501822UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:25-cv-04480-JMB-ECW

VICTOR VAZQUEZ AVILEZ

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Victor Vazquez Avilez filed this petition for a writ of habeas corpus because he wants an immigration court to conduct a bond hearing in connection with his detention by the U.S. Immigration and Customs Enforcement ("ICE"). After this Court set a briefing schedule for the petition, Vazquez Avilez filed a motion for a temporary restraining order, asking the Court to block his transfer out of Minnesota and order an immediate bond hearing. Dkt. 5. The Court already ruled on that motion, Dkt. 10, so Respondents Pamela Bondi, Kristi Noem, Todd M. Lyons, David Easterwood, ICE, and the Department of Homeland Security (collectively "the Federal Respondents") will not address it further.

This Court should dismiss Vazquez Avilez's petition for lack of jurisdiction, because Congress has not empowered federal district courts to address the issues that he raises. On the merits, Vazquez Avilez is not entitled to habeas relief because his detention is mandatory—he is not eligible for bond or a bond hearing.

BACKGROUND

The Federal Respondents draw the following background from Vazquez Avilez's petition, the Declaration of John D. Ligon ("Ligon Decl."), and the accompanying exhibits.

I. Factual and Procedural Background

Vazquez Avilez is a native and citizen of Mexico. Ligon Decl. ¶ 4; Pet. ¶ 31. He claims to have initially entered the United States in 2003. Pet. ¶ 32. According to ICE's records, Vazquez Avilez went through a two-week period in August 2003 of entering the country, being arrested, agreeing to voluntarily depart, and then being arrested a few days later. Ligon Decl. ¶ 7, Ex. A, at 3. At this point, everyone agrees that Vazquez Avilez entered the country without inspection. Ligon Decl. ¶ 4; *Id.* Ex. A, at 1; Pet. ¶ 32.

On November 21, 2025, officers from ICE's Enforcement and Removal Operations in St. Paul encountered Vazquez Avilez outside his residence in St. Paul. Ligon Decl. ¶ 5; *Id.* Ex. A, at 3.[1] Unlike his string of voluntary departures in the early 2000s, Vazquez Avilez refused to voluntarily depart the country this time around. Ligon Decl. Ex. A, at 4. Thus, ICE began removal proceedings against him by issuing a Notice to Appear. Ligon Decl. ¶ 7, Ex. B. The Notice to Appear charged Vazquez Avilez with removability under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, which is codified at 8 U.S.C. § 1182(a)(6)(A)(i)). Ligon Decl. Ex. B, at 1.

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[1] Vazquez Avilez's submissions repeatedly state or allege that his encounter with ICE occurred on October 21, 2025, and that he has been in ICE custody since then. *See, e.g.*, Pet. ¶ 37; Dkt. 7, at 3. That is not correct.

The Immigration Court scheduled a hearing for December 10, 2025, in Vazquez Avilez's removal proceedings. Ligon Decl. ¶ 6. To date, Vazquez Avilez has not asked for a bond hearing or otherwise sought release from detention. Ligon Decl. ¶ 8. Instead, he filed the present habeas petition and urged this Court to let him skip all administrative attempts to seek release pending his removal proceedings. Pet. ¶¶ 22-30. The relief Vazquez Avilez wants is "immediate release to the extent that Respondents justify his detention on 8 U.S.C. § 1225(b)(2)" or a "custody redetermination hearing in which he is not erroneously treated as detained pursuant to 8 U.S.C. § 1225(b)(2) and is instead treated as a detainee under 8 U.S.C. § 1226(a)." Pet. ¶¶ 66, 70. Neither request makes sense given that Vazquez Avilez has not even raised the issue of his detention in Immigration Court.

II. Legal Background

For more than a century, this country's immigration laws have authorized immigration officials to charge noncitizens[2] as removable from the country, arrest those subject to removal, and detain them 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. Garland*, 115 F.4th 928 (8th Cir. 2024) (quoting *Demore v. Kim*, 538 U.S. 510, 523 (2003)), *rehearing by panel and en banc denied* 2025 WL 837914 (8th Cir. Mar. 18, 2025); *see also Demore*, 538 U.S. at 523 n.7 ("In fact, prior to 1907 there was no provision permitting bail for any aliens

[2] The statutory term "alien" means any person not a citizen or national of the United States. 8 USC § 1101(a)(3). The Federal Respondents use the term "noncitizen" as the equivalent of the statutory term "alien." *See Nasrallah v. Barr*, 590 U.S. 573, 578 n.2 (2020).

during the pendency of their deportation proceedings."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."). 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)).

All of this explains why Congress enacted a multi-layered statutory framework for detaining 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. Vazquez Avilez's petition in this case challenges which of two statutes governs his detention: § 1225 or § 1226.

A. Detention under § 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 noncitizen "who are applicants for admission . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). And 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). Vazquez Avilez satisfies this definition and is therefore treated as an "applicant for admission" regardless of whether he wants to pursue legal status in the United States.

Section 1225 sets out the inspection procedures applicable to applicants for admission. Individuals "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"[3] noncitizens "initially determined to be inadmissible because of fraud, misrepresentation, or lack of valid documentation." Noncitizens falling under this 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 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). Vazquez Avilez falls into this category: he is an applicant for admission, but he is not covered under (b)(1) because he is not "arriving" in the United States—he has been here for decades. Subject to exceptions not applicable in this case, "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

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[3] 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.

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. Detention under § 1226

Section 1226 covers a different immigration process: arrest and detention of noncitizens pending removal. The statute provides that a noncitizen "may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). For noncitizens arrested under § 1226(a), the Attorney General and DHS have broad discretionary authority to detain a noncitizen during removal proceedings.[4] *See* 8 U.S.C. § 1226(a)(1) (DHS "may continue to detain the arrested" noncitizen during the pendency of removal proceedings).

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[4] 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 . . . although 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).

When a noncitizen is apprehended, a DHS officer makes an initial discretionary determination concerning release, *see* 8 C.F.R. § 236.1(c)(8), after which DHS can continue detention, *see* 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)). If DHS releases the noncitizen, then the agency may set a bond or condition for release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that a noncitizen should remain detained during removal proceedings, then the noncitizen can request a bond hearing. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). An immigration judge conducts a bond hearing and decides whether release is warranted, based on factors that account for ties to the United States and the possible risks of flight or danger to the community. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (identifying 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 alien or [DHS].").

Tellingly, none of the § 1226 detention procedures occurred in Vazquez Avilez's case. No DHS officer made an initial discretionary decision, Vazquez Avilez did not request a bond, and no immigration judge conducted a bond hearing. In other words, everyone—including Vazquez Avilez—understands that he is being detained pursuant to § 1225 rather than § 1226. *See, e.g.*, Pet. ¶ 64 (acknowledging that the Federal Respondents are detaining Vazquez Avilez under 8 U.S.C. § 1225(b)(2)).

ARGUMENT

The parties' disagreement in this case comes down to whether Vazquez Avilez is 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 as well, expressly directing that noncitizens like Vazquez Avilez who get into the United States without being inspected "shall be deemed for purposes of this chapter an applicant for admission" and then detained pursuant to § 1225(b)(1) or § 1225(b)(2). *Id.* § 1225(a)(1). Under a straightforward reading of the statute, Vazquez Avilez is subject to mandatory detention under § 1225(b)(2). He is not entitled to a bond hearing, and the Court should deny his habeas petition.

I. Threshold Issues

Before getting to the merits, there are two threshold issues to resolve. First, this Court lacks habeas jurisdiction to review Vazquez Avilez'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 Vazquez Avilez's efforts to overcome the provision fail. Second, DHS and ICE are not proper parties to this case. Vazquez Avilez included them solely for purposes of trying to obtain APA-style relief. *See* Pet. at 27, ¶¶ 6-7. That is improper in a habeas case, and the Court should dismiss DHS and ICE no matter how it resolves Vazquez Avilez's petition.

A. Jurisdiction

This Court lacks jurisdiction over Vazquez Avilez's habeas petition. Under § 1252(g), federal courts cannot review challenges—whether raised directly or roundaboutly—to the government's decision to commence removal proceedings against a noncitizen. Vazquez Avilez tires to get out in front of this issue, Dkt. 7, at 3-6, but none of his arguments are persuasive.

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."[5] 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

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[5] 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.

discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

This habeas petition stems from Vazquez Avilez's detention following a notice to appear that initiated removal proceedings. More precisely, Vazquez Avilez challenges ICE's choice to detain him pursuant to § 1225(b)(2) rather than § 1226. He expressly asks this Court to override ICE's choice and declare that he "is detained pursuant to 8 U.S.C. § 1226(a)(1)." Pet. ¶ 73. That puts this petition 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). This Court recently acknowledged the rule as 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).

Vazquez Avilez asks the Court to ignore Congress's jurisdiction-stripping provisions because he "is not challenging any decision to commence proceedings." Dkt. 7, at 4. For support, Vazquez Avilez observes that removal proceedings are governed by § 1229 and his detention is governed by § 1225. His point seems to be that a decision or

action made pursuant to one statute cannot possibly "arise out" of a decision or action made pursuant to a different statute. Yet § 1252(g) is not limited to blocking judicial review of decisions or actions made pursuant to the provisions of § 1229. The statute bars review of all decisions or actions to commence proceedings *under this chapter*—i.e., Chapter 12, which spans from 8 U.S.C. § 1101 to § 1537.

As explained above, Vazquez Avilez was served with a Notice to Appear that initiated removal proceedings against him. The notice explained that he was a noncitizen "present in the United States who has not been admitted or paroled." Ligon Decl. Ex. B, at 1. That is the exact category of noncitizen Congress deems to be an "applicant for admission" under § 1225. And Vazquez Avilez is being detained under § 1225(b)(2), while his removal proceedings are ongoing. Indeed, the express purpose of subsection (b)(2) is to detain applicants for admission "***for a proceeding under section 1229a of this title***." (emphasis added) There is no detention under § 1225 without 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)). Vazquez Avilez is wrong that his detention does not "arise out of" the commencement of removal proceedings.

Nor is Vazquez Avilez correct that his petition presents "a pure question of law." Dkt. 7, at 5. The Court need look no further than the filings in this case. Between Vazquez Avilez's petition, his TRO brief, the Federal Respondents' response, and the supporting declaration the parties have drawn this Court into resolving questions about: (1) Vazquez

Avilez's arrival into the country and what his encounters were with immigration officials at that time; (2) long-standing agency practices or interpretations of applicable statutes; and (3) Vazquez Avilez's recent arrest and removal proceedings. Those are fact-heavy issues. 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

Vazquez Avilez included DHS and ICE as respondents for his habeas petition. Pet. ¶¶ 17, 19. It was a mistake for Vazquez Avilez to include them because agencies are not people. "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.* For that reason, DHS and ICE are not proper parties to this case.

The reason Vazquez Avilez named such obviously improper respondents is clear from the face of the petition: he is trying to shoehorn APA-style relief into a habeas action. Vazquez Avilez does not even try to hide it. The "prayer for relief" in the petition asks the Court to broadly declare that "Respondents' action is arbitrary and capricious" and that "Respondents' failed to adhere to its [sic] regulations." Pet. at 26. That relief would go well

beyond addressing Vazquez Avilez's detention situation, effectively converting this case into an APA action.[6]

This is not an APA case. Vazquez Avilez paid only a $5.00 filing fee, styled his initial pleading as a petition for writ of habeas corpus, and did not go through the mechanisms for serving a summons and traditional civil complaint pursuant to Federal Rule of Civil Procedure 4. The Court ordered the Federal Respondents to answer the petition and "show[] cause why the writ should not be granted," Dkt. 4, not prepare an administrative record of a final agency action upon which the parties could present cross-motions for summary judgment. It is black-letter law 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 Vazquez Avilez'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.

Vazquez Avilez is not the first petitioner to sneak civil claims into a habeas action. But this Court consistently rejects such tactics. Just a few months ago, a report and recommendation in a different habeas case decried the practice as "Frankenstein pleading"

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[6] Narrow habeas relief would be an adequate remedy for Vazquez Avilez'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).

that "unduly broadens the narrow scope of habeas corpus and combines proceedings with 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). Vazquez Avilez is free to file a new civil action to pursue APA claims, but they are not properly before the Court in a petition for a writ of habeas corpus. And with those claims excluded from the case, there is no reason to keep DHS or ICE as parties.

II. Merits

Turning to the merits, the Court should deny Vazquez Avilez's habeas petition because he is not entitled to a bond hearing. A plain reading of the statutes at issue confirms that Vazquez Avilez 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. Vazquez Avilez's Detention

The Court should reject Vazquez Avilez request to convert his § 1225(b)(2) detention into § 1226(a) detention. *See* Pet. ¶¶ 72-74. Regardless of whether Vazquez Avilez thinks he is "seeking admission," *see* Pet. ¶ 13, the simple fact is that Congress deemed him to be an "applicant for admission" through § 1225(a)(1). Vazquez Avilez's own allegations confirm that he meets the definition, as he is a noncitizen "present in the United States who has not been admitted." *See* Pet. ¶¶ 31-33 ("Vazquez Avilez is a native and citizen of Mexico [who] entered the United States without inspection sometime in

2003."). Under § 1225(b)(2), a noncitizen who is an applicant for admission and not subject to (b)(1) must be detained during removal proceedings.

Vazquez Avilez wants to short circuit this analysis by shifting the Court's focus to the phrase "seeking admission," highlighted in the block quote of § 1225(b)(2) below:

> 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.

His argument is that a noncitizen who is an "applicant for admission" must ***also*** be seeking admission before the mandatory detention provisions of § 1225(b)(2) are triggered. *See* Dkt. 7, at 10-22. Part and parcel with this argument is Vazquez Avilez's passing assertion 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. Put differently, Vazquez Avilez thinks there is no mandatory detention for a noncitizen who is an "applicant for admission" unless that person is arriving and seeking admission at the time he encounters an immigration officer. Basic canons of interpretation foreclose Vazquez Avilez's reading of § 1225.

First, there is the plain text and meaning of the provisions at issue. 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, that dooms Vazquez Avilez's suggestion that § 1225 governs only arriving noncitizens.

His emphasis on "seeking admission" fares no better. Section 1225(b)(2) does not create two subclasses of applicants for admission—one comprised of noncitizens who are seeking admission, and one comprise of noncitizens who aren't seeking admission. The phrases are merely two ways to say the same thing. Indeed, 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 Congress 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.

Vazquez Avilez obfuscates the issue by asserting that § 1225(b) applies only "to those arriving at or near the border." Dkt. 7, at 21. Detention under § 1225(b)(2) has nothing to do with whether a noncitizen is arriving; the trigger is "in the case of an [noncitizen] who is an ***applicant for admission***." 8 U.S.C. § 1225(b)(2) (emphasis added). And as explained above, Congress deemed noncitizens present in the United States without admission to be "applicants for admission," choosing not to limit the definition to only arriving noncitizens. *Id.* § 1225(a)(1).

Second, there is the overall statutory structure. 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. There is no third category of applicants for admission as Vazquez Avilez suggests. 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 to (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. The statute says nothing about detaining applicants for admission. That is the role § 1225(b) plays, by addressing 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]."). Because Vazquez Avilez 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).[7]

* * *

Vazquez Avilez's reading of the statues at issue is not correct. And this Court would not be the first tribunal to reach that conclusion. A federal district court in Massachusetts 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 result was correct: the statutory language at issue is clear and does not require the meandering analysis Vazquez Avilez proposes:

> 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 for admission" if he has arrived to or is present in the country but has not yet been lawfully granted admission.

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[7] Vazquez Avilez points to the mandatory detention provisions in § 1226(c), arguing that those recent changes would be superfluous under the Federal Respondents' interpretation of § 1225(b). Dkt. 7, at 22 (citing 8 U.S.C. § 1226(c)(1)(E)). But that provision requires mandatory detention for noncitizens who are charged with, arrested for, or convicted of particular crimes—circumstances not present here. This provision cannot shrink the scope of mandatory detention under an altogether different statute.

Pena, 2025 WL 2108913, at *1 (citations omitted); *see also Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sep. 30, 2025).

Equally persuasive is the BIA's analysis of this exact issue. That analysis should command ***more*** respect—not less, as Vazquez Aviles suggests, Dkt. 7, at 22 n.1—because the BIA specializes in resolving legal questions that arise in immigration proceedings. The tribunal has 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). Thus, the BIA recently adopted the government's interpretation of § 1225(b)(2) and resolved the issues that Vazquez Avilez raises in his petition. *See In re Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). This Court should follow suit.

B. Congressional Intent

When the plain text of a statute is clear, that meaning is controlling and courts "need not examine legislative history." *Doe v. Dep't of Veterans Affs. of U.S.*, 519 F.3d 456, 461 (8th Cir. 2008). Indeed, "in interpreting a statute a court should always turn first to one, cardinal canon before all others." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). The Supreme Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Id.* (citations omitted). Thus, "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Id.* (citing *Rubin v. United States*, 449 U.S. 424 at 430 (1981)).

Even if legislative history is relevant, nothing within it "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Indeed, the legislative history and evidence regarding the purpose of § 1225(b)(2) show that Congress did not mean to treat noncitizens arriving at ports of entry worse than those who successfully enter the nation's interior without inspection. Congress passed IIRIRA to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It "intended to replace certain aspects of the [then-]current 'entry doctrine,' under which illegal [noncitizens] who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to [noncitizens] who present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225).

Vazquez Avilez asks this Court for a statutory interpretation that ignores Congress's goal. His construction means that noncitizens like him who "crossed the border unlawfully" are in a better position than those who follow the rules and "present themselves for inspection at a port of entry." *Id.* This cannot be the law. Accepting Vazquez Avilez's position means that noncitizens who present at ports of entry are subject to mandatory detention under § 1225, while those who evade detection and cross without inspection are rewarded with eligibility for a bond under § 1226(a).

C. Prior Agency Practices

That leaves Vazquez Avilez's complaint that prior agency practices were different. *See, e.g.*, Dkt. 7, at 23-26. But prior practices are not dispositive. The weight given to agency interpretations "must always 'depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 432-33 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)). And here, prior agency practices were not based on a persuasive supporting analysis. *See* 62 Fed. Reg. at 10323; *see also Maldonado v. Bostock*, 2023 WL 5804021, at *3, 4 (W.D. Wash. Aug. 8, 2023) (noting the agency provided "no authority" to support its reading of the statute).

"[W]hen the best reading of the statute is that it delegates discretionary authority to an agency," the Court must "independently interpret the statute and effectuate the will of Congress." *Loper Bright*, 603 U.S. at 395 (cleaned up). Here, "read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297 (cleaned up).

D. Vazquez Avilez's Regulatory and Constitutional Claims

Neither DHS regulations nor the Constitution require granting Vazquez Avilez habeas relief. The Court should deny relief on Counts Three and Four of the petition for substantially the same reasons listed above. But a few points warrant further mention.

In Count Three, Vazquez Avilez contends that mandatory detention violates his constitutional right to due process. Pet. ¶¶ 81-83. That is not the law. An immigration

detainee has no constitutional right to release on bond when he is held pursuant to a statutory provision requiring detention during removal proceedings. *See Banyee*, 115 F.4th at 931. In Count Four, Vazquez Avilez contends that the government violated the INA's implementing regulations. Pet. ¶¶ 84-88. The Federal Respondents disagree. But even if Vazquez Avilez had a ***regulatory*** right to bond, that right would not trump the ***statutory*** provisions in § 1225(b)(2) that require detention. Thus, none of the allegations in Counts Three or Four of the petition entitle Vazquez Avilez to habeas relief.

CONCLUSION

For the foregoing reasons, the Court should dismiss Vazquez Avilez's habeas for lack of jurisdiction or deny it on the merits. The Court should also dismiss the agencies improperly named as respondents to this case and decline Vazquez Avilez's invitation to issue improper APA-style relief.

Dated: December 5, 2025

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