to review "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to [1] *commence proceedings*, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code,

or any other habeas corpus provision, and sections 1361 and 1651 of such title."[7] Thus, unless authorized in § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021). Section 1252(g) also bars district courts from hearing challenges to the *method* by which the government chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

The Petition stems from Petitioner's detention following a notice to appear initiating removal proceedings. Petitioner challenges ICE's choice to detain now him pursuant to § 1225(b)(2) rather than § 1226. The Petition also appears to take issue the government's additional charge of removability. *See* Petition ¶ 6 (arguing the government cited "no new facts in support of this amended charge"). This puts the Petition squarely in the crosshairs of § 1252(g). As other courts recognize, detention under these circumstances necessarily arises "from [the] decision to commence expedited removal proceedings." *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007); *see also Wang v. United States*, 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Valencia-Mejia v. United States*, 2008 WL 4286979 (C.D. Cal. Sept. 15, 2008). Judge Magnuson recently acknowledged the rule as

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[7] In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

well, finding no jurisdiction to review a similar "1225/1226" habeas petition because the "[p]etitioner's removal proceedings commenced when he was issued a Notice to Appear in immigration court. By its plain terms, [§ 1252(g)] bars the Court from questioning ICE's discretionary decisions to commence removal and detain Petitioner during his removal proceedings." *S.Q.D.C. v. Bondi*, 2025 WL 2617973, at *2 (D. Minn. Sept. 9, 2025) (citations, alterations, and internal quotation marks omitted).

As explained above, Petitioner was served with a Notice to Appear initiating removal proceedings against him. The NTA stated that he was a noncitizen "present in the United States who has not been admitted or paroled." Lee Decl. Ex. C at 1—the same category of noncitizen Congress deemed to be an "applicant for admission" under § 1225. Petitioner is now detained under § 1225(b)(2), while his removal proceedings are ongoing. The express purpose that subsection is to detain applicants for admission "*for a proceeding under section 1229a of this title*." (emphasis added). Indeed, there is no detention under § 1225 absent removal proceedings. *See Ali v. Sessions*, 2017 WL 6205789, at *2 (D. Minn. Dec. 7, 2017) ("Ali's claim clearly falls within the ambit of § 1252(g), as Ali's claim clearly "arises from" the Secretary's decision to "execute the removal order" by detaining Ali so that he can be removed to Somalia." (alterations omitted)).

Nor does the Petition here present a pure question of law. The Court need look no further than Petitioner's own filings in this case. Between the Petition, TRO Motion, and supporting exhibits, Petitioner has presented: arguments about the validity of a BIA decision, immigration court documents, and allegations about long-standing agency practices or interpretations of applicable statutes. The fact that there is no dispute as to the

factual record in this case does not mean the question is purely legal. On balance, this case does not "present a habeas claim that raises a purely legal question of statutory construction," and § 1252(g)'s jurisdictional bar applies. *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017).

B. Proper Parties

Petitioner also named Kristi Noem, Todd Lyons, and Pam Bondi as respondents. *See* Petition ¶¶ 21-23. "The federal habeas statute straightforwardly provides that the proper respondent to a habeas petition is *the person* who has custody over the petitioner." *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (emphasis added) (citations, alterations, and internal quotation marks omitted). In other words, habeas petitions must be brought against "'the person' with the ability to produce the prisoner's body before the habeas court." *Id.* Petitioner's asserted basis for naming these individuals is based on their oversight of agencies or programs and/or their status as supervisory officials. *See* Petition ¶¶ 21-23. However, supervisory authority does not matter; "the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Rumsfeld*, 542 U.S. at 435. Thus, they are not proper parties.

The reason such obviously improper respondents are named is apparent from the face of the Petition: Petitioner is trying to shoehorn Administrative Procedure Act ("APA") claims into this habeas action. Indeed, he refers directly to the APA in "Count III" of the Petition, and claims that the BIA decision in *Matter of Yajure Hurtado* "is arbitrary, capricious, and unlawful and should be set aside." Petition ¶¶ 69-74. The memorandum in support of the TRO Motion also adds an explicit request to "Declare that the actions of

Respondents as set forth in Mr. Morente Cahuec's Petition, Motion, and Memorandum of Law violated . . . the APA." Dkt No. 4 at 30.

This is not an APA case. An APA suit is entirely different and is subject to different procedures.[8] Petitioner styled his initial pleading as a "petition," and did not go through the mechanisms for serving a summons and civil complaint pursuant to Federal Rule of Civil Procedure 4. The Court ordered Respondents to show the true cause and duration of Petitioner's detention, not prepare an administrative record of a final agency action upon which the parties could present cross-motions for summary judgment. *See* Dkt. No. 6. And it is black-letter law in this circuit that habeas petitioners are limited to challenging the fact or duration of their confinement, not the conditions of that confinement or the agency policies governing it. *Spencer v. Haynes*, 774 F.3d 467, 469-71 (8th Cir. 2014); *Kruger v. Erickson*, 77 F.3d 1071, 1073 (8th Cir. 1996). Thus, the Court cannot take up Petitioner's sweeping challenge to how federal agencies interpret and apply § 1225, how they adhere to BIA precedent, or how they make detention decisions as to other individuals.

Petitioner is not the first petitioner to include civil claims in a habeas action. But this Court consistently rejects such tactics. Just a few weeks ago, a report and recommendation in a different habeas case decried the practice as "Frankenstein pleading" that "unduly broadens the narrow scope of habeas corpus and combines proceedings with

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[8] Narrow habeas relief is would be an adequate remedy for Petitioner's claims in this case. Whether a person is entitled to release from unlawful custody "fall[s] within the 'core' of the writ of habeas corpus and thus must be brought in habeas." *Trump v. J. G. G.*, 604 U.S. 670, 672 (2025) (per curiam). And APA claims are unavailable where habeas relief presents an adequate alternative remedy. *Id.* at 674 (Kavanaugh, J., concurring).

incompatible procedural rules." *Patel v. Noem*, No. 25-cv-3167 (ECT/DJF) (D. Minn. Sept. 12, 2025); *see also Canada v. Olmsted County Cmty. of Corrs*, 2022 WL 607482, at *8 (D. Minn. Mar. 2022) (citing District of Minnesota authority). Petitioner is free to file a new civil action to pursue broader APA claims, but they are not properly before the Court in a petition for a writ of habeas corpus. With those claims properly excluded from the case, there is no reason to keep Kristi Noem, Todd Lyons, and Pam Bondi as parties.[9]

III. Petitioner's claims fail on the merits.

Turning to the merits, the Court should deny the Petition as Petitioner he is not entitled to a bond hearing. A plain reading of the statutes at issue confirms that he is subject to mandatory detention under § 1225(b)(2). That is the only reading that comports with the intent behind deeming noncitizens who arrive without admission or inspection as "applicants for admission. *See* 8 U.S.C. § 1225(a)(1).

A. Petitioner is properly subject to mandatory detention according to the plain text, context, and structure of § 1225

The Court should reject Petitioner's request to convert his § 1225(b)(2) detention into discretionary detention under § 1226(a). *See, e.g.*, Petiton ¶ 74. The Petition fails to substantively dispute that Petitioner is a noncitizen "present in the United States who has not been admitted" and thus "deemed" an "applicant for admission" under § 1225. 8 U.S.C. § 1225(a)(1). Under § 1225's "catchall provision"—paragraph (b)(2)—a noncitizen

[9] Judge Menendez recently declined to address APA claims in a habeas petition similar to this one as it would be "premature" to set aside the agency's practice and declare that it violated the APA. Order, *Belsai D.S. v. Bondi, et al.*, No. 25-cv-3682 (KMM-EMB) at 13 n.5 (D. Minn. Oct. 1, 2025) (ECF 14).

deemed an applicant for admission and who is not subject to paragraph (b)(1) must be detained during removal proceedings. *Jennings*, 583 U.S. at 287.

Petitioner's contrary reading appears to emphasize the phrase "seeking admission" in the text of § 1225(b)(2)(A). Petition ¶ 45-46. That provision, in its entirety, states:

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

8 U.S.C. § 1225(b)(2)(A) (emphasis added). This phrase, Petitioner implies, limits § 1225(b)(2)'s scope to only "inspections at the border," Petition ¶ 45, not those "like Petitioner, who have already entered . . . ." *Id.* ¶ 46. In other words, Petitioner's assertion appears to be that *all* detention under § 1225(b)—whether pursuant to (b)(1) or (b)(2)—is appropriate only for noncitizens who arrive at the border or who recently arrived at the border. *See id.* The Court should reject that interpretation for multiple reasons evident from the statute's text, context, and structure.

First, the argument is contrary to § 1225's plain text, which "deem[s]" people like Petitioner who are already "present in the United States" without admission to be applicants for admission. *See* 8 U.S.C. § 1225(a)(1). While paragraph (b)(1) applies to those "arriving" in the United States and other more recent arrivals, paragraph (b)(2) applies to any "other" noncitizen "who is an applicant for admission." *Compare id.* § 1225(b)(1)(A)(i) *with id.* § 1225(b)(2)(A); *accord Jennings*, 583 U.S. at 287. Under § 1225(a)(1), an "applicant for admission" includes any noncitizen "present in the United States who has not been admitted or who arrives in the United States." Noncitizens who

have been in the country for years fit within the first part of that definition, while noncitizens who appear at the border fit within the second part. Right away, this dooms Petitioner's suggestion that § 1225 governs only arriving noncitizens.

Nor does the term "seeking admission" implicitly narrow this provision to just those applicants "arriving" at the border. It includes all people who Congress deemed to be applicants for admission, whether they are arriving or are present in the United States without admission. Congress took a similar approach in § 1225(a)(3), requiring inspection for all noncitizens "who are applicants for admission or otherwise seeking admission." Congress understood that being an applicant for admission is a way of "otherwise seeking admission," and it required all noncitizens seeking admission (whether as applicants for admission or "otherwise") to be inspected under §1225(a)(5). To put this back into the context of § 1225(b)(2), Congress mandated detention for noncitizens who are applicants for admission (and thus, "seeking admission") if an immigration officer determines they are not clearly and beyond a doubt entitled to be admitted.

Second, Petitioner's assertion contradicts the plain structure of the statute, both within § 1225 itself and between §§ 1225 and 1226. According to the Supreme Court, applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. The second category "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Id.* This structure makes sense in the context of § 1225(b)'s detention provisions—(b)(1) applies to "arriving" or recently arrived noncitizens who must be detained pending *expedited* removal proceedings, and

(b)(2) applies to all applicants who must be detained for a *non-expedited* removal proceeding under § 1229a. Adopting his self-serving requirement that detention under (b)(2) is available only for arriving noncitizens who also seek admission would render the provision redundant with (b)(1).

Third, the mandatory detention provisions of § 1225 are more targeted than the discretionary detention provisions of § 1226. "A basic canon of statutory construction" is that "a specific provision applying with particularity to a matter should govern over a more general provision encompassing that same matter." *Hughes v. Canadian Nat'l Ry. Co.*, 105 F.4th 1060, 1067 (8th Cir. 2024). Section 1226(a) applies to noncitizens "arrested and detained pending a decision" on removal. By contrast, § 1225(b) addresses detention for a narrower and specially defined category of noncitizens who are applicants for admission. that includes those "present in the United States who ha[ve] not be admitted." *See* 8 U.S.C. § 1225(a)(1); *Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) ("§ 1225(a) treats a specific class of [noncitizens] as 'applicants for admission,' and § 1225(b) mandates detention of these [noncitizens] throughout their removal proceedings. Section 1226(a), by contrast, states in general terms that detention of [noncitizens] pending removal is discretionary unless the [noncitizen] is a criminal [noncitizen]."). As Petitioner falls within the specific detention authority of § 1225(b), the Court should not adopt a statutory construction that forces him over into the more general provisions of § 1226(a).

And fourth, the context of § 1225's passage in a 1996 reform package shows Congress intended to place noncitizens who are present without admission on equal footing with those who are apprehended upon arriving. Before the current version of § 1225 was

enacted, under the entry doctrine, inadmissible noncitizens who successfully evaded apprehension and gained entry enjoyed greater rights than those who were found inadmissible after appearing for inspection. *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc) (explaining history of § 1225), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). But Congress, in 1996, did away with the distinction by, among other changes, deeming both categories to be treated as applicants for admission in § 1225(a) and treating them similarly in § 1225(b).

In the TRO Motion's memorandum, Petitioner includes a multi-page string cite to cases he argues have "rejected the illegal recategorization of citizens properly subject to § 1226 as instead subject to § 1225." *See* Dkt. No. 4 at 12-14 (citing cases, including some in this district). However, Federal Respondents maintain that Petitioner's reading of the statues at issue is not correct and note that this Court would be far from the first tribunal to reach that conclusion.

As recently as November 10, 2025, a federal district court in Missouri denied a habeas petition involving a petitioner who had "lived in the United States for almost 40 years, but he was never lawfully 'admitted' into the country," *Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 U.S. Dist. LEXIS 221830, at *1 (E.D. Mo. Nov. 10, 2025). In that case, the court considered arguments nearly identical to those raised by Petitioner here, including a contention by that petitioner "that § 1225(b)(2) applies only to recently arrived noncitizens seeking entry at a border or point of entry, where they are examined by an immigration officer." *Id.* at *7-8. Though the petitioner argued "the 'overwhelming' majority of district courts have agreed with his position," and the *Olalde* court

acknowledged that "[d]istrict courts are divided over the application of these statutes when individuals have been living within the country for many years," it observed that "[w]hat governs this case is the text of the statute, not what other district courts have concluded." *Id.* at *2. And what it found, based on the statutory language was that "[t]he plain text provides that [petitioner] is an applicant for admission to the United States, so he is governed by § 1225(b)(2)" and thus ineligible for bond or release. *Id.*; *see id.* at *3 ("Because § 1225(b)(2) plainly covers Mejia Olalde and requires detention without bond, the Court denies the petition"). The same statutory analysis applies here.

Likewise, on September 30, 2025, a federal district court in Nebraska, interpreting Eighth Circuit precedent, dismissed a similar habeas petition specifically finding that the petitioner in that case was properly detained under 8 U.S.C. § 1225(b)(2). *See Lopez v. Trump, et al.,* No. 8:25CV526, 2025 WL 2780351, at *7 (D. Neb. Sept. 30, 2025). It declined to find a conflict between section 1225 and 1226, finding that the fact that they may overlap did not mean 1226 must apply to the petitioner. Rather, the Court found that the petitioner was properly within the category of individuals to whom 1225(b)(2) applied, and thus, he was subject to mandatory detention.

A federal district court in Massachusetts also recently confirmed that a noncitizen, unlawfully present in the country for approximately 20 years, was nonetheless an "applicant for admission." *See Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025). The *Pena* court explained that this resulted in the "continued detention" of a noncitizen during removal proceedings as commanded by statute. *Id.* The statutory language is clear:

> The authority of ICE to detain aliens who are present in the country unlawfully derives from 8 U.S.C. §1225. That statute authorizes the detention of any alien who 1) is "an applicant for admission" to the country and 2) is "not clearly and beyond doubt entitled to be admitted." An alien is an "applicant t for admission" if he has arrived to or is present in the country but has not yet been lawfully granted admission.

Pena, 2025 WL 2108913, at *1 (citations omitted).

The BIA has also recognized for decades that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012). And in *In re Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the BIA adopted the government's interpretation of § 1225(b)(2), which is persuasive authority to guide this Court's review given its expertise in immigration law.

And though the Eighth Circuit has not yet weighed in directly on the applicability of 1225/1226 in this context, this same issue is now on appeal to the Eighth Circuit and likely to be resolved in the near future. *See Noel De La Cruz v. Kristi Noem, et al.*, 25-3153 (8th Cir. 2025). In the interim, Federal Respondents submit that a plain reading of the relevant statutes confirms that § 1225(b)(2) plainly covers Petitioner and requires his detention without bond.

B. Even were Petitioner detained under 8 U.S.C. § 1226(a), he would not be entitled to an additional bond hearing

Here, even were the Court to credit Petitioner's argument that his detention falls under 8 U.S.C. § 1226(a), Petitioner would not be entitled to a further bond hearing. Petitioner asserts that "[t]he government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due

process." Petition ¶ 68. Though it is true that discretionary bond is available under 8 U.S.C. § 1226(a), Section 1226(a) does not grant "any *right* to release on bond." *Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Here, Petitioner has already had a bond redetermination hearing.

But Petitioner has had just such hearing. *See* Lee Decl. ¶ 12; Petition ¶ 3. As recently as late August of this year, the BIA issued its final order on appeal in his bond redetermination hearing and found that he had not met his burden to show that he was not a danger to the community. *See* Dkt. No. 1-3 at 4 ("Given the nature, circumstances, and recency of the domestic violence incident, as well as the respondent's previous conviction for driving under the influence, we conclude that the respondent has not carried his burden of establishing that he does not represent a danger to the community, and thus is ineligible for bond."). Indeed, at that time under the statute that Petitioner relies on, the BIA ordered him "detained on no bond." *Id.*; *see* 8 U.S.C. ¶ 1226(a).

Thus, what Petitioner seeks is not an initial bond redetermination hearing but a subsequent bond redetermination hearing, which requires "a request for a subsequent bond redetermination . . . made in writing" which "shall be considered only upon a showing that the Petitioner's circumstances have changed materially since the prior bond redetermination." 8 C.F.R. 1003.19(e). The Petition appears to confirm such a request, arguing the Court "should enter a declaratory judgment finding that Petitioner is detained under 8 U.S.C. § 1226(a) and order him released on the bond issued by the IJ." *Id.* ¶ 74.

Though Petitioner did seek a subsequent bond redetermination which was denied, he makes no showing in the Petition, TRO Motion, or related filings, that any

circumstances have changed materially since the August 21, 2025 BIA order in his bond proceedings. Nor should he be permitted to make that showing for the first time on reply. Thus, even were the Court to consider Petitioner's detention as falling under 8 U.S.C. § 1226(a) (and it should not), the relief Petitioner seeks is not warranted.

IV. The remaining *Dataphase* factors do not support a temporary restraining order.

For the reasons discussed above, Petitioner is unlikely to succeed on the merits of his Petition. Thus, the Court need not even reach the remaining factors, given Petitioner's failure to show a likelihood of success on the merits of his claim. *See Devisme v. City of Duluth*, No. 21-CV-1195 (WMW/LIB), 2022 WL 507391, at *4 (D. Minn. Feb. 18, 2022) ("Because Devisme has not demonstrated a likelihood of success on the merits, the Court need not address the remaining *Dataphase* factors."). But even if the Court were to consider the other factors, Petitioner's claim fails.

Although the lack of a likelihood of success on the merits should be dispositive in this case, the remaining *Dataphase* factors do not collectively support injunctive relief either. In the absence of an injunction, Petitioner will remain detained, thus ensuring that he is present if ordered removed and that the community is protected. Moreover, the temporary restraining order that Petitioner seeks will cause harm to the government.

Importantly, the Court must take into consideration the public consequences of injunctive relief against the government. *See Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008) (cautioning that the Court "should pay particular regard for the public consequences" of injunctive relief). The government has a compelling interest in the steady enforcement of its immigration laws. *See Miranda v. Garland*, 34 F.4th 338, 365–66 (4th Cir. 2022)

(vacating an injunction that required a "broad change" in immigration bond procedure); *Ubiquity Press Inc. v. Baran*, No 8:20-cv-01809-JLS-DFM, 2020 WL 8172983, at *4 (C.D. Cal. Dec. 20, 2020) ("the public interest in the United States' enforcement of its immigration laws is high"); *United States v. Arango*, CV 09-178 TUC DCB, 2015 WL 11120855, at 2 (D. Ariz. Jan. 7, 2015) ("the Government's interest in enforcing immigration laws is enormous.").

Judicial intervention would only disrupt the status quo. *See, e.g.*, *Slaughter v. White*, No. C16-1067-RSM-JPD, 2017 WL 7360411, at * 2 (W.D. Wash. Nov. 2, 2017) ("[T]he purpose of a preliminary injunction is to preserve the status quo pending a determination on the merits."). The Court should avoid a path that "inject[s] a degree of uncertainty" in the process. *USA Farm Labor, Inc. v. Su*, 694 F. Supp. 3d 693, 714 (W.D.N.C. 2023). The BIA exists to resolve disputes like the one regarding Petitioner's detention. *See* 8 C.F.R. § 1003.1(d)(1). By regulation it must "provide clear and uniform guidance" "through precedent decisions" to "DHS [and] immigration judges." *Id.* Respondents respectfully ask that the Court allow the established process to continue without disruption.

Petitioner's proposed order would also necessarily hinder the governments enforcement of its immigration laws, including insofar as it would enjoin his transfer. Dkt. No. 4 at 30. It would also incur costs associated with supervising Petitioner outside of detention and costs associated with re-detaining him later to carry out his removal, if ordered. Thus, as with the first *Dataphase* factor, the remaining factors weigh against entering emergency injunctive relief.

Thus, the Court should deny the TRO Motion as well as the Petition.

C. CONCLUSION

For the foregoing reasons, Federal Respondents request the Court deny the Petition and hold Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) as well as dismiss the Petition for lack of jurisdiction or deny it on the merits. It should also dismiss the improperly named Federal Respondents to this case, and deny his motion for a temporary restraining order.[10]

* * *

Dated: November 14, 2025

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[10] No evidentiary hearing is necessary in this matter because the record, including the submissions filed with this response provide a sufficient record upon which the Court can adjudicate the Petition.