UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Edgar Geovanny Chicaiza Dutan,

Willian Patricio Toalombo Yanchaliquin,

Petitioners,

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,

Daren K. Margolin, Director for Executive Office for Immigration Review,

Executive Office for Immigration Review,

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

and,

Ryan Shea, Sheriff of Freeborn County.

Respondents.

0:25-cv-04640-ECT-JFD

MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

Petitioner Edgar Geovanny Chicaiza Dutan (hereinafter "Petitioner Chicaiza Dutan") and Petitioner Willian Patricio Toalombo Yanchaliquin (hereinafter "Petitioner Toalombo Yanchaliquin") have been detained by Immigration and Customs Enforcement ("ICE") and denied an opportunity to seek release on bond. Petitioners request a Temporary Restraining Order ("TRO") pursuant to Rule 65(b) to **enjoin Respondents from moving Petitioners outside of the geographic boundaries of the District of Minnesota**.

FACTS

Petitioner Chicaiza Dutan and Petitioner Toalombo Yanchaliquin, both natives and citizens of Ecuador, entered the United States without inspection in 2019 and 2023, respectively. Respondents did not encounter Petitioner Chicaiza Dutan at the time of his entry. Respondents previously released Petitioner Toalombo Yanchaliquin under his own recognizance, and Petitioner Toalombo Yanchaliquin was complying with the conditions of his release. Petitioners have no criminal history. Respondents detained Petitioners in Minnesota on December 13, 2025, without notice or any explanation. Petitioners are being held in ICE custody at the Freeborn County Jail in Albert Lea, Minnesota.

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*, No. 25-CV-3142 (SRN/SGE), 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 might contend that 8 U.S.C. § 1252(b)(9) precludes review of Petitioners' claims. However, § 1252(b)(9) comes under the authority of § 1252(b), which lists "[r]equirements for review of orders of removal." This provision channels review of "final orders of removal" to federal courts of appeals. 8 U.S.C. § 1252(b)(9). There is no removal order. 8 U.S.C. § 1252(b)(9) alone does not inhibit this Court. Custody is entirely separate and independent from removal proceedings. *Compare* 8 U.S.C. § 1229a, *with* 8 U.S.C. § 1226. By regulation, "[c]onsideration by the Immigration Judge of an application or request of a respondent regarding custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding." 8 C.F.R. § 1003.19(d). Custody and removal have nothing to do with each other. The Supreme Court has also rejected the government's proffered broad interpretation of 8 U.S.C. § 1252(b)(9) as it "would lead to staggering results." *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018).

8 U.S.C. § 1252(g) also is irrelevant. Petitioners are asserting that the application of 8 U.S.C. § 1225(b)(2)(A) was improper and that they are not subject to mandatory detention. They are not challenging any decision to commence

proceedings, adjudicate cases, or execute removal orders. These matters are "separate and apart from" custody, 8 C.F.R. § 1003.19(d), which is what is challenged here. Moreover, the initiation of proceedings is governed by 8 U.S.C. § 1229, regardless of whether the mandatory detention provisions at 8 U.S.C. § 1225(b)(2)(A), or the discretionary detention framework at 8 U.S.C. § 1226(a)(2)(A), apply. Proceedings are commenced with the filing of an NTA that complies with the requirements at 8 U.S.C. § 1229(a). *Cf.* 8 U.S.C. § 1225(b)(2)(A); 1229(a); 1229a.

Respondents have not "commenced" proceedings under 8 U.S.C. § 1225(b)(2). 8 U.S.C. § 1229 is titled "initiation of proceedings" for a reason. It governs that process. This matter is a challenge to how to interpret the sections that address Respondents' authority to detain, not commence, initiate, or execute the removal process. Petitioners are not challenging any action taken under 8 U.S.C. § 1229.

Furthermore, the Supreme Court has previously characterized § 1252(g) as a narrow provision, determining that it 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.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). The Supreme Court found it "implausible that the mention of *three discrete events* along

the road to deportation was a shorthand way to referring to all claims arising from deportation proceedings." *Id.* (emphasis added).

Moreover, even if this suit did somehow relate to the discrete events outlined at 8 U.S.C. § 1252(g), the Eighth Circuit has explicitly observed "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, 633 (8th Cir. 2003), *aff'd sub nom. Jama v. Immigr. & Customs Enf't*, 543 U.S. 335 (2005)). This is a pure question of law in the habeas context. 8 U.S.C. § 1252(g) does not apply because resolving the legal authority of detention is the question before the Court.

Finally, § 1252, titled "Judicial Review of Orders of Removal," contains a provision detailing "[m]atters not subject to judicial review." *See* 8 U.S.C. § 1252(a)(2). This provision contains four subsections outlining categories of claims that are not subject to judicial review. *See* 8 U.S.C. § 1252(a)(2)(A)-(D). None of these subsections precluding judicial review apply to this matter, as the specified statutory provisions do not cite to 8 U.S.C. § 1225 or 1226, which are the provisions in dispute. No part of § 1252 deprives the Court of jurisdiction.

II. EXHAUSTION IS FUTILE WHEN RESPONDENTS COLLABORATE IN DEVELOPING A NATIONWIDE CHANGE OF POLICY

The Supreme Court has noted that prudential exhaustion is not required when to do so would be futile or "the administrative body . . . has . . . predetermined the

issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). Here, the government's evolving position on the application of 8 U.S.C. § 1225(b)(2)(A) was issued "in coordination with the Department of Justice." The Board's published decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), held that 8 U.S.C. § 1225(b)(2)(A) governs custody of aliens like Petitioners.

"There is no useful purpose to proceeding through the administrative remedy process where the petitioner presents a pure question of law." *Vang v. Eischen*, No. 23-CV-721 (JRT/DLM), 2023 WL 5417764, at *3 (D. Minn. Aug. 1, 2023), *report and recommendation adopted,* No. CV 23-721 (JRT/DLM), 2023 WL 5403793 (D. Minn. Aug. 22, 2023). "A party also may escape the exhaustion requirement if it is able to show that the agency clearly exceeded its statutory authority." *Trinity Indus., Inc. v. Reich*, 901 F. Supp. 282, 286 (E.D. Ark. 1993), *aff'd,* 33 F.3d 942 (8th Cir. 1994) (citing *Philip Morris, Inc. v. Block*, 755 F.2d 368, 370 (4th Cir. 1985)). This issue is a matter of law related to agency conduct in excess of the statute. Exhaustion is not required. *See Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025). Further administrative efforts are pointless.

III. A TEMPORARY RESTRAINING ORDER IS APPROPRIATE.

"[T]he standard for analyzing a motion for a temporary restraining order is the same as a motion for a preliminary injunction." *Tumey v. Mycroft AI, Inc.*, 27 F.4th 657, 665 (8th Cir. 2022). The relevant factors are: 1) the likelihood of

irreparable harm; 2) the likelihood of success on the merits; 3) relevant hardships, and 4) public interest. *See Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 112 (8th Cir. 1981). The Eighth Circuit has held that the first two factors are particularly important as they comprise what is known as the "traditional test" employed to evaluate the necessity of a Temporary Restraining Order ("TRO"). *Id.* at 12. These factors all militate towards a TRO.

A. Likelihood of Irreparable Harm

At the outset, "the equitable balancing test a court must conduct using the *Dataphase* factors requires an initial determination that threatened irreparable harm exists." *Gelco Corp. v. Coniston Partners*, 811 F.2d 414, 420 (8th Cir. 1987). It most certainly does in this case.

As Minnesota federal district courts have recognized, "a loss of liberty … is perhaps the best example of irreparable harm." *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018). *See also Farella v. Anglin*, 734 F. Supp. 3d 863, 885 (W.D. Ark. 2024). Indeed, "[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). Petitioners have been detained without a bond since December 13, 2025, despite their clear eligibility for bond under 8 U.S.C. § 1226(a)(2)(A), which statutorily mandates a bond hearing.

Since that time, Petitioners have remained "detained [in ICE custody], which is 'not meaningfully different from a penal institution for criminal detention.'" *Ararso U.M. v. Barr*, No. 19-CV-3046 (PAM/DTS), 2020 WL 1452480, at *4 (D. Minn. Mar. 10, 2020), *report and recommendation adopted,* No. 19CV3046 (PAM/DTS), 2020 WL 1445810 (D. Minn. Mar. 25, 2020) (citing *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 860 (D. Minn. 2019)). The government's actions have already deprived Petitioners of their liberty, and because these violations continue each day they remain in custody, they have suffered and will continue to suffer actual prejudice. *See Puc-Ruiz v. Holder*, 629 F.3d 771, 782 (8th Cir. 2010) (prejudice exists where an alternate result may well have occurred absent the violation). Immediate relief is warranted to halt ongoing harm and restore Petitioners' rights. Petitioners' continued unjustified detention absent a bond hearing constitutes irreparable and immediate harm and justifies the issuance of injunctive relief while this habeas proceeding pends.

Petitioners will be further harmed if Respondents are not enjoined from transferring them to a detention facility in another state. A transfer further impedes vital attorney-client exchanges by limiting how Petitioners and their attorneys can communicate confidentially. Moving Petitioners out of this District inhibits these crucial attorney-client communications. It also complicates the need for any

appearance in this Court. Given the time-sensitive nature of continued unlawful detention, this too is irreparable harm.

Given the harm of unlawful detention absent a bond, as well as the issues arising from movement outside of Minnesota, irreparable harm has been established.

B. Likelihood of Success on Merits

"While no single factor is determinative, the probability of success factor is the most significant" in determining whether to grant a TRO. *Home Instead, Inc. v. Florance*, 721 F.3d 494, 497 (8th Cir. 2013). Analyzing the likelihood of a party's success on the merits is not an inquiry aimed at pinning down the mathematical probability that a plaintiff will prevail on the merits. Rather, the court seeks to ascertain whether the "balance of equities so favors the movant that justice requires the Court to intervene to preserve the status quo until the merits are determined." *Dataphase Systems, Inc.*, 640 F.2d at 113.

Courts, including in this District, have already issued favorable ruling on materially similar facts. *See, e.g.*, *Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Eliseo A.A. v. Olson*, No. CV 25-3381 (JWB/DJF), 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Maldonado*, 2025 WL 2374411; *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025). There are over 200 positive rulings and less than ten rulings

reaching the opposite conclusion. *See Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025); *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025).

The vast majority of courts found the way they did because Petitioners' "statutory construction better aligns with the text of Sections 1225(b) and 1226 and better harmonizes the two statutes" and because "[t]he government's interpretation contravenes the plain text of Section 1226(a) and would render superfluous Section 1226(c), which mandates the detention of certain noncitizens and is the sole exception to Section 1226(a)'s discretionary framework." *Gomes*, 2025 WL 1869299, at *1. Longstanding practice and legislative history were also instructive. *See Maldonado*, 2025 WL 2374411.

As such, Petitioners are also likely to succeed on the merits of their claim that 8 U.S.C. § 1225(b)(2)(A) does not apply to them.

a. The Plain Text Illustrates that 8 U.S.C. § 1225(b)(2)(A) Cannot Apply as Petitioners Were Not "Seeking Admission" When They Were Detained on December 13, 2025.

The text and structure of the statute illustrate that 8 U.S.C. § 1225(b)(2) is totally inapplicable now, years after Petitioners first arrived and entered the United States. As the Supreme Court has held, while "Section 1225(b) 'authorizes the Government to detain certain aliens *seeking admission into the country*,' Section 1226 'authorizes the Government to detain certain aliens *already in the country*

pending the outcome of removal proceedings.'" *Gomes*, 2025 WL 1869299, at *2 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)). Petitioners were apprehended in hundreds of miles from the nearest border and nowhere near a port of entry. They were not "seeking admission into the country." They were already here and have been for years.

The statutory text makes it clear that, at the time of their 2025 detention, Petitioners were not "seeking admission" as contemplated at 8 U.S.C. § 1225(b)(2)(A). In reading a statute, "'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)). A comprehensive reading of 8 U.S.C. § 1225 illustrates that both 8 U.S.C. § 1225(b)(1) and 8 U.S.C. § 1225(b)(2) apply only to those arriving at the border or those who have recently arrived.

"[W]e start where we always do: with the text of the statute." *Van Buren v. United States*, 593 U.S. 374 (2021). In interpreting 8 U.S.C. § 1225(b)(2), it is critical to note how the qualifier "seeking admission" limits the class of aliens to which 8 U.S.C. § 1225(b)(2) applies to those seeking entry into the United States from outside the country, either at the border or a port of entry. In this way, an "alien present in the United States who has not been admitted" is only subjected to 8 U.S.C. § 1225(b)(2) if he is "seeking admission."

As the Supreme Court has held:

> It is important to note at the outset that our immigration laws have long made a distinction between those aliens who have come to our shores **seeking admission** … and **those who are within the United States after an entry, irrespective of its legality**. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely "on the threshold of initial entry."

Leng May Ma v. Barber, 357 U.S. 185, 187 (1958) (citing *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)) (emphasis added). Petitioners were plainly beyond the threshold of entry when detained.

This is particularly notable given that the term "admission" is statutorily defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13). As always, "we start … with the text of the statute," *Van Buren*, 593 U.S. 374, so to be "seeking admission," a person must be seeking "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13). This is augmented by long-held interpretations of "[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).

Petitioners are not outside the United States, nor did their apprehension occur at the threshold of the United States, nor have they been outside the country for years. They are not seeking admission into the country at this time, nor were they at the time of their detention. As such, 8 U.S.C. § 1225(b)(2) cannot apply to them.

The remainder of the INA's definition of "admission" reinforces the conclusion that "admission" contemplates entry from outside. The provisions related to when a lawful permanent resident ("LPR") will be treated as "seeking an admission" bear this out.

> An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission ... unless the alien-
>
> (i) has abandoned or relinquished that status,
>
> (ii) has been absent from the United States for a continuous period in excess of 180 days,
>
> (iii) has engaged in illegal activity after having departed the United States,
>
> (iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,
>
> (v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or
>
> (vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

8 U.S.C. § 1101(a)(13)(C). Once again, an "admission" necessarily contemplates entry from outside the territorial boundaries of the United States. To be "seeking

admission" as contemplated under 8 U.S.C. § 1225(b)(2), an alien must be entering from abroad. The provision clearly applies at and immediately around the border.

If that were not enough, the "[a]dmission of immigrants into the United States" is governed under INA § 211, which requires "a valid unexpired immigrant visa … and [ ] a valid unexpired passport or other suitable travel document." 8 U.S.C. § 1181(a). Moreover, those seeking admission are "admitted into the United States." *Id.* This also necessarily contemplates an alien "seeking entry" from outside the United States.

This is also consistent with how the pre-IIRAIRA INA distinguished between aliens present in the United States and those seeking to enter. Prior to 1997, "[t]he deportation hearing [was] the usual means of proceeding against an alien already physically in the United States, and the exclusion hearing [was] the usual means of proceeding against an alien outside the United States seeking admission." *Landon v. Plasencia*, 459 U.S. 21, 25 (1982).

In fact, the term "seeking admission" was plucked from former 8 U.S.C. § 1225, which governed "exclusion proceedings" and the "[t]he inspection ... of aliens (including alien crewmen) seeking admission or readmission to ... the United States" who, then as now, were "examined by one or more immigration officers at the discretion of the Attorney General and under such regulations as he may prescribe...." 8 U.S.C. § 1225(a) (1994). Under the prior regime, those who were

"seeking admission" were those "outside the United States seeking admission." *Landon v. Plasencia*, 459 U.S. 21, 25 (1982).

Given that this language, now codified at 8 U.S.C. § 1225, came from the former 8 U.S.C. § 1225, which also governed the "inspection of aliens," the well-established legal principal applies: "[w]hen a statutory term is 'obviously transplanted from another legal source,' it 'brings the old soil with it.'" *Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019). Then as now, those "seeking admission" are those at the border or a port of entry, not those simply present in the United States without admission.

By contrast, long-tenured aliens like Petitioners are not "seeking admission" when they are detained by ICE. While they may be "applicants for admission" under 8 U.S.C. § 1225(a)(1), to "seek admission" they would need to present at a border or port of entry and request "admission into the United States." 8 U.S.C. § 1181.

This is also consistent with how all Circuits have "construe[d] the meaning of the phrase 'at the time of application for admission'" in the context of 8 U.S.C. § 1182(a)(7), which "refers to the particular point in time when a noncitizen submits an application to physically enter into the United States." *Torres v. Barr*, 976 F.3d 918, 924 (9th Cir. 2020); *see also Marques v. Lynch*, 834 F.3d 549, 561 (5th Cir. 2016) (quoting *Ortiz-Bouchet v. U.S. Atty. Gen.*, 714 F.3d 1353, 1356 (11th Cir. 2013)) ("Section 1182(a)(7) 'only applies to applicants for admission and not to

immigrants ... who sought post-entry adjustment of status while already in the United States.'"). Just as an "application for admission" occurs at the specific moment an application is applied for, seeking admission also occurs at the moment admission is sought.

The subsection title further reinforces this conclusion. While they do not supplant the statutory text, "statutory titles and section headings 'are tools available for the resolution of a doubt about the meaning of a statute.'" *Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008) (citing *Porter v. Nussle*, 534 U.S. 516, 528 (2002)). Section 1225 is titled "[i]nspection by immigration officers; expedited removal of inadmissible arriving aliens; [and] referral for hearing." 8 U.S.C. § 1225. All of this is squarely related to inspection at or near a point of entry, not interior enforcement against aliens who have been present for years.

The "catchall" nature of 8 U.S.C. § 1225(b)(2) is not limitless either. It has to reflect the general parameters of 8 U.S.C. § 1225(b)(1) and respond to the similarly situated individuals arriving to the country who are not arriving aliens. As the Supreme Court has noted, 8 U.S.C. § 1225(b)(2) is a "catchall" that "applies to most other applicants for admission not covered by § 1225(b)(1)." *Jennings v. Rodriguez*, 583 U.S. 281, 281 (2018). "The ejusdem canon applies when 'a catchall phrase' follows 'an enumeration of specifics, as in dogs, cats, horses, cattle, and other animals.'" *Fischer v. United States*, 603 U.S. 480, 509 (2024) (quoting A.

Scalia & B. Garner, READING LAW § 32, at 199 (2012)). "We often interpret the catchall phrase to 'embrace only objects similar in nature to those objects enumerated by the preceding specific words.'" *Id.*

8 U.S.C. § 1225(b)(2) follows in line with the specificity contained in 8 U.S.C. § 1225(b)(1). 8 U.S.C. § 1225(b)(2) is titled "inspection of other aliens." "Other aliens" has a proximity limitation—around the border and ports of entry. It is not a force multiplier. After all, this catchall provision would be an odd place to hide the most far-reaching and consequential detention authority in the INA. "Congress does not 'hide elephants in mouseholes.'" *Sackett v. Env't Prot. Agency*, 598 U.S. 651, 677 (2023). The Supreme Court recognized this limited reach of § 1225(b)(2) when it held, "An alien arriving in the United States must be inspected by an immigration official, 66 Stat. 198, as amended, 8 U.S.C. § 1225(a)(3), and, unless he is found 'clearly and beyond a doubt entitled to be admitted,' must generally undergo removal proceedings to determine admissibility, § 1225(b)(2)(A)." *Clark v. Martinez*, 543 U.S. 371, 373 (2005).

Section 1225(b)(2) addresses a person who presents some evidence he or she is entitled to entry, but the examining officer is not convinced clearly and beyond a reasonable doubt. For example, Respondents invoke this provision frequently to permanent residents returning from travel abroad. Precedent has acknowledged this distinction in purpose within § 1225(b). Detention of non-arriving aliens attempting

to enter from the outside is permissible because "§ 235(b)(2) requires the INS to detain aliens 'not clearly and beyond a doubt entitled to be admitted' … in practice, these provisions often result in the mandatory detention of returning lawful permanent residents at places of inspection." *Tineo v. Ashcroft*, 350 F.3d 382, 387 (3d Cir. 2003); *see also Kasneci v. Dir., Bureau of Immigr. & Customs Enf't*, No. 12-12349, 2012 WL 3639112, at *3 (E.D. Mich. Aug. 23, 2012); *Bautista v. Sabol*, No. 3:11CV1611, 2011 WL 5040894, at *4 (M.D. Pa. Oct. 24, 2011).

The Court must also consider that the government's regulation identifies the limited scope of § 1225(b)(2). It states, "Lawful permanent residents have verifiable entry documents ('green cards') which prevents them from being deemed clearly inadmissible. All aliens who are not clearly inadmissible, but are also not clearly admissible, are placed in regular removal proceedings. INA § 235(b)(2)." 8 C.F.R. § 235.3(b)(5)(ii). As identified in regulation, this group includes permanent residents who appear to have abandoned status, been absent from more than 180 days, departed during pendant removal or extradition hearings, committed certain crimes, or who are attempting to enter the United States at a place other than a designated port of entry. *See* 8 U.S.C. § 1101(a)(13)(C). This class of permanent residents are definitionally "seeking admission" but are not necessarily inadmissible for fraud or a lack of travel documents under 8 U.S.C. § 1182(a)(6)(C); 1182(a)(7), so they do not fall within the provisions of 8 U.S.C. § 1225(b)(1)(A). Instead, they

fall into 8 U.S.C. § 1225(b)(2)(A)'s catchall. Any case that suggests an overlap between §§ 1225(b)(2) and § 1226(a) fail consistently to engage with obvious application of § 1225(b)(2) to permanent residents and similarly situated individuals at the time of arrival. Even Respondents' regulation validates recognition of such a limitation.

Petitioners' reading does not create a surplusage issue in which the 8 U.S.C. § 1225(b)(2) catchall becomes redundant in light of 8 U.S.C. § 1225(b)(1). While 8 U.S.C. § 1225(b)(1) expressly applies to those who are "arriving," and 8 U.S.C. § 1225(b)(2)(A) expressly excludes those "to whom paragraph (1) applies," 8 U.S.C. § 1225(b)(2)(B)(ii), there is a universe of "applicants for admission" who are "seeking admission" from outside the United States that fall outside of 8 U.S.C. § 1225(b)(1), and therefore fall into the catchall at 8 U.S.C. § 1225(b)(2).

These include most obviously any "alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry." 8 U.S.C. § 1225(b)(1)(F). These individuals are expressly exempted from 8 U.S.C. § 1225(b)(1). They too fall under 8 U.S.C. § 1225(b)(2). It also includes lawful permanent residents suspected of abandoning residence or criminality. *See* 8 U.S.C. § 1101(a)(13)(C); *Tineo*, 350 F.3d at 387. They too fall into 8 U.S.C. § 1225(b)(2).

The neighboring inadmissibility provision at 8 U.S.C. § 1182(a)(9)(A) reinforces § 1225's limited application to the borders and ports of entry. This provision lumps those who are "removed under 8 U.S.C. § 1225(b)(1) of this title" together with those removed "at the end of proceedings under section 1229a of this title initiated upon the alien's arrival in the United States." 8 U.S.C. § 1182(a)(9)(A)(i). Given that the only provision of law that appears to authorize full proceedings under 8 U.S.C. § 1229a for those arriving at the border is 8 U.S.C. § 1225(b)(2)(A), this inadmissibility provision reinforces Petitioners' interpretation that 8 U.S.C. § 1225(b)(2)(A), like 8 U.S.C. § 1225(b)(1), applies to those arriving at or near the border. That is why removals in 1229a proceedings initiated upon arrival at the border—that is, 8 U.S.C. § 1225(b)(2)(A) removals—are treated like removals under 8 U.S.C. § 1225(b)(1), triggering a five-year inadmissibility period, whereas those otherwise "ordered removed under section 1229a of this title" are subject to a ten-year bar. *See* 8 U.S.C. § 1182(a)(9)(A)(ii). This dichotomy between 1) border detention and removal, and 2) interior enforcement with more significant consequences, is clear in both provisions.

8 U.S.C. § 1225(a)(3) does not undercut this point. 8 U.S.C. § 1225(a)(3) defines who "shall be inspected by immigration officers." It does not define who "shall be detained." Moreover, the notion that the word "or" somehow means that

the subsequent phrase is necessarily synonymous with the preceding one is meritless. Instead:

> While that can sometimes introduce an appositive—a word or phrase that is synonymous with what precedes it ("Vienna or Wien," "Batman or the Caped Crusader")—its ordinary use is almost always disjunctive, that is, the words it connects are to "be given separate meanings."

United States v. Woods, 571 U.S. 31, 45–46 (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.

Romero v. Hyde recently illustrated this poignantly. *See* 2025 WL 2403827, at *10 (illustrative graph). 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 independent meaning.

Petitioners were detained years later hundreds of miles from any border or port of entry. At the time of their arrest, they were, and still are not, seeking admission. Therefore, 8 U.S.C. § 1225(b)(2)(A) cannot apply.[1]

[1] *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) is owed no deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 369 (2024). It mimics the arguments that a multitude of courts have rejected.

b. Canons Against Surplusage Require Finding that Petitioners Are Not Subject to 8 U.S.C. § 1225(b)(2).

Courts do not "adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law." *Republic of Sudan v. Harrison*, 587 U.S. 1 (2019). In fact, this "canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *City of Chicago, Illinois v. Fulton*, 592 U.S. 154 (2021) (quoting *Yates v. United States*, 574 U.S. 528, 543 (2015)).

Interpreting 8 U.S.C. § 1225(b)(2) as Respondents do would have the Court render the entire Laken Riley Act (LRA) superfluous. In the LRA, Congress added language to 8 U.S.C. § 1226(c) that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act, PL 119-1, January 29, 2025, 139 Stat 3. Pursuant to these amendments, an alien who "is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 212(a) of this title; and is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person" is subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(E).

If everyone inadmissible under 8 U.S.C. § 1182(a)(6)(A) is already subject to mandatory detention under 8 U.S.C. § 1225(b)(2), then there was no need for the LRA at all. Those present without admission who commit crimes would not require a separate provision to mandate detention. That would render an entire provision of the INA surplusage and runs afoul of the maxim that "[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Pierce Cnty., Wash. v. Guillen*, 537 U.S. 129, 145 (2003). This cannot stand and definitively illustrates that 8 U.S.C. § 1225(b)(2) is confined to the borders and ports of entry. It does not apply to Petitioners.

c. Applicable Precedent Cuts in Petitioners' Favor.

To the extent that the Court is ruling on the *likelihood* of success on the merits, the existence of at least thirty decisions affirming Petitioners' position, in contrast to just a few incomplete and poorly pled decisions in Respondents' favor, certainly suggests Petitioners have illustrated a strong likelihood of success. At least 61 district courts have endorsed Petitioners' position on similar facts. *Supra* § III.B. One district in Massachusetts refused to unconditionally release a petitioner who failed to ask for bond and argued that an approved I-130 was a visa. *See Pena*, 2025 WL 2108913. One in Nebraska chastised a petitioner where "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." *Vargas Lopez*, 2025 WL 2780351, at *2. Finally, one in Wisconsin ignored the temporal element of admission, created surplusage in 8 U.S.C. § 1225, and conflated seeking relief with seeking admission. *Rojas v. Olson*, No. 25-CV-1437-BHL, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025). The weight of authority favors Petitioners.

d. Legislative History and Longstanding Practice Illustrate that Petitioners Are Not Subject to Mandatory Detention Under 8 U.S.C. § 1225(b)(2).

If the structure and language did not make 8 U.S.C. § 1225(b)(2)'s inapplicability to this case clear, Congress did so expressly. "Section 1226(a)'s predecessor statute, § 1252(a), included discretionary release on bond." *Maldonado*, 2025 WL 2374411, at *11 (citing 8 U.S.C. § 1252(a) (1994)). In House reports accompanying the legislation that enacted 8 U.S.C. § 1225(b)(2), the legislators noted how the simultaneously enacted detention authority that now lives at 8 U.S.C. § 1226(a) merely "restates the [then] current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same).

Both provisions were created in the same Act. *See* Illegal Immigration Reform and Immigration Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 3009-585 ("IIRIRA"). It seems preposterous that Congress

would enact one provision, at 8 U.S.C. § 1226(a)(2)(A), for the purpose of authorizing "the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States" just one section after enacting a provision that DHS now claims subjects those exact same people to mandatory detention. *See* 8 U.S.C. § 1225(b)(2).

Furthermore, from 1996 to 2025, Respondents contended that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10323, 62 FR 10312-01, 10323. "[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). This is long-held Agency practice, and it makes clear that, despite Respondents' newfound position, 8 U.S.C. § 1226 governs Petitioners' detention, and as such, they are eligible for bond.

C. Relevant Hardships and Public Interest

"The balance of the equities and the public interest … factors merge [when] the federal government is the party opposing the injunction." *Missouri v. Trump*, 128 F.4th 979, 996–97 (8th Cir. 2025). These factors require the Court to consider "whether the movant's likely harm without a preliminary injunction exceeds the nonmovant's likely harm with a preliminary injunction in place." *Cigna Corp. v. Bricker*, 103 F.4th 1336, 1347 (8th Cir. 2024). Other courts have recognized that re-detention after release without any right to seek release is likely violative of Due Process. *See Lopez-Arevalo v. Ripa*, -- F.Supp.3d --, 2025 WL 2691828 (W.D. Tex. Sep. 22, 2025).

Courts have recognized that the public interest includes upholding constitutional safeguards, ensuring due process, and preventing unnecessary deprivation of liberty. *See, e.g.*, *Mohammed H. v. Trump*, 786 F. Supp. 3d 1149 (D. Minn. 2025) (rejecting public-interest argument where detention rested solely on automatic stay without evidence); *Gunaydin v. Trump*, 784 F. Supp. 3d 1175 (D. Minn. 2025) (same). The public interest is not served by needlessly incarcerating a man with no criminal conviction in violation of statute.

Granting Petitioners' injunctive relief is fully consistent with the government's ability to enforce its immigration laws. If the TRO is granted, DHS retains all tools to continue Petitioners' removal cases, to monitor their compliance with conditions of release, and to seek re-detention if circumstances change. In short,

the government can enforce the law, and the Court can ensure that enforcement proceeds within constitutional bounds by ordering the Respondents to schedule a bond hearing within seven days.

The harms to Petitioners have been articulated, *supra*, and they are severe. 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 Eighth Circuit has called the federal interest in an action is "minimal" where the plaintiff has illustrated a "strong likelihood of success in showing it exceeds agency authority." *Id.* As that is precisely the case here, all factors favor the issuance of a TRO.

CONCLUSION

The evidence compels the conclusion that Petitioners, who have demonstrated a strong likelihood of success on the merits, will suffer significantly and irreparably in the absence of a TRO. As such, a TRO must be granted, enjoining Respondents from moving Petitioners outside of Minnesota.

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Respectfully submitted,

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