

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Marco Ganan Bagua,

Petitioner,

v.

Pamela Bondi, Attorney General,

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

0:25-cv-4545-NEB-DTS

Department of Homeland Security,

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

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

Immigration and Customs Enforcement,

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

and,

Joel Brott,
Sheriff of Sherburne County,

Respondents.

INTRODUCTION

This Court should rule consistently with its previous determinations in this District and sister districts. The facts here are indistinguishable. Petitioner was detained in the interior of the United States over a year after entering without inspection, and Respondents detained him following the issuance of an I-213. *See* ECF No. 11. The Court should grant the requested relief and order a bond hearing within seven days or Petitioner’s immediate release.

ARGUMENT

I. THE COURT HAS JURISDICTION.

“A person challenging the lawfulness of immigration-related detention may also avail themselves of a writ of habeas corpus.” *Maldonado v. Olson*, 2025 WL 2374411, at *4 (D. Minn. Aug. 15, 2025) (citing *Deng Chol A. v. Barr*, 455 F. Supp. 3d 896, 900–01 (D. Minn. 2020)). Respondents trot out the same tired arguments that the court lacks jurisdiction. None is availing, and all have been roundly rejected numerous times, including by this Court. *See* ECF No. 5 at 8-9.

This Court has jurisdiction to review whether Petitioner is in “custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). Nothing at 8 U.S.C. § 1252 changes that and the Supreme Court has held as much clearly. Petitioner is not challenging the government’s decision or action to “commence proceedings, adjudicate cases, or execute removal orders,” so 8 U.S.C.

§ 1252(g) does not bar review. He is not challenging anything related to an action or proceeding brought to “remove him from the United States,” so 8 U.S.C. § 1252(b)(9) is inapplicable. Nor does he challenge anything to do with a “final order of removal,” so 8 U.S.C. § 1252(b)(5) cannot apply.

Custody is “separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding.” 8 C.F.R. 1003.19(d). *Compare also* 8 U.S.C. 1229(a), *with* 8 USC 1226(a). Custody is separate from the removal proceedings and has no bearing on those proceedings in any legally relevant manner. They are separate statutes, separate inquiries, and separate records.

Finding otherwise would contravene the express language of the Supreme Court and the Eighth Circuit. In *Reno v. Am.-Arab Anti-Discrimination Comm.*, the Supreme Court held that “§ 1252(g) applies to only a limited subset of deportation claims.” 525 U.S. 471, 487 (1999). It is a “narrow[] ... provision [that] applies only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Id.* at 482 (emphasis in original). “There are of course many other decisions or actions that may be part of the deportation process.” *Id.* Custody is such a reviewable action.

This was spelled out with clarity in *I.N.S. v. St. Cyr* and *Zadvydas v. Davis*. 533 U.S. 289 (2001); 533 U.S. 678, 688 (2001). In *I.N.S. v. St. Cyr*, the Court held that “[t]he writ of habeas corpus has always been available to review the legality of

Executive detention.” 533 U.S. at 305. Then, in *Zadvydas*, the Court added that, despite the limitations on judicial review at 8 USC § 1252, “§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention.” *Zadvydas*, 533 U.S. at 688. While this case involves pre-removal detention, the logic remains the same. detention is independent of removal and can be reviewed in a habeas action.

The Court walked through the history of appellate review in removal cases and noted that the “statutory changes left habeas untouched as the basic method for obtaining review of continued *custody*,” before adding that 8 U.S.C. § 1252(g) did not apply to strip jurisdiction where the petitioner challenged custody. *Zadvydas*, 533 U.S. at 687–88 (emphasis in original). Once again, habeas remained as a vehicle to challenge detention. *See also Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (finding jurisdiction when the person “not asking for review of an order of removal; [he is] not challenging the decision to detain [him] in the first place or to seek removal; and [he is] not even challenging any part of the process by which [his] removability will be determined.”) *Jennings*’ plurality even acknowledged Respondent’s current argument, noting that “[i]t may be argued that” detention arises from the decision to commence proceedings “in the sense that if those actions had never been taken, the aliens would not be in custody at all. But [rejected] this expansive interpretation of § 1252(b)(9) [as it] would lead to staggering results.” *Id.*

at 293. Thus, the Court explicitly “did not interpret this language to sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General. Instead, **we read the language to refer to just those three specific actions themselves.**” *Id.* at 294 (2018) (citing *A.A.A.D.C.*, 525 U.S. at 482-83).

A review of the concurring and dissenting opinions makes this even clearer. Justice Thomas’s concurrence indicates that “detention is an ‘action taken ... to remove’ an alien,” *id.* at 318 (J. Thomas, concurring), but that portion of the concurrence was joined by just one other justice and Justice Thomas acknowledged that his position departed from the plurality as to jurisdiction. *See id.* (“I am of a different view.”). Like the plurality, the dissent noted that “[j]urisdiction also is unaffected by 8 U.S.C. § 1252(b)(9) [because] ... [t]he respondents challenge their detention without bail, not an order of removal.” *Id.* at 355 (J. Breyer, dissenting). Three justices joined the dissent, and Justice Kagan did not participate in the decision, so simple arithmetic indicates that six justices agreed that habeas jurisdiction over the availability of bond remained unaffected by 8 U.S.C. §§ 1252(b)(9) and 1252(g). That binds this Court.

Even if that were not the case, the Eighth Circuit has expressly noted that “§ 1252(g) does not proscribe review over even the generality of deportation matters.” *Sabhari v. Reno*, 197 F.3d 938, 942 (8th Cir. 1999). Expanding on this holding, the

Court held that it has “carved out an exception to § 1252(g) for a habeas claim raising a pure question of law.” *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (citing *Jama v. I.N.S.*, 329 F.3d 630 (8th Cir. 2003)).

In *Jennings*, the Supreme Court described issues concerning “detention without a bond hearing” as “questions of law.” *Jennings*, 583 U.S. at 292. In this district, a “‘pure’ question of law” has been described “as ‘something the court of appeals could decide quickly and cleanly without having to study the record’—or ‘an abstract issue of law ... suitable for determination by an appellate court without a trial record.’” *Nicholas L. L. v. Barr*, 2019 WL 4929795, at *4 (D. Minn. Oct. 7, 2019) (citing *Ahrenholz v. University of Illinois*, 219 F.3d 674, 676–77 (7th Cir. 2000)).

In *Nicholas L. L.*, Judge Tostrud recognized that:

Whether a T-visa applicant lawfully may be removed before a bona fide determination has been made seems to be a purely legal question. It is an abstract question and answering it does not require consideration of Nicholas's circumstances, apart from merely recognizing the fact (necessary for standing) that he is a T-visa applicant facing imminent removal. There is subject-matter jurisdiction over this claim.

Id. at *5. Here too, the only relevant facts are that Petitioner was, and remains, detained without bond after apprehension over a year after arriving in the United States and hundreds of miles from the border. As in *Nicholas L.L.*, these facts are necessary for standing, and the applicability of 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a), is a purely legal concern. This Court has jurisdiction.

Given this precedent, Respondent's arguments are expressly foreclosed. While it is true that noncitizens "cannot entertain challenges to the enumerated executive branch decisions or actions," *E.F.L. v. Prim*, 986 F.3d 959, 964 (7th Cir. 2021), this is not a challenge to any of the enumerated provisions. It is a challenge to the denial of a statutory guaranteed right to have a bond hearing. *See* 8 U.S.C. § 1226(a). That custody matter is "separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding." 8 CFR 1003.19(d). As such, it does not fit within the narrow confines of 8 U.S.C. § 1252(g), nor does it relate to a removal order under 8 U.S.C. §§ 1252(b)(5) or (b)(9).

Aguilar v. ICE squarely contradicts Respondents 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).

Petitioner challenges detention without bail, not his initial detention. He is simply asking for a bond hearing after all. Similarly, in *Ruiz v. Mukasey*, which

predates *Jennings*, the Second Circuit said that “[n]either 8 U.S.C. § 1252(b)(9) nor 8 U.S.C. § 1252(a)(5) is applicable” where the issue before the court was an I-130 visa petition, 552 F.3d 269, 274 n.3 (2d Cir. 2009), suggesting, contrary to Respondents’ position, that not everything related to immigration is barred from review.

E.F.L. v. Prim, *Tazu v. Att’y Gen.* and *Ajlani v. Chertoff* involved attempts to directly enjoin the execution of removal orders. 986 F.3d 959, 964 (7th Cir. 2021) (foreclosed “challenge [to] DHS’s decision to execute her removal order while [the petitioner] seeks administrative relief.”); 975 F.3d 292, 295 (3d Cir. 2020) (foreclosing “a stay of removal”); 545 F.3d 229, 233 (2d Cir. 2008) (“Ajlani also requested that the district court enjoin defendants from removing him from the United States.”). Those were direct challenges to the execution of orders, concerns completely unrelated to Petitioner’s case.

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

by criminal aliens seeking review of their *removal orders* into petitions for review.” 434 F.3d 144, 151 (2d Cir. 2006) (emphasis added)..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, Respondents’ channeling argument is disingenuous. While they claim 8 U.S.C. § 1252(b)(9) channels custody review to the applicable circuit, they are arguing that it be channeled into the dustbin of irrelevancy.

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

Ultimately, Respondents advance a reading of 8 U.S.C. § 1252(g) that the Supreme Court derided as “lead[ing] to staggering results.” *Jennings*, 583 U.S. at 293. It is the reading that the Supreme Court has rejected time and again. *See Jennings*, 583 U.S. at 281; *Zadvydas*, 533 U.S. at 678; *St. Cyr*, 533 U.S. at 289; *A.A.A.D.*, 525 U.S. at 471. This court has jurisdiction.

II. 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. Respondents Mr. Easterwood and EOIR are proper parties 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. 10, at 13; *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

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.

conditions or the policies that govern the conditions themselves. Petitioner's claims are accordingly properly pled and purposefully focused on the legal actions that have caused his indefinite detention.

III. LIKELIHOOD OF SUCCESS ON THE MERITS

As articulated above, hundreds of cases have exercised jurisdiction and subsequently found that the detention of individuals in materially identical positions with Petitioner—i.e., a person initially detained at the border, released on recognizance under 8 U.S.C. § 1226(a) according to DHS records, and then re-detained on a warrant at some later point—was improper under 8 U.S.C. § 1225(a)(2)(B). Those individuals, like Petitioner, were entitled to bond hearings under 8 U.S.C. § 1226(a). Respondents point to a few contrary decisions. The weight of the authority, consistent with the record, plain text, context, congressional intent, and long held practice all illustrate why this writ must issue.

a. Petitioner is detained under 8 U.S.C. § 1226(a).

Respondents have indicated that Petitioner has been detained under 8 U.S.C. § 1226(a), and they cannot recast that for the purposes of litigation. Petitioner was released on Form I-220A Order of Release on Recognizance.³ See ECF No. 11-2 at 3. He is clearly eligible for bond pursuant to 8 U.S.C. § 1226(a). The plain text at 8

³ Respondents have neglected to produce the relevant Form I-220A, but this is the standard language on the template form. See https://www.ice.gov/doclib/detention/checkin/I_220A_OREC.pdf.

U.S.C. § 1226(a) “establishes a discretionary detention framework for noncitizens arrested and detained ‘[o]n a warrant issued by the Attorney General.’” *Gomes*, 2025 WL 1869299, at *6 (citing 8 U.S.C. § 1226(a)). “For such individuals, the Attorney General (1) *may* continue to detain the arrested alien”; (2) “*may* release the alien on ... bond”; or (3) “*may* release the alien on ... conditional parole.” 8 U.S.C. §§ 1226(a)(1), (a)(2)(A), (a)(2)(B). “The thrice-used permissive word ‘may’ indicates Congress’s intent to establish a discretionary, rather than mandatory, detention framework for noncitizens arrested on a warrant.” *Gomes*, 2025 WL 1869299, at *6.

The statute then sets out a single exception to this discretionary framework, articulating that it applies “[e]xcept as provided in subsection (c).” 8 U.S.C. § 1226(a). Subsection (c), in turn, applies to certain “criminal” noncitizens, who are expressly exempted from this discretionary framework.” 8 U.S.C. § 1226(c). However, this framework does not similarly carve out noncitizens who would be subject to mandatory detention under Section 1225(b)(2).” *Gomes*, 2025 WL 1869299, at *7. As the Supreme Court has noted, this sort of “express exception” to Section 1226(a)’s discretionary framework “implies that there are no *other* circumstances under which” detention is mandated for noncitizens, like Petitioner, who are subject to Section 1226(a), in that he was arrested on a warrant issued by the attorney general. *Jennings*, 583 U.S. at 300 (citing A. Scalia & B. Garner, *Reading Law* 107 (2012)).

Moreover, given that Petitioner was detained “on a warrant of arrest issued by the attorney general,” *see* ECF No. 11, his specific circumstances relate to an “arrest on a warrant issued by the attorney general.” 8 U.S.C. § 1226(a). So, to the extent that “the specific governs over the general,” *Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1015 (9th Cir. 2017), this fact pattern is governed by the provision relating to detention “on a warrant of arrest.” 8 U.S.C. § 1226(a). As such, Petitioner’s detention falls within the discretionary bond framework governed by 8 U.S.C. § 1226(a). No one alleges that the exceptions to that framework articulated at 8 U.S.C. § 1226(c) applies, so there is no basis for a mandatory custody finding.

This precise fact pattern led Judge Tostrud to rule that 8 U.S.C. § 1226 applied when “Respondents point[ed] to no record evidence suggesting that [the petitioner] was arrested and detained under § 1225” because he was “arrested on a warrant pursuant to § 1226 ... and detained under authority of § 1226 and its implementing regulations.” *J.O.E. v. Bondi*, 2025 WL 2466670, at *8 (D. Minn. Aug. 27, 2025). There is no distinction in this record. Petitioner was arrested on a warrant, *see* ECF No. 13. Therefore, 8 U.S.C. § 1226 applies. The Court must hold Respondents to their determinations. They cannot abandon a record by claiming to adopt a new legal position. The record controls.

Respondents have been clear that they have detained Petitioner under 8 U.S.C. § 1226(a)(2), not 8 U.S.C. § 1225(b)(2), just as they did in *J.O.E.* Yet, Respondents

seek to rewrite this administrative history and invoke, for the first time, the mandatory detention provisions at 8 U.S.C. § 1225(b)(2). This attempt at revisionism is inconsistent with the statute, the regulations, and a host of clear representation of Congressional intent. *See infra*. Respondents' own records contradict Respondents. Given that the government has invoked 8 U.S.C. § 1226(a)(2) to justify Petitioner's detention, *see* ECF No. 11, the Court must hold them to that now.

a. The Plain Text Illustrates that 8 U.S.C. § 1225(b)(2)(A) Cannot Apply as Petitioner Was Not "Seeking Admission" When He Was Detained on or about November 24, 2025.

The government raises three arguments. None is availing. First, they argue that all "applicants for admission" are perpetually "seeking admission." ECF No. 10, at 15-17. They point to 8 U.S.C. § 1225(a)(3) for the proposition that the terms "applicants for admission" and "seeking admission" are synonymous. ECF No. 10, at 16.

However, the government neglects that these two terms are separated by the word "or" in 8 U.S.C. § 1225(a)(3). The word "or" "is almost always disjunctive, that is, the words it connects are to 'be given separate meanings.'" *United States v. Woods*, 571 U.S. 31, 45 (2013) (citing *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979)). In other words, "or" is generally disjunctive and here, some "applicants for admission" are "seeking admission" and some who are not "applicants for admission" may be "otherwise seeking admission," and all those people are subject

to inspection. However, only those who are both an “applicant for admission” and “seeking admission ... shall be detained.” 8 U.S.C. § 1225(b)(2)(A). This was explained beautifully in *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (illustrative graph). Moreover, 8 U.S.C. § 1225(a)(3) defines who “shall be inspected by immigration officers.” It does not define who “shall be detained.” Ultimately, only those who are both an “applicant for admission” and “seeking admission ... shall be detained.” 8 U.S.C. § 1225(b)(2)(A). The provisions are different and address different things. The Court must ensure it gives each an independent meaning.

Second, Respondents argue that Petitioner manufactures a third category of applicants for admission. ECF No. 10, at 17. He does not. Under the plain language of 8 U.S.C. § 1225(b)(2)(A), an alien must be an “applicant for admission” and actively “seeking admission” for mandatory detention to apply. Petitioner appears to be an “applicant for admission,” but he is not, and was not at the time of his apprehension, “seeking admission.” Respondent’s position, on the other hand, would write the “seeking admission” requirement out of the statute by treating it identically to “applicant for admission.” That is improper as the terms are separately defined. *Compare* 8 U.S.C. § 1225(a), *with* 8 U.S.C. § 1101(a)(13)(A). Mandatory detention requires both, *see* 8 U.S.C. § 1225(b)(2)(A), yet Respondents would collapse them into one. That would render “seeking admission” “inoperative or superfluous, void

or insignificant.” *Corley v. United States*, 556 U.S. 303, 314 (2009). That is improper.

The more significant surplusage issue is Respondents’ wholesale abrogation of the Laken Riley Act. As a rule, courts do not “adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law.” *Sudan v. Harrison*, 139 S. Ct. 1048, 1058 (2019). In fact, this “canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.” *Chicago v. Fulton*, 141 S. Ct. 585, 591 (2021) (quoting *Yates v. United States*, 574 U.S. 528, 543 (2015)). As previously briefed, Respondents’ reading would render the entire LRA surplusage. It would swallow the narrow mandatory detention provisions aimed at some people present without admission or parole whole, *see* 8 U.S.C. § 1226(c)(E), by subjecting all such individuals to mandatory detention. That is obviously improper.

Third, Respondents point to *Florida v. United States*, 660 F.Supp.3d 1239 (N.D. Fla. 2023). ECF No. 10, at 18. That case is in no way instructive. There, the court limited its inquiry to “aliens arriving at the Southwest Border into the country *en masse*.” 2025 WL 2108913, at 1249. In that case, where individuals were caught crossing the southwest border of the United States, that is “seeking entry” into the United States. Those people were properly categorized under 8 U.S.C. § 1225(b),

but Petitioner was apprehended inside the country, hundreds of miles from any border. The case is totally dissimilar.

The final cases to which Respondents point are equally unconvincing. In *Sandoval v. Acuna*, the court selectively read *Jennings*, focusing only on the two classes of people in 8 U.S.C. 1225 but failing to engage in the language of “seeking admission,” “inspection,” and “examination.” No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025). The court failed to acknowledge that 8 U.S.C. 1226(a) specifically discusses apprehension. As for *Pena v. Hyde*, there, a district court refused to unconditionally release a petitioner who failed to ask for bond and argued that an approved I-130 was a visa. 2025 WL 2108913, at *1 (D. Mass. July 28, 2025). The petition was based on a fundamental misunderstanding of the law and asked for relief that was unavailable to the petitioner. In *Chavez v. Noem*, the court entirely failed to account for the statutory language or wrestle with the plain language of the statute at 8 U.S.C. § 1225(b)(2)(A) requiring that an applicant for admission under that section must also be “seeking admission” at the time of the detention. *See* 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025). In *Vargas Lopez*, the case was ultimately dismissed because “the mistakes in the Petition, including the failure [] to attach certain referenced exhibits, [that] prevent[ed him] from meeting his burden to show he is entitled to habeas relief.” *See* 2025 WL 2780351, at *2 (D. Neb. Sept. 30, 2025). In *Cabanas v. Bondi*, the case was clouded with other issues,

such as the Petitioner failing to exercise her right to appeal the immigration judge's bond denial. 2025 WL 3171331 at *2 (S.D. Tex. Nov. 13, 2025).

There is a constant theme in the few negative cases, including *Chen v. Almodovar* and *Garibay-Robledo v. Noem*, of not engaging with the positive caselaw and maintaining tunnel vision. An applicant for admission has to be fulfilling the condition of seeking admission for 8 U.S.C. 1225(b) to apply. None of these negative cases engage in the definition of admission, which is defined in the Act. None of these cases move the needle.

b. Legislative History Cuts Against Respondents.

Respondents cite out of circuit caselaw for the proposition that IIRIRA was “intended to replace *certain* aspects of the [then-]current ‘entry doctrine.’” ECF No. 10, at 20 (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)). Notably, Respondents also cite the same house report that specifically indicated how “the Attorney General [was empowered] to arrest, detain, and release on bond an alien who is not lawfully in the United States.” *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996); ECF No. 10, at 20. If, as Respondents contend, that “a specific provision applying with particularity to a matter should govern over a more general provision encompassing that same matter[.]” ECF no. 10, at 17 (citing *Hughes v. Canadian Nat’l Ry. Co.*, 105 F.4th 1060, 1067 (8th Cir. 2024)), then the specific determination that noncitizens present without admission like Petitioner are eligible for bond

controls over contentions that certain, though not all, aspects of the entry doctrine were to be replaced.

c. Prior Conduct is Stil Relevant

Respondents contend that “prior practices are not dispositive.” ECF No. 10, at 21. What *Loper Bright* actually says is that “[t]he contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect,” particularly “when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024). Here, Respondents’ long-held agency practice was first articulated precisely when the law was codified. The position remained uniform for 29 years. This reinforces Petitioner’s position and, in light of all the arguments made *supra*, he is eligible for bond.

IV. REMAINING DATAPHASE FACTORS

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

CONCLUSION

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

DATED: December 15, 2025

Respectfully submitted,

/s/ David Wilson

David Wilson

MN Attorney Lic. No. 0280239

Wilson Law Group

3019 Minnehaha Avenue

Minneapolis, MN 55406

(612) 436-7100 / dwilson@wilsonlg.com

/s/ Lee Anne Mills

Lee Anne Mills

MN Attorney Lic. No. 0402913

Wilson Law Group

3019 Minnehaha Avenue

Minneapolis, MN 55406

(612) 436-7100 / lmills@wilsonlg.com

Attorneys for Petitioner