

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:25-cv-04545-NEB-DTS

MARCO GANAN BAGUA,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

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

Petitioner Marco Ganan Bagua 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”). Petitioner also 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. 3. But by the time he filed that motion, Petitioner had already been transferred to an immigration detention facility in Texas. As directed by the Court, Dkt. 8, Respondents Pamela Bondi, Kristi Noem, Todd M. Lyons, David Easterwood, ICE, and the Department of Homeland Security (collectively “the Federal Respondents”) submit this consolidated response.

This Court should dismiss Petitioner’s petition for lack of jurisdiction because Congress has not empowered district courts to address the issues that he raises. On the merits, Petitioner is not entitled to habeas relief because his detention is mandatory—he is not eligible for bond or a bond hearing. Finally, the Court should deny Petitioner’s motion for a temporary restraining order as moot.

BACKGROUND

The Federal Respondents draw the following background from Petitioner's petition, the Declaration of Deportation Officer Angela Minner ("Minner Decl."), and the accompanying exhibits.

I. Factual and Procedural Background

Petitioner is a citizen and national of Ecuador. Minner Decl. ¶¶ 4, 14, Ex. A; Pet. ¶ 28. He entered the United States in June 2021 without inspection, by wading across the Rio Grande River with his spouse and two minor children. Minner Decl. ¶ 4; Pet. ¶ 29. Petitioner and his family were promptly apprehended by U.S. Border Patrol, which issued Petitioner a Notice to Appear in removal proceedings and then released him due to lack of bed space at the border facilities. Minner Decl. ¶ 4; Pet. ¶¶ 30-31.¹

About a month later, officers from ICE's Enforcement and Removal Operations in St. Paul issued Petitioner a superseding Notice to Appear. Minner Decl. ¶¶ 5, 14, Ex. B. Petitioner appeared before an immigration judge two times in 2023, and then moved to administratively close his removal proceedings based on a petition for nonimmigrant status that he filed with the U.S. Citizenship & Immigration Service ("USCIS") in October 2023. Minner Decl. ¶¶ 6-7. An immigration judge granted Petitioner's motion in November 2023, and USCIS issued a "bona fide" determination on his pending application in May 2024, Minner Decl. ¶¶ 8-9; Pet. ¶ 35.

¹ The petition alleges that Petitioner encountered "Respondents" at the time of entry. Pet. ¶ 30. That is wrong. U.S. Border Patrol is not a respondent in this case.

Fast forward to November 2025. Officers with the Rosemount Police Department arrested Petitioner for driving after revocation, and criminal charges against are currently pending. Minner Decl. ¶ 10. In fact, Petitioner has more than 20 traffic and parking citations in the last three years. Minner Decl. ¶ 10. ICE officers therefore arrested Petitioner following his release from the Dakota County Jail so that the agency could continue removal proceedings. Minner Decl. ¶ 11. And on November 28, 2025, ICE moved to re-calendar Petitioner's removal proceedings with the immigration court. Minner Decl. ¶ 12.

Petitioner filed this habeas petition on the evening of December 7, 2025. Dkt. 1. At the time, he was being detained in the Sherburne County Law Enforcement Center in Elk River, Minnesota. Pet. ¶ 37. But the next day—before ICE learned of the petition—he was transferred to the Port Isabel Detention Center in Los Fresnos, Texas. Minner Decl. ¶ 13. Despite the transfer, Petitioner filed a motion for a temporary restraining order asking the Court to block ICE from moving him outside of the District of Minnesota. Dkt. 3. The Court entered a briefing schedule, and the Federal Respondents now submit their combined response to the habeas petition and motion for a temporary restraining order.

II. Legal Background

For more than a century, this country's immigration laws have authorized immigration officials to charge noncitizens² as removable from the country, arrest those subject to removal, and detain them during removal proceedings. *See Abel v. United States*,

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” instead. *See Nasrallah v. Barr*, 590 U.S. 573, 578 n.2 (2020).

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 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. Petitioner’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). Petitioner

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).

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.

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 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 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).

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

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).

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 Petitioner’s case. No DHS officer made an initial discretionary decision, Petitioner did not request a bond, and no immigration judge conducted a bond hearing. In other words, everyone—including Petitioner—understands that he is being detained pursuant to § 1225 rather than § 1226. *See, e.g.*, Pet. ¶ 64 (acknowledging that the Federal Respondents are detaining Petitioner under 8 U.S.C. § 1225(b)(2)).

ARGUMENT

The parties’ disagreement in this case comes down to whether Petitioner is detained under § 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 Petitioner 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). Based on a straightforward reading of the statute, Petitioner is subject to mandatory detention under § 1225(b)(2). He is not entitled to a bond hearing, and the Court should deny his petition.

The Federal Respondents acknowledge that this Court has considered and rejected the government’s arguments in these types of habeas cases. *See, e.g., Andres R.E. v. Bondi*, 2025 WL 3146312 (D. Minn. Nov. 4, 2025). Although the Eighth Circuit is poised to weigh-in soon, *see Avila v. Bondi*, No. 25-3248 (8th Cir. docketed Nov. 10, 2025), the

Federal Respondents are nevertheless obligated to raise the government's prior arguments here to preserve them for appeal.

I. Threshold Issues

Before getting to the merits, there are two threshold issues to resolve. First, this 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's efforts to overcome the provision fail. Second, DHS and ICE are not proper parties to this case. Petitioner included them solely for purposes of trying to obtain APA-style relief. *See* Pet. at 22, ¶¶ 6-7. That is improper in a habeas case, and the Court should dismiss DHS and ICE no matter how it resolves Petitioner's petition.

A. Jurisdiction

This Court lacks jurisdiction over Petitioner'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. Petitioner tires to get out in front of this issue, Dkt. 5, 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 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 Petitioner’s detention following a notice to appear that initiated removal proceedings. More precisely, Petitioner 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

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.

“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).

Petitioner asks the Court to ignore Congress’s jurisdiction-stripping provisions because he “is not challenging any decision to commence proceedings.” Dkt. 5, at 4. For support, Petitioner 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, Petitioner was served with a Notice to Appear and superseding Notice to Appear that initiated removal proceedings against him. The superseding notice explained that he was a noncitizen “present in the United States who has not been admitted or paroled.” Minner Decl. Ex. B, at 1. That is the exact category of noncitizen Congress deems to be an “applicant for admission” under § 1225. And Petitioner 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)). Petitioner is wrong that his detention does not “arise out of” the commencement of removal proceedings.

Nor is Petitioner correct that his petition presents “a pure question of law.” Dkt. 5, at 5. The Court need look no further than the filings in this case. Between Petitioner’s petition, his TRO brief, the Federal Respondents’ response, and the supporting declaration the parties have drawn this Court into resolving questions about: (1) Petitioner’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) Petitioner’s recent arrest and re-calendar of 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

Petitioner included DHS and ICE as respondents for his petition. Pet. ¶¶ 15, 17. It was a mistake 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 Petitioner 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. Petitioner 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 22. That relief would go well beyond addressing Petitioner’s detention situation, effectively converting this case into an APA action.⁶

This is not an APA case. Petitioner 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, Dkt. 8, 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 Petitioner’s sweeping challenge to how federal agencies interpret and

⁶ Narrow habeas relief 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).

apply § 1225, how they adhere to BIA precedent, or how they make detention decisions as to other individuals.

Petitioner is not the first habeas litigant 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” that “unduly broadens the narrow scope of habeas corpus and combines proceedings with incompatible procedural rules.” *Patel v. Noem*, 2025 WL 2823561, at *2 (D. Minn. Sept. 12, 2025), *adopted by* 2025 WL 2821375 (D. Minn. Oct. 3, 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 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 Petitioner’s habeas petition because he is not entitled to a bond hearing. A plain reading of the statutes at issue confirms that Petitioner 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’s Detention

The Court should reject Petitioner request to convert his § 1225(b)(2) detention into § 1226(a) detention. *See* Pet. ¶¶ 72-74. Regardless of whether Petitioner thinks he is

“seeking admission,” *see* Pet. ¶ 11, the simple fact is that Congress deemed him to be an “applicant for admission” through § 1225(a)(1). Petitioner’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. ¶¶ 28-29 (“Petitioner Ganan Bagua is a native and citizen of Ecuador [who] entered the United States without inspection on or about June 25, 2021.”). Under § 1225(b)(2), a noncitizen who is an applicant for admission and not subject to (b)(1) must be detained during removal proceedings.

Petitioner 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. 5, at 10-22. Part and parcel with this argument is Petitioner’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, Petitioner 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 Petitioner’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 Petitioner’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.

Petitioner obfuscates the issue by asserting that § 1225(b) applies only “to those arriving at or near the border.” Dkt. 5, at 20. 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 Petitioner 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 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).⁷

* * *

Petitioner’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

⁷ Petitioner 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. 5, at 22-23 (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.

statute. *Id.* The result was correct: the statutory language at issue is clear and does not require the meandering analysis Petitioner 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.

Pena, 2025 WL 2108913, at *1 (citations omitted); *see also Chen v. Almodovar*, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Cabanos v. Bondi*, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Garibay-Robledo v. Noem*, 2025 WL 3264478 (N.D. Tex. Oct. 24, 2025); *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025).

Equally persuasive is the BIA’s analysis of this exact issue. That analysis should command *more* respect—not less, as Petitioner suggests, Dkt. 5, 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 Petitioner 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).

Petitioner 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 Petitioner’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 Petitioner’s complaint that prior agency practices were different. *See* Dkt. 5, at 24-26. 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. Petitioner’s Regulatory and Constitutional Claims

Neither DHS regulations nor the Constitution require granting Petitioner 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, Petitioner 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, Petitioner contends that the government violated the INA’s implementing regulations. Pet. ¶¶ 84-88. The Federal Respondents disagree. But even if Petitioner 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 Petitioner to habeas relief.

III. Motion for Temporary Restraining Order

No matter how the Court resolves the merits, Petitioner’s motion for a temporary restraining order should be denied as moot and unnecessary.

Petitioner sought emergency injunctive relief to block ICE from moving him outside the geographic boundaries of Minnesota. Dkt. 3, at 2. But that move already happened. ICE transferred him to Texas last week. *See Minner Decl.* ¶ 13. A party’s pursuit of preliminary

injunctive relief becomes moot when “it is no longer possible for the grant or denial of preliminary injunctive relief . . . to have any meaning.” *Forbes v. Ark. Educ. Television Comm’n Network Found.*, 982 F.2d 289, 290 (8th Cir. 1992) (denial of motion for preliminary injunction related to televising debate became moot after debate occurred); *see also Bierman v. Dayton*, 817 F.3d 1070, 1073 (8th Cir. 2016) (pursuit of preliminary injunction became moot because “[t]he event the homecare providers attempted to stop—the election and subsequent certification of SEIU as the exclusive representative—has already occurred”); *Reichling v. Fikes*, 2022 WL 1721233, at *1 (D. Minn. May 6, 2022), *adopted by* 2022 WL 1720931 (D. Minn. May 26, 2022). Because Petitioner is no longer in Minnesota, an injunction preventing his move out of the state is meaningless. The Court should therefore deny this aspect of Petitioner’s motion as moot.

The other piece of injunctive relief that Petitioner sought was an order requiring ICE to give him an immediate bond hearing. Dkt. 3, at 2. It was never appropriate to include that request in a motion for a temporary restraining order because Petitioner was essentially asking the Court to give him up-front all the relief he would obtain at the end of the case if he succeeds on the merits. Indeed, the Eighth Circuit “has repeatedly recognized that the purpose of injunctive relief is to *preserve the status quo*; it is not to give the movant the ultimate relief he seeks.” *Lindell v. United States*, 82 F.4th 614, 618 (8th Cir. 2023) (emphasis added). Setting aside Petitioner’s misuse of a request for preliminary injunctive relief, the practical reality is that his motion is unnecessary at this point. The Court is poised to resolve this petition on the merits, after which the Federal Respondents will either afford Petitioner a bond hearing (because the Court granted a writ of habeas corpus) or Petitioner

will not be entitled to one (because the Court denied the writ). Either way, ordering a bond hearing via a temporary restraining order or preliminary injunction is unnecessary.

CONCLUSION

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

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