UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Victor Vazquez Avilez,

Petitioner,

Case No. 0:25-cv-04480-JMB-ECW

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,

David Easterwood, Acting Director, St. Paul Field Office Immigration and Customs Enforcement,

and,

Ryan Shea, Sheriff of Freeborn County.

Respondents

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

INTRODUCTION

Petitioner is undoubtably entitled to a bond hearing, and Respondents have erred in several ways. Granting a bond hearing is fully consistent with the record in this case, the plain text of the statute, and well-established interpretive canons requiring courts to apply Congress's own definitions and to presume that enacted legislation carries substantive meaning. It also aligns with nearly three decades of bipartisan consensus on this issue—as well as with Respondents' own long-held position from 1996 until as recently as July of this year. Respondents' newly crafted arguments to the contrary are unpersuasive and should be rejected.

I. THIS COURT HAS JURISDICTION

This issue is reviewable in federal court. This Court rendered a detailed analysis of this issue in *J.O.E.*, 2025 WL 2466670 at *5. Respondents have not presented new or novel arguments on this point and the fact remains: Petitioner "does not seek to challenge Respondents' initiation of removal proceedings against him. He has not requested staying, enjoining, or otherwise terminating the removal proceedings. And he is not challenging a final removal order." *Id.* (internal citations omitted). Just as in *J.O.E.*, this court has jurisdiction.

To find otherwise would be to embrace a jurisdictional theory that the Supreme Court expressly rejected as "lead[ing] to staggering results." *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018). The citations on page 9 of the initial

memorandum in support of injunctive relief demonstrate that numerous district courts have recognized and exercised jurisdiction in cases that mirror the circumstances presented here. *See* ECF No. 7, at 9.

Despite Respondents' characterizations, this is not a challenge to the commencement of removal proceedings. ECF No. 12, at 9. Removal proceedings started with the filing of a Notice to Appear. Petitioner is not seeking to terminate those proceedings or challenging them in any way in this action. 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—a bond hearing. *See* 8 U.S.C. § 1226(a). Petitioner's custody matter 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).

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. 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). Once again, the issue here is entirely collateral to removal proceedings.

Courts have dismissed actions that failed because the relief sought ultimately targeted the initial detention decision. *See Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("at its core he 'challenges ICE's decision to lodge a detainer against him."); *Sissoko v. Rocha*, 509 F.3d 947, 948 (9th Cir. 2007) ("Fourth Amendment-based damages claim for false arrest"); *Valencia-Mejia v. United States*, 2008 WL 4286979, at *1 (C.D. Cal. Sept. 15, 2008) (same); *Wang v. United States*, 2010 WL 11463156, at *1 (C.D. Cal. Aug. 18, 2010) (same). None of these cases sought to vitiate a statutory right to bond or any sort of release. They sought monetary damages for the decision to detain in the first instance. Once again, Petitioner here is not challenging his removal

proceedings. 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:

> 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

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[1] In *Saadulloev v. Garland*, the 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).

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

II. RESPONDENTS ARE PROPER PARTIES

Respondents Attorney General Bondi, Secretary Noem, Mr. Lyons, DHS, and ICE are proper parties to this petition because they are legal custodians of Petitioner, and power over Petitioner is vested in them. EOIR is also a proper party because they are perpetuating Petitioner's unlawful detention by refusing to give him a bond hearing to which he is entitled under 8 U.S.C. § 1226(a).

Rumsfeld v. Padilla set forth an immediate custodian rule for traditional habeas prisoner petitions but expressly declined to rule on whether the immediate custodian rule applies in the context of immigration habeas petitions. 542 U.S. 426, 435 n.8 (2004). The legal custodian rule is more apt for immigration habeas petitions. "Detainees cannot be released without the express authorization of ICE; ICE, and only ICE, may authorize release of any detainee." *Calderon v. Sessions*, 330 F. Supp. 3d 944, 952 (S.D.N.Y. 2018). Moreover, courts have recognized national-level policy makers as proper respondents in habeas actions. *See, e.g.*, *Santos v. Smith*, 260 F. Supp. 3d 598, 607-08 (W.D. Va. 2017); *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 723-25 (D. Md. 2016); *Somir v. United States*, 354 F. Supp. 2d

215, 217-18 (E.D.N.Y. 2005); *S.N.C. v. Sessions*, 325 F. Supp. 3d 401, 407 (S.D.N.Y. 2018). All Respondents are properly named parties in this Petition.

Respondents attempt to distract the Court by alleging that Petitioner's claim that Respondents' action is arbitrary and capricious is not properly raised in this habeas action. Respondents' citations, however, bear no relation to Petitioner's claims. *See* ECF Doc. 12, at 13-14; *Spencer v. Haynes*, 774 F.3d 467 (8th Cir. 2014) (holding federal prisoner improperly used habeas petition to assert a conditions-of-confinement Eighth Amendment claim); *Kruger v. Erickson*, 77 F.3d 1071 (8th Cir. 1996) (concluding habeas petition did not make any colorable allegation that underlying conviction was invalid or that prisoner was otherwise being denied his freedom from unlawful incarceration and was in actuality a § 1983 claim that had been previously rejected by the state courts). The cases cited in *Canada v. Olmsted County Cmty. of Corrs* pointed out that civil complaints filed by prisoners are subject to the Prison Litigation Reform Act (PLRA), which has "wholly different rules and procedures" from habeas petitions. 2022 WL 607482, at *8 (D. Minn. Mar. 2022) (first citing *See Smith v. Fikes*, No. 20-CV-1294 (JRT/TNL), 2020 WL 6947848, at *1 (D. Minn. Oct. 12, 2020), *report & recommendation adopted*, 2020 WL 6947433 (D. Minn. Nov. 25, 2020); and then citing *Malcom v. Starr*, No. 20-CV-2503 (MJD/LIB), 2021 WL 931213, at *2 (D. Minn. Mar. 11, 2021)). Those cases are wholly inapposite, however, because the PLRA does not apply to immigration

detainees. *See Zongo v. Brott*, No. CV 21-407 (NEB/BRT), 2022 WL 2182196, at *3 (D. Minn. Mar. 30, 2022), *report and recommendation adopted,* No. 21-CV-407 (NEB/BRT), 2022 WL 2181759 (D. Minn. June 16, 2022).

The "Frankenstein pleadings" that Respondents refer to from *Patel v. Noem*, No. 25-cv-3167 (ECT/DJF) (D. Minn. Sept. 12, 2025), combined a habeas with a petition for a writ of mandamus asking the court to order USCIS to adjudicate the petitioner's U visa application.[2] There is no correlation between evaluating the cause of detention and ordering another agency to act on a benefit application. Petitioner agrees that such cobbling of ideas and remedies is too disjointed to sustain. There is no concern here that there is a tenuous link between the cause of Petitioner's detention and why it persists. It is the failure to adhere to the law and regulation that is causing his confinement. Petitioner challenges his unlawful detention and asks for a bond hearing because he is detained under 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2). *Patel* is inapposite.

Respondents' litany of citations try to muddle the issues before the Court. Petitioner is challenging the fact of his confinement, not the corresponding conditions or the policies that govern the conditions themselves. Petitioner's claims

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[2] While not particularly important, it is also worth noting that this matter also involved a post removal order petition. This petition was also to stymie removal as much as secure release. The instant Petition does not want for a singular focus – release.

are accordingly properly pled and purposefully focused on the legal actions that have caused his indefinite detention.

III. The Plain Text Illustrates that 8 U.S.C. § 1225(b)(2)(A) does not apply to Petitioner

Next, we turn to the central issue—establishing inconclusively that § 1225(b)(2)(A) does not apply to Petitioner. Respondents' argument that Petitioner is detained under § 1225(b)(2)(A) runs headlong into the cannon against surplusage. As a general matter, "'we must 'give effect, if possible, to every clause and word of [the] statute.'" *Fischer v. United States*, 603 U.S. 480, 486 (2024) (citing *Williams v. Taylor*, 529 U.S. 362, 404 (2000)). Respondents casually highlight the phrase "seeking admission" out of the second clause of 8 U.S.C. § 1225(b)(2), suggesting that "applicant for admission" and "seeking admission" are just "two ways to say the same thing." ECF No. 12, at 15-16. This is particularly problematic given that the term "admission" carries a specific statutory definition that applies throughout the INA. *See* 8 U.S.C. § 1101(a)(13) ("the lawful entry of the alien into the United States after inspection and authorization by an immigration officer"). Given that "[t]he word 'entry' [which] by its own force implies a coming from outside." *U.S. ex rel. Claussen v. Day*, 279 U.S. 398, 401 (1929), Respondents' reading not only renders the phrase wasted ink, but it also assigns a new definition, independent from the one Congress proved.

Respondents' second argument cherry picks language from *Jennings* for the proposition that there are only two classes of "applicants for admission." ECF No. 12, at 16-17. The full quote cabined that language by noting that the statement was limited to the issues "relevant [there]," in a case dealing with a process that "generally begins at the Nation's borders and ports of entry." *Jennings*, 583 U.S. at 286. Because no one had ever advanced the novel theory that this provision applies beyond the ports of entry – indeed the Supreme Court noted that "§ 1225(b) applies primarily to aliens seeking entry into the United States," *Id.* at 297 – the Supreme Court was not dealing with the issue presented to this Court.

Indeed, language throughout *Jennings* actually suggests that mandatory custody provisions at 8 U.S.C. § 1225(b) apply only "at an official 'port of entry" (e.g., an international airport or border crossing) or [to those] who have been apprehended trying to enter the country at an unauthorized location." *Id.* at 281. Thus, the quoted language stands for the proposition that there are two classes of individuals at the port of entries who may be detained, those under section 1225(b)(1)(B)(ii) and those under 1225(b)(2), but *Jennings* in no way expands the scope of these provisions beyond the borders.

Respondent's third argument boils down to a suggestion that the specific governs over the general. *See* ECF No. 12, at 17 (citing *Hughes v. Canadian Nat'l Ry. Co.*, 105 F.4th 1060, 1067 (8th Cir. 2024). That does nothing to establish that

Petitioner is "seeking admission," so regardless of whether 8 U.S.C. § 1225(a)(2)(B) applies to "applicants for admission," it only does so if that person is also "seeking admission." Petitioner was not at the time of his detention, and he is not today, seeking "admission" as that term is defined at 8 U.S.C. § 1101(a)(13).

Moreover, Respondents fail to note that it appears that Petitioner was detained on a "warrant of arrest." Given that 8 U.S.C. § 1226(a) governs arrest and detention "[o]n a warrant issued by the Attorney General," it would appear that the specific provision at issue here would be 8 U.S.C. § 1226(a), and under that framework, "the Attorney General … may release the alien on … bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General." 8 U.S.C. § 1226(a)(2)(A). Thus, a bond hearing is appropriate.

Respondents next lean into a pair of decisions rendered amongst a maelstrom of more than 200 decisions siding with Petitioner. ECF No. 13, at 19. [3] Neither case is convincing. 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

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[3] Kyle Cheney, *More than 100 judges have ruled against the Trump admin's mandatory detention policy*, POLITICO (Oct. 31, 2025), https://www.politico.com/news/2025/10/31/trump-administration-mandatory-detention-deportation-00632086.

the court did engage with, and seem to endorse, the government's briefing, its ruling rested on faulty pleadings. As for *Pena v. Hyde*, the 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. Finally, although not brought forth in this case, Petitioner is aware of two additional cases that Respondents have cited in other district courts in analogous litigation. The first is *Sandoval v. Acuna*, in which the court selectively parsed *Jennings*, limiting its focus to the two categories identified in 8 U.S.C. § 1225 while failing to grapple with the statutory text governing "seeking admission," "inspection," and "examination." *See* No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025). The court further overlooked that § 1226(a) expressly addresses apprehension. The second is *Mina v. Trump*, which departs from the statute's plain language and adopts a reasoning that has been rejected by scores of courts nationwide, including within this District. *See* No. 8:25-cv-583, 2025 WL 3141178 (D. Neb. Nov. 10, 2025). None of these cases alter the analysis.

The citation to administrative precedent is of no more help to Respondents. In fact, the first case is illustrative as to why the "otherwise seeking admission" language at 8 U.S.C. § 1225(a)(3) does not mean that all "applicants for admission" are also necessarily "seeking admission." For starters, the terms are not "two ways

to say the same thing" as Respondents contend. ECF No. 12, at 16. By definition, "an 'applicant for admission,' [ ] must be 'present in the United States' or otherwise "arriv[ing] in the United States.'" *Romero*, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025) (citing 8 U.S.C. § 1225(a)(1)). "By contrast, one can 'seek admission' from anywhere in the world, 'for example, by applying for a visa at a consulate abroad.'" *Id.* (citing *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 741 (BIA 2012)). Furthermore, while many "applicants for admission" are seeking admission, and some noncitizens who are not "applicants for admission" may otherwise seek admission, it does not follow that all applicants must necessarily seeking admission. 8 U.S.C. § 1225(a)(3) simply states that all "applicants for admission," as well as anyone "seeking admission," must be inspected. Only when the two groups overlap does the mandatory custody provision at 8 U.S.C. § 1225(b)(2)(A) apply.

Nor should *Matter of Yajure Hurtado* move the needle. 29 I. & N. Dec. 216 (BIA 2025). That case stands merely for the proposition that the Department of Justice, which represents the government here, is taking the same position at the administrative level, where it manages the Board of Immigration Appeals, that it does before this Court. *See* 8 C.F.R. § 1003.1(a)(1) ("There shall be in the Department of Justice a Board of Immigration Appeals").

Respondents' legislative arguments fail for similar reasons. If, as Respondents contend, "a specific provision applying with particularity to a matter should govern

over a more general provision encompassing that same matter," ECF no. 13, at 17 (citing *Hughes*, 105 F.4th at 1067), then surely the specific confirmation that Congress was simply "restat[ing] the [then] current provisions in section 242(a)(1)" that provided bond hearings to noncitizens present without admission, H.R. Rep. No. 104-469, pt. 1, at 225 (1996), trumps general intent "to replace certain aspects of the [then-]current 'entry doctrine.'" ECF No. 12, at 20 (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)).

Finally, pursuant to Supreme Court precedent of recent vintage, "the 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 … 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). For 29 years Respondents viewed the statute as Petitioner does. That is "entitled to very great respect." *Id.*

A. Remaining *Dataphase* Factors Support Petitioner

Respondents appear to argue that there is none if they are right that the statute requires detention. ECF No. 12, at 22. The statute does no such thing, *supra*, and "'loss of liberty' is 'perhaps the best example of irreparable harm.'" *J.O.E.*, 2025 WL 2466670, at *6 (citing *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018)). Irreparable harm is established.

This would hardly be the first injunction against the government on this issue. It would be one of hundreds and this Court has already issued such a request. *J.O.E.*, 2025 WL 2466670, at *1. Embracing the government's position would essentially greenlight lawless government action, at least in the short term. Second, the government overturned the applecart here after 29 years of steadily providing bond hearings to individuals like Petitioner, and the suggestion that unlawful detention constitutes an acceptable status quo undermines the very foundation of *habeas corpus*.

In contrast, "[t]here is generally no public interest in the perpetuation of unlawful agency action." *Missouri v. Trump*, 128 F.4th 979, 997 (8th Cir. 2025). The equities favor Petitioner.

CONCLUSION

Respondents' policy articulated in *Matter of Yajure Hurtado* is a clear violation of the INA. The Court must grant Petitioner's writ of habeas corpus and order Respondents to provide him with a bond hearing consistent with 8 U.S.C. § 1226(a) within seven days.

Respectfully submitted,

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12/09/2025
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