

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

LORENZO CARDENAS PEREZ,
Petitioner,

vs.

**KRISTI NOEM, Secretary, U.S. Department of
Homeland Security; *et al.*
Respondents.**

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Civil Action No. 1:25-cv-181

**APPLICATION FOR EMERGENCY TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTON**

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Pursuant to Rule 65,¹ Petitioner, Lorenzo Cardenas Perez (“Mr. Cardenas”), applies to this Court for a temporary restraining order and preliminary injunction to maintain the *status quo* by enjoining Respondents from transferring Mr. Cardenas and from enforcing the automatic stay provisions set out in 8 C.F.R. §§ 1003.19(i)(2) and 1003.6(c), (d) pending a final resolution of this action. In support, Petitioner shows the following:

I. FACTUAL BACKGROUND

1. Mr. Cardenas is a 63-year-old man who has resided in south Texas since approximately 1998 when he entered the United States without inspection. Exh. 2 (Decl. of Cardenas); Exh. 5 (Notice to Appear). He raised six children, all of whom are now adults, in Texas. Exh. 2.

2. On August 2, 2025, Mr. Cardenas was arrested at his workplace by immigration officials. *Id.*, at ¶3. Following the arrest, officials transported Mr. Cardenas to the Port Isabel Service Processing Center (“PISPC”). *Id.* Mr. Cardenas has been detained in Respondents’ custody ever since. *Id.* As of the filing of this application he remains at PISPC, but Petitioner reasonably anticipates that he will be transferred further from his family, counsel, and this Court soon. Exh. 1 (Decl. of McGraw); Exh. 3 (Decl. of Yovanna Cardenas).

3. Respondents Carlos D. Cisneros and Miguel Vergara are the Assistant Field Office Director and the Field Office Director for the Harlingen Field Office of U.S. Immigration and Customs Enforcement (“ICE”), respectively. *See* Exh. 4. They are responsible for the detention of individuals at PISPC and are Petitioner’s immediate custodians.

4. On August 2, 2025, ICE officials filed a Notice to Appear (“NTA”) with the Immigration Court initiating removal proceedings under 8 U.S.C. § 1229a. Exh. 5. The NTA sets out one charge

¹ Petitioner’s counsel’s efforts to notify Respondents are set out in the declaration included with this application as Exhibit 1. *See* Fed. R. Civ. P. 65(b)

of inadmissibility, that Mr. Cardenas entered the United States without inspection under 8 U.S.C. § 1182(a)(6)(A)(i).

5. No bond was set by ICE or the U.S. Department of Homeland Security (“DHS”) for Mr. Cardenas’s release from PISPC. Exh. 6 (EOIR-43) (ICE “[h]eld the Respondent without bond.”). On August 11, 2025, Mr. Cardenas requested that the Immigration Judge (“IJ”) conduct a bond determination hearing in accordance with 8 U.S.C. § 1226(a) and 8 C.F.R. § 1236.1(d).

6. On August 14, 2025, the IJ found jurisdiction for the bond determination hearing, granted Mr. Cardenas’s request for bond, and, after an individualized consideration of Mr. Cardenas’s risk of flight and danger to the community, ordered that he be released from detention pending the resolution of his removal proceedings upon posting of a reasonable bond in the amount of \$4,000.00. Exh. 5 (IJ Bond Order); Exh. 8 (Decl. of Garcia).

7. During the bond determination hearing, an U.S. Department of Homeland Security (“DHS”) attorney argued that the IJ lacked jurisdiction for the proceeding because Mr. Cardenas is detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which makes detention mandatory. Exh. 8.

8. DHS’s position at the bond hearing is consistent with the agency’s new policy. On or about July 8, 2025, DHS, of which ICE is a component, adopted a policy (“Mandatory Detention Policy”) requiring that all people who entered the United States without inspection be treated as “applicants for admission” who are “seeking admission” and therefore subject to mandatory under 8 U.S.C. § 1225(b)(2)(A). Exh. 9 (Mandatory Detention Policy).² This policy was adopted “in coordination with DOJ,” of which the Executive Office for Immigration Review (“EOIR”) and the Board of

² Available at: <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (accessed Aug. 23, 2025).

Immigration Appeals (“BIA”) are components. *Id.* The new Mandatory Detention Policy marks an abrupt change from the long-standing practices of the federal government.³

9. On August 14, 2025, a DHS attorney filed a Form EOIR-43 “Notice of ICE Intent to Appeal Redetermination” invoking an automatic stay of the IJ’s bond order under 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1003.6(c). *See* Exh. 6. Mere filing of this notice automatically stays the IJ’s bond order for up to 10 business days, during which time DHS may file an appeal to the BIA of the IJ’s bond order. 8 C.F.R. § 1003.6(c)(1). Petitioner reasonably believes that DHS intends to file an appeal to the BIA, which will further automatically the stay the IJ’s bond order for up to 90-days. 8 C.F.R. § 1003.6(c)(4); *see* Exh. 7 (DHS reserves appeal).

10. On August 15, 2025, Mr. Cardenas’s family member attempted to pay bond for his release but Respondents’ online system indicated that they could not pay the bond because an automatic stay had been filed. Exh. 3.

11. Mr. Cardenas remains detained at PISPC where he suffers irreparable harm each passing day. Exh. 2; Exh. 3, at ¶¶3-6. He is not able to be with and support his immediate family and grandchildren. Mr. Cardenas’s daughters are enlisting in the military. *Id.* Because he is detained, Mr. Cardenas is not able to support them in this process and will not be able to see her off before she enlists. *Id.* One of Mr. Cardenas’s daughters has already sought to extend the date she ships off so that she might be able to see her father again, outside of a detention facility, before she leaves the Rio Grande Valley area. *Id.* Respondents’ ongoing detention of Mr. Cardenas risks him not being able to say goodbye to his daughter before she is stationed outside of Texas.

³ *See infra*, at ¶37.

12. Petitioner reasonably anticipates that Respondents intend to transfer him from PISPC in the coming days and continue detaining Mr. Cardenas in a facility farther away from his family, his counsel, and this Court. Exh. 1; Exh. 3.

13. Mr. Cardenas respectfully requests that the Court enter a temporary restraining order prohibiting Mr. Cardenas to another detention facility and enjoin Respondents from enforcing the unlawful automatic stay provisions of 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. §§ 1003.6(c), (d) during the pendency of this action.

II. STANDARD OF REVIEW

14. The purpose of a temporary restraining order is to prevent irreparable harm until the court makes a final decision on injunctive relief. *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cty.*, 415 U.S. 423, 439 (1974); *Canal Auth. of Fla. V. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974). The decision to grant or deny a temporary restraining order is within the Court's discretion. *See Moore v. Brown*, 868 F.3d 398, 402 (5th Cir. 2017).

15. Courts consider the same factors in ruling on an application for a temporary restraining order and an application for preliminary injunction. *See Texas v. United States*, 524 F.Supp.3d 598, 651 (S.D. Tex. 2021) (citing *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987)). An applicant for a preliminary injunction must establish: (1) a substantial likelihood of success on the merits; (2) a substantial threat that the movant will suffer irreparable injury if the temporary restraining order is denied; (3) that the threatened injury outweighs any damage the temporary restraining order might cause defendant; and (4) that the temporary restraining order will not disserve the public interest. *See id.* These factors are analyzed on a "sliding scale" taking into account the intensity of each factor. *See State of Tex. v. Seatrain Intern., S.A.*, 518 F.2d 175, 180

(5th Cir. 1975). When other factors weigh heavily in favor of an injunction “a showing of some likelihood of success on the merits will justify temporary injunctive relief.” *Monumental Task Comm., Inc. v. Focc*, 157 F.Supp.3d 573, 585 (E.D. La. 2016) (quoting *Productos Carnic, S.A. v. Cent. Am. Beef & Seafood Trading Co.*, 621 F.2d 683, 686 (5th Cir. 1980)).

III. ARGUMENT

A. Petitioner is likely to succeed on his claims.

i. This Court has jurisdiction of this action.

16. This Court has jurisdiction over this action because Mr. Cardenas is in custody in violation of the U.S. Constitution and laws. 28 U.S.C. § 2241(c)(3); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 295-96 (2018) (courts maintain jurisdiction over challenges to “the extent of the Government’s detention authority under the ‘statutory framework’ as whole”) (internal citations omitted); *Oyelude v. Chertoff*, 125 F.App’x 543, 546 (5th Cir. 2005) (courts maintain jurisdiction to the extent detention “presents constitutional issues”) (unpublished); *Diallo v. Pitts*, No. 1:19-cv-216, 2020 WL 71274, at *4 (S.D. Tex. Jan. 15, 2020).

17. No provision of 8 U.S.C. § 1252 strips this Court of jurisdiction. Petitioner is not required to pursue review by the BIA and court of appeals under 8 U.S.C. § 1252(a)(5) because he is not challenging “an order of removal issued under any provision of” Chapter 12 of the Immigration and Nationality Act (“INA”). 8 U.S.C. § 1252(a)(5); *See, e.g., Romero v. Hyde*, --- F.Supp.3d ---, 2025 WL 2403827, at *5-*6 (D. Mass. Aug. 19, 2025); *Garcia-Perez v. U.S. Dep’t of Homeland Sec.*, No. CIVASA05CA0429-XR, 2005 WL 1398100, at *1 (W.D. Tex. Jun. 1, 2005).

18. Mr. Cardenas challenges the extent of Respondents’ authority to detain him without bond under the governing statutory framework, not Respondents’ decision to detain him in the first

place. Jurisdiction is not barred by 8 U.S.C. § 1252(b)(9). *See Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (citing *Jennings*, 583 U.S. at 294)).

19. Moreover, Petitioner does not challenge the decision to “commence proceedings, adjudicate cases, or execute removal orders.” *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999) (Section 1252(g) applies to a “much narrower” set of “three discrete actions” that the Attorney General may take). 8 U.S.C. § 1252(g) does not deprive this Court of jurisdiction.

ii. 8 C.F.R. § 1003.19(i)(ii) And 8 C.F.R. § 1003.6(c) violate due process.

20. Mr. Cardenas has resided in the United States for more than twenty years. Exh. 2. He has worked and raised six children in this country. *Id.* He is protected by the Due Process Clause of the Fifth Amendment. *See Zadvydas*, 533 U.S. at 693 (2001) (“[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”); *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 107 (2020) (“aliens who have established connections in this country have due process rights in deportation proceedings”); *Ayobi v. Castro*, No. SA-19-cv-01311-OLG, 2020 WL 13411861, at *5 (W.D. Tex. Feb. 25, 2020) (fact that petitioner “may not be in the country legally, does not deprive the individual of the protections of the Due Process Clause”).

21. “Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that [the Due Process Clause] protects.” *Zadvydas*, 533 U.S. at 690 (2001). Due Process requires “adequate procedural protections” to ensure that the Government’s asserted justification for detention “outweighs the individual’s constitutionally protected interest in avoid physical restraint.” *Id.*

22. Courts determine whether civil detention violates due process by applying the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). See *Jacinto v. Trump*, --- F.Supp.3d --, 2025 WL 2402271, at *3 (D. Neb. Aug. 19, 2025); *Gashaj v. Garcia*, 234 F.Supp.2d 661, 670 (W.D. Tex. 2002) (applying *Mathews* to claims challenging mandatory detention); *Ayobi*, 2020 WL 13411861, at *5 (W.D. Tex. Feb. 25, 2020). Courts weigh: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. See *Mathews*, 424 U.S. 319, 335 (1976).

23. **Mathews Factor #1** – Mr. Cardenas's interests are significant. Being free from physical detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Despite the IJ's bond order setting a reasonable \$4,000.00 bond after individualized consideration of whether Mr. Cardenas poses a risk of flight or danger to the community, he is unable to be with and support his family, including his grandchildren. Exh. 2, at ¶¶4-5; Exh. 3, at ¶¶3-6; *Zadvydas*, 533 U.S. at 690-91 (civil detention must be "nonpunitive" and "[bear a] reasonable relation to the purpose for which the individual was committed"). Respondents intend to transfer Mr. Cardenas to another detention facility far away from his family, counsel, and this Court. Exh. 1; Exh. 3. Mr. Cardenas's family and counsel are able to visit him at PISPC, but will not be able to visit with him in-person or will face obstacles to visiting him in person at a detention facility hours away. Exh. 3. Transfer will exacerbate the harm to Mr. Cardenas.

24. **Mathews Factor #2** – The risk of erroneous deprivation of Mr. Cardenas's liberty interest is high. Where "DHS has determined" that a non-citizen should not be released in accordance with

an IJ's bond determination,⁴ the agency can automatically stay the non-citizen's release by filing a simple, one-page form. 8 C.F.R. § 1003.19(i)(2); Exh. 6. No evidence or analysis of the non-citizen's flight risk or danger to community is required. The party that lost the bond hearing before the IJ unilaterally continues the non-citizen's detention based on agency regulation, not Congress or a neutral arbiter.

25. Within 10 business after the IJ's bond determination, DHS may file a notice of appeal to the BIA. 8 C.F.R. § 1003.6(c)(1). Filing the appeal extends the automatic stay up to 90 days after the filing of the notice of appeal. *Id.*, at § 1003.6(4).

26. Even in cases where the BIA authorizes a non-citizen's release, or the automatic stay lapses, once DHS starts this process the automatic stay remains in place for at least five additional business days and may be further extended by the Attorney General. 8 C.F.R. § 1003.6(d). The regulations are written so as to provide Respondents authority to detain Petitioner regardless of what the IJ and BIA decide after individualized consideration of the only factors that can justify civil detention.

27. The only individuals subject to the automatic stay provisions of 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1003.6(c) are people who, like Mr. Cardenas, prevailed at their bond hearing after an IJ's individualized consideration of the factors that justify civil detention. *See Jacinto*, 2025 WL 2402271, at *3 (D. Neb. Aug. 19, 2025). The automatic stay provisions are invoked upon a "unilateral determination" by DHS attorneys, the prosecutors of removal proceedings, which poses a "serious risk of error." *Zavala v. Ridge*, 310 F.Supp.2d 1071, 1078 (N.D. Cal. 2004); *Ashley v. Ridge*, 288 F.Supp.2d 662, 671 (D.N.J. 2003) (8 C.F.R. § 1003.19(i)(2) produces a "patently unfair

⁴ 8 C.F.R. § 1003.19(i)(2) also permits DHS's invocation of automatic stay provisions where the bond set by the IJ is \$10,000.

situation” by removing the detention decision from the IJ altogether and giving it to the prosecutor).

28. The risk is compounded in this case because 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1003.6(c) are invoked by Respondents to advance their new Mandatory Detention Policy. Exh. 8, at ¶¶6-7 (Garcia Decl.); Exh. 9. Under the policy, Mr. Cardenas is treated as an “applicant for admission” who is “seeking admission” and therefore purportedly detained pursuant to 8 U.S.C. § 1225(b)(2)(A). A growing number of district courts throughout the country have found this interpretation to be contrary to the plain text of 8 U.S.C. §§ 1225(b)(2)(A) and 1226(a), the entire statutory scheme, or violative of the Due Process Clause.⁵ Mr. Cardenas should not be deprived of his liberty unilaterally by prosecutors to advance an argument without merit.

29. Additional procedural safeguards available to Respondents adequately protect their valid

⁵ See, e.g., *Romero*, --- F.Supp.3d ---, 2025 WL 2403827, at *4-*13; *Diaz Martinez v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); see also, e.g., *Rodriguez Vazquez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash. Apr. 24, 2025) (holding same); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) (same); *Garcia v. Hyde*, Civ. No. 25-11513 (D. Mass. July 14, 2025) (same); *Rosado v. Bondi*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (same), report and recommendation adopted without objection, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, --- F. Supp. 3d ---, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (same); *dos Santos v. Lyons*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (same); *Aguilar Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (same); *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025) (granting preliminary relief after positively weighing likelihood of success), report and recommendation adopted sub nom. *O. E. v. Bondi*, 2025 WL 2235056 (D. Minn. Aug. 4, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting individualized bond hearings on ex parte motion for temporary restraining order after finding likelihood of success); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (granting relief from stay of bond order pending BIA appeal); *Mayo Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025) (same); *Rodrigues De Oliveira v. Joyce*, 2025 WL 1826118 (D. Me. July 2, 2025) (recognizing disagreement as to the detention statutes and granting habeas petition on due process grounds).

interests in ensuring that Mr. Cardenas attends his removal proceedings and protecting the community. Respondents have already been provided the opportunity, consistent with 8 U.S.C. § 1226(a), to demonstrate to an IJ the need for additional detention. The IJ made a bond determination after considering their evidence. Moreover, Respondents may seek a discretionary stay of the IJ's bond order from the BIA. 8 C.F.R. § 1003.19(i)(1) if they believe that the IJ's bond determination does not reasonably protect the narrow interests that justify civil detention. *See Gunaydin v. Trump*, --- F.Supp.3d ---, 2025 WL 14519154, at *9 (D. Minn. May 21, 2025) (BIA discretionary decision "based on the individual circumstances and merits of the case" mitigates).⁶

30. **Mathews Factor #3** - The Government of course has a valid interest in ensuring that Mr. Cardenas does not evade law enforcement or commit crimes during the pendency of his removal proceedings. *Id.*, 2025 WL 1459154, at *10; *see also Zadvydas*, 533 U.S. at 690 (regulatory goals behind civil detention are "ensuring the appearance of aliens at future immigration proceedings" and "preventing danger to the community"). The bond procedures available under 8 U.S.C. § 1226(a) and the IJ's bond order in this case adequately protect these interests. The automatic stay provisions of 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1003.6(c) are supposed to be "limited measure[s]" and are rarely invoked by the Government. *Executive Office for Immigration Review; Review of Custody Determination*, 66 Fed. Reg. 54909 (Oct. 31, 2001); *see also Gunaydin*, 2025 WL 1459154, at *10. Given the mechanisms to the Government both before the IJ and on appeal

⁶ While this additional procedural safeguard demonstrates the high likelihood of error when relying on the automatic stay provisions under 8 C.F.R. § 1003.19(i)(2), an appeal of the IJ bond determination to the BIA pursuant to 8 C.F.R. § 1003.19(i)(1) relying on the Mandatory Detention Policy, as opposed to arguments and evidence concerning Mr. Cardenas's actual risk of flight or danger to the community, only highlights the *ultra vires* or due process issues raised in Mr. Cardenas's petition. The Mandatory Detention Policy was adopted "in coordination with DOJ," of which the BIA is a component. Exh. 9. Any such appeal and subsequent order from the BIA upholding the interpretation adopted by Respondents as their Mandatory Detention Policy would only further justify Mr. Cardenas's habeas petition and the need for this Court's intervention.

under 8 C.F.R. § 103.19(i)(1) for protecting their valid interests, no significant fiscal or administrative burden is presented by enjoining the enforcement of automatic stay provisions in this case.

31. Moreover, the automatic stay provisions violate Mr. Cardenas's substantive Due Process rights. Detention by the Government "violates the Due Process clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances 'where a special justification,...outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Zavala*, 310 F.Supp.2d at 1076 (N.D. Cal. 2004) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). There is no such special justification in this case. *See, e.g., Ashley*, 288 F.Supp.2d at 669; *Jacinto*, 2025 WL 2402271, at *4 (D. Neb. Aug. 19, 2025). Mr. Cardenas has lived with his family for more than 20 years in the Rio Grande Valley area of Texas, where his removal proceedings are pending. Exh. 2. Pursuit of confirmation of Respondents' new and unlawful Mandatory Detention Policy before the BIA does not justify detaining Mr. Cardenas without bond.

iii. 8 C.F.R. § 1003.19(i)(ii) And 8 C.F.R. § 1003.6(c) violate 8 U.S.C. § 1226.

32. Respondents' "power to act and how they are to act is authoritatively prescribed by Congress, so that when they act improperly, no less than when they act beyond their jurisdiction, what they do is *ultra vires*." *D&G Holdings, L.L.C. v. Becerra*, 22 F.4th 470, 477 (5th Cir. 2022). An immigration regulation that is inconsistent with the INA is invalid. *Romero v. INS*, 39 F.3d 977, 980 (9th Cir. 1994).

a. Mr. Cardenas is detained pursuant to 8 U.S.C. § 1226(a).

33. As an initial matter, Mr. Cardenas is detained pursuant to 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A). The plain text of § 1226 demonstrates that subsection (a) applies to Petitioner.

Section 1226(a) applies to anyone who is detained “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a); *see Jennings*, 583 U.S. at 289 (2018) (describing Section 1226(a) as the “default rule” and applicable when an individual is “already in the country”). Section 1226 explicitly confirms that this authority includes not just noncitizens who are deportable pursuant to 8 U.S.C. § 1227(a), but also noncitizens, such as Petitioner, who is alleged to be inadmissible pursuant to 8 U.S.C. § 1182(a). While § 1226(a) provides the right to seek release on bond, § 1226(c) carves out specific categories of noncitizens from being released – including certain categories of inadmissible noncitizens – and subjects him instead to mandatory detention. *See, e.g.*, § 1226(c)(1)(A), (C). If § 1226(a) did not apply to Petitioner, there would be no reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, the statute would only have needed to address people who are deportable. *See, e.g., Rodriguez v. Bostock*, 779 F.Supp.3d 1239, 1255-61 (W.D. Wash. 2025).

34. Recent amendments to § 1226 reinforce that this section covers people like Petitioner who DHS alleges to be present without admission. The Laken Riley Act added language to § 1226 that directly references people who have entered without inspection, those who are inadmissible because they are present without admission. *See Laken Riley Act (LRA)*, Pub. L. No. 119-1, 139 Stat. 3 (2025). Specifically, pursuant to the LRA amendments, people charged as inadmissible pursuant to § 1182(a)(6) (the inadmissibility ground for presence without admission) or § 1182(a)(7) (the inadmissibility ground for lacking valid documentation to enter the United States) *and* who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)’s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress further clarified that § 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). In other words, if someone is *only* charged as inadmissible under § 1182(a)(6)

or (a)(7) and the additional crime-related provisions of § 1226(c)(1)(E) do not apply, then § 1226(a) governs that person's detention. *See Rodriguez Vazquez*, 779 F.Supp.3d 1239, 1259 (W.D. Wash. 2025) (explaining these amendments explicitly provide that § 1226(a) covers people like Petitioners because the “‘specific exceptions’ [in the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically leaves those inadmissible noncitizens not criminally implicated under Section 1226(a)’s default rule for discretionary detention.”); *Diaz Martinez*, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) (“if, as the Government argue[s], . . . a non-citizen’s inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect.”); *see also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).

35. The plain language of 8 U.S.C. § 1225(b) confirms that it does not apply to Mr. Cardenas. Paragraph (b)(1) concerns “expedited removal of inadmissible arriving aliens” and encompasses only the “inspection” of certain “arriving” non-citizens and other recent entrants designated by the Attorney General. 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). The focus of 8 U.S.C. § 1225(b) is on people who arrive at ports of entry and other recent entrants. Likewise, mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is limited to non-citizens who are “seeking admission.” As the Supreme Court recognized, § 1225 is concerned “primarily [with those] seeking entry,” *Jennings*, 583 U.S. at 297 (2018), i.e., cases “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible,” *id.* at 287. Ignoring the limitations in 8 U.S.C. § 1225(b) fails to give effect to every word and phrase chosen by Congress. *Corley v. United States*, 556 U.S. 303, 314 (2009) (statute should be construed so that

effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant.”).

36. The legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) supports the application of 8 U.S.C. § 1226(a) to Mr. Cardenas. Prior to the IIRIRA, non-citizens like Mr. Cardenas who had entered the United States without inspection and resided here for decades were not subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportation proceedings, which applied to all persons physically present within the United States). Congress explained that 8 U.S.C. § 1226(a) “restates the current provisions in [INA] section 242(a)(12) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] *who is not lawfully in the United States.*” H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).

37. Long-standing agency practice similarly confirms the applicability of 8 U.S.C. § 1226(a) to Mr. Cardenas. Decades ago, EOIR explained 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*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).^{7, 8}

b. The automatic stay violates 8 U.S.C. § 1226.

⁷ Available at: <https://www.govinfo.gov/content/pkg/FR-1997-03-06/pdf/97-5250.pdf> (accessed Aug. 22, 2025).

⁸ Moreover, application of Respondents’ new interpretation would violate the rule against retroactivity. *Monteon-Camargo v. Barr*, 918 F.3d 423, 430-31 (5th Cir. 2019) (“A ‘presumption of prospectivity attaches to Congress’s own work,’ and it should generally attach when an agency ‘exercises delegated legislative....authority.’”) (internal citations omitted).

38. Congress specifically exempted Mr. Cardenas from mandatory detention. *See* 8 U.S.C. § 1226(c) (revoking bond procedures only for certain “criminal aliens”). Mr. Cardenas is instead subject to the bond procedures Congress made available to allegedly inadmissible non-citizens who have resided in the United States for years. 8 U.S.C. § 1226(a). “The responsibility of determining the limits of statutory grants of authority...is a judicial function entrusted to the courts by Congress....” *Dart v. U.S.*, 848 F.2d 217, 223 (D.C. Cir. 1988) (quoting *Stark v. Wickard*, 321 U.S. 288, 310 (1944)). The automatic stay provisions of 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1103.6(c) are *ultra vires* as applied to Mr. Cardenas because they permit Respondents to subject Mr. Cardenas to mandatory detention where Congress specifically prohibited it. *See Zavala*, 310 F.Supp.2d at 1079 (N.D. Ca. 2004); *Jacinto*, 2025 WL 2402271, at *4 (D. Neb. Aug. 19, 2025).

B. Petitioner is suffering irreparable harm.

39. Injuries that “cannot be addressed by the application of a judicial remedy after a hearing on the merits can properly justify a preliminary injunction.” *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). Each day that passes Mr. Cardenas is unlawfully subject to mandatory detention. Shortly after his arrest, Mr. Cardenas turned 63-years-old, but he was unable to spend this day with his wife, children, or grandchildren. Exh. 2, at ¶2; Exh. 3, at ¶5. As a result of Respondents’ actions, he faces the prospect of additional months in detention far away from his family and counsel and logistical complications preparing his defenses to removal. There is “no adequate remedy” for these harms and Respondents’ constitutional violations. *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2000).

C. The balance of equities favors Petitioner.

40. Courts consider the severity of the impact on Respondents if an injunction is granted and the hardship that would occur to Mr. Cardenas if an injunction is denied. *See Texas First Nat. Bank*

v. Wu, 347 F.Supp.2d 389, 399-400 (S.D. Tex. 2004). Mr. Cardenas must show that he would suffer more harm without the injunction than Respondents would if it is granted. *Texas v. United States*, 328 F.Supp.3d 662, 740 (S.D. Tex. 2018). The balance weighs heavily in Petitioner's favor. Enjoining the automatic stay provisions as applied in this case restores the *status quo* of Mr. Cardenas's detention at PISPC and the IJ's bond order. Respondents' legitimate interest in protecting the community and ensuring that Mr. Cardenas attends his removal proceedings is protected by the IJ's individualized bond determination. On the other hand, Mr. Cardenas faces the prospect of further deprivation of his fundamental liberty interests and additional months of detention based on the unilateral determination of prosecutors in his removal proceedings.

D. A restraining order and preliminary injunction will serve the public interest.

41. "It is always in the public interest to prevent the violation of a party's constitutional rights." *O'Donnell v. Harris County, Texas*, 328 F.Supp.3d 643, 661 (S.D. Tex. 2018) (citing *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014)). This is so even when faced with a competing public interest. *See, e.g., Dearmore v. City of Garland*, 400 F. Supp. 2d 894, 903 (N.D. Tex. 2005) (granting TRO to enjoin city rental ordinance and holding that the Fourth Amendment right to be free from warrantless search "outweigh[s] any interest that the government has in protecting the health, safety or welfare of the public"). Similarly, "[t]here is a 'substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.'" *MCR Oil Tools, L.L.C v. United States DOT*, No. 24-60230, 2024 WL 2954416, 2024 U.S. App. LEXIS 14297 at *19 (5th Cir. June 12, 2024) (quoting *Texas v. United States*, 40 F.4th 205, 229 (5th Cir. 2022)). An order enjoining Respondents' enforcement of the automatic stay provisions will serve the public interest.

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant a temporary restraining order and preliminary injunction enjoining Respondents' from transferring him to another detention facility and enforcing the automatic stay provisions of 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1003.6(c) pending a final resolution of this action. A proposed order that complies with Rule 65 is included with this filing.

Dated: August 23, 2025.

Respectfully submitted

/s/ Carlos M. Garcia

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CERTIFICATE OF SERVICE

As of the date of filing, Respondents and their counsel have not appeared. Counsel for Petitioner will deliver a copy of the foregoing Application for Temporary Restraining Order and Preliminary Injunction to the U.S. Attorney's Office for the Southern District of Texas by email

and certified mail to Respondents.

/s/ Peter McGraw
Peter McGraw