

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

**LORENZO C.P.,**  
**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, Petitioner, Lorenzo C.P., files this application for temporary restraining order and preliminary injunction seeking an order enjoining Respondents from detaining him under 8 U.S.C. § 1225(b)(2)(A) and either releasing him from Respondents' custody, releasing him from Respondents' custody in accordance with the Immigration Judge's ("IJ") August 14, 2025, bond order, or ordering Respondents to provide a bond hearing for Petitioner within seven (7) days. In support, Petitioner shows the following:

## INTRODUCTION

1. Petitioner challenges the extent of Respondents' authority to detain him without bond under the Immigration and Nationality Act ("INA") and the Fifth Amendment. ECF Dkt. 18, at ¶¶18-53. He seeks release from unlawful detention. *Id.*, at 14 ¶C.
2. Petitioner's detention is governed by 8 U.S.C. § 1226(a), which provides for bond proceedings. Respondents recently broke with long-standing agency practice and now claim that Petitioner, who has resided in the United States for decades, is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *Id.*, at ¶¶26-28. Dozens of district courts reject this view.<sup>1</sup>

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<sup>1</sup>See, e.g., *Angel Fuentes v. Lyons*, Civil Action NO. 5:25-CV-00153, Doc. 15, (S.D. Tex. Laredo Division, Oct. 16, 2025) (attached at "Exh. 1"); *Buenrostro-Mendez v. Bondi*, No. H-25-3276, 2025 WL 2886346, at \*1-\*4 (S.D. Tex. Oct. 7, 2025); *Santiago Santiago v. Noem*, EP-25-CV-361-KC, 2025 WL 2792588, at \*6-\*14 (W.D. Tex. Oct. 1, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278, at \*1-\*5 (W.D. La. Sept. 11, 2025); *Salcedo Aceros v. Kaiser, et al.*, No. 25-cv-06924, 2025 WL 2637503, at \*9 (N.D. Cal. Sept. 12, 2025) ("The Government has not pointed to a single district court that has agreed with its construction of 1225(b)(2)."); *Chang Barrios v. Shepley*, No. 1:25-CV-00406-JAW, 2025 WL 2772579, at \*4-\*12 (D. Me. Sept. 29, 2025); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765, at \*3-\*10 (E.D.N.Y. Sept. 29, 2025); *Hernandez Lopez v. Hardin*, 2:25-cv-830-KCD-NPM, 2025 WL 2732717, at \*1 (M.D. Fla. Sept. 25, 2025); *Rivera Zumba v. Bondi*, 25-cv-14626, 2025 WL 2753496, at \*4-\*11 (D.N.J. Sept. 26, 2025); *Barrajas v. Noem*, 4:25-cv-00322-SHL-HCA, 2025 WL 2717650, at \*3-\*6 (S.D. Iowa Sept. 23, 2025); *Giron Reyes v. Lyons*, --- F.Supp.3d ---, 2025 WL 2712437, at \*1-\*5 (N.D. Iowa Sept. 23, 2025); *Sanchez Roman v. Noem*, 2:25-cv-01684-RFB-EJY, 2025 WL 2710211, at \*1-\*7 (D. Nev. Sept. 23, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR

3. Petitioner has been unlawfully detained since on or about August 5, 2025. He filed his Original Petition for Writ of Habeas Corpus on August 19, 2025. ECF Dkt. 1.<sup>2</sup> Shortly thereafter he sought and was granted a temporary restraining order enjoining the enforcement of 8 C.F.R. § 1003.19(i)(2), ECF Dkt. 11, but Petitioner remains in Respondents' custody under the purported authority of 8 U.S.C. § 1225(b)(2)(A). In accordance with 28 U.S.C. § 2243 and this Court's order, ECF Dkt. 16, Respondents filed their response to Petitioner's Second Amended Petition for Writ of Habeas Corpus, ECF Dkt. 20, and Petitioner replied. ECF Dkt. 22.

4. Because Petitioner is likely to succeed on his claims, is suffering irreparable harm, and meets all other criteria for issuance of a temporary restraining order and preliminary injunction, Petitioner files this application.

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(CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also*, e.g., *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same); *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS, 2025 WL 2652880 (D. Col. Sept. 16, 2025); *Singh v. Lyons*, 1:25-cv-01606-AJT-WBP, 2025 WL 2932635, at \*2 (E.D. Va. Oct. 14, 2025).

<sup>2</sup> Petitioner has since filed a First Amended Petition for Writ of Habeas Corpus, ECF Dkt. 5, and the operative Second Amended Petition for Writ of Habeas Corpus. ECF Dkt. 18.

## FACTUAL BACKGROUND

5. Petitioner entered the United States without inspection and has resided in the Rio Grande Valley area of Texas since approximately 1998. ECF Dkt. 18, at ¶¶11, 35.
6. On July 8, 2025, the U.S. Department of Homeland Security (“DHS”), “in coordination with [the U.S. Department of Justice (“DOJ”)],” which governs immigration courts, abruptly departed from the Government’s long-standing practice of detaining non-citizens like Petitioner under 8 U.S.C. § 1226(a), which provides for bond hearings, and instead construe 8 U.S.C. § 1225(b)(2), to require detention for Petitioner. ECF Dkt. 18, at ¶27.<sup>3</sup>
7. On August 2, 2025, Mr. Cardenas was arrested at his worksite by immigration officials. ECF Dkt. 18, at ¶36. A Notice to Appear (“NTA”) initiating formal removal proceedings under 8 U.S.C. § 1229a was filed with the Immigration Court. *Id.*, at ¶37; Exh. 2 (NTA).<sup>4</sup> The NTA originally set out one charge of inadmissibility, that Petitioner entered the United States without inspection under 8 U.S.C. § 1182(a)(6)(A)(i). *Id.*<sup>5</sup>
8. Consistent with 8 U.S.C. § 1226(a), Petitioner requested that the Immigration Judge (“IJ”) make an individualized determination of whether he may be released on bond during the pendency of his removal proceedings. ECF Dkt. 18, at ¶38.

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<sup>3</sup> See Immigration and Customs Enforcement, “Interim Guidance Regarding Detention Authority for Applicants for Admission,” July 8, 2025, available at: <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (accessed Oct. 16, 2025).

<sup>4</sup> The Court can consider documents referenced in pleadings. FED. R. CIV. P. 10(c). Petitioner’s Second Amended Petition for Writ of Habeas Corpus referenced earlier docket entries. See, e.g., ECF Dkt. 18, at ¶37 (referring to ECF Dkt. 8-5). Petitioner provides these documents as exhibits for the Court’s and parties’ convenience.

<sup>5</sup> DHS has since added a charge of inadmissibility under 8 U.S.C. § 1182(a)(7)(A)(i)(I) alleging that Petitioner lacks valid entry documents, but this does not affect the analysis of Petitioner’s claims.

9. On August 14, 2025, the IJ found jurisdiction for a bond determination and ordered Petitioner to be released from custody upon posting of a bond in the amount of \$4,000.00. *See Id.*, at ¶39; Exh. 3 (Bond Order). DHS filed a “Notice of Intent to Appeal Redetermination” in Petitioner’s case, invoking an automatic stay of the IJ’s bond decision. ECF Dkt. 18, at ¶40.

10. On August 19, 2025, Petitioner filed his Original Petition for Writ of Habeas Corpus. ECF Dkt. 1. On August 20, 2025, Petitioner filed his first amended petition. ECF Dkt. 5.

11. On August 23, 2025, Petitioner filed an Application for Temporary Restraining Order and Preliminary Injunction seeking to enjoin Respondents’ enforcement of federal regulations that automatically stayed the IJ’s bond determination. ECF Dkt. 8.

12. On or about August 24, 2025, Respondents transferred Petitioner from the Port Isabel Processing Center in Los Fresnos, Texas to the Rio Grande Processing Center (“RGPC”) in Laredo, Texas. ECF Dkt. 9; ECF Dkt. 18, at ¶¶6, 11. Petitioner sought and was granted leave to file a Second Amended Petition for Writ of Habeas Corpus to add Norbal Vasquez, Warden of RGPC, as a Respondent. ECF Dkt. 9; ECF Dkt. 17.

13. On August 26, 2025, the Court granted, in part, and denied, in part, Petitioner’s application for a temporary restraining order, enjoining enforcement of the challenged regulations. ECF Dkt. 11.

14. On September 5, 2025, the BIA issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which interprets 8 U.S.C. § 1225(b)(2) to provide that IJ’s lack authority to grant bonds to non-citizens who are present in the United States without admission. *See* ECF Dkt. 20-2. On September 9, 2025, the IJ who originally set Petitioner’s \$4,000 bond found, according to this new BIA precedent, that he lacked jurisdiction and denied Petitioner’s request for a bond decision. Exh. 4

15. The Court determined that the IJ's September 9, 2025, order mooted Petitioner's request for temporary injunctive relief against the challenged automatic stay regulations. ECF Dkt. 16. The Court ordered Respondents to respond to Petitioner's habeas petition thereby mooting the pending Motion for Order to Show Cause. *Id.*; ECF Dkt. 2.

16. Respondents filed their response on September 15, 2025, ECF Dkt. 20, and Petitioner replied on September 17, 2025. ECF Dkt. 22.<sup>6</sup>

17. Petitioner now files this Application for Temporary Restraining Order and Preliminary Injunction.

#### **STANDARD OF REVIEW**

18. The purpose of a temporary restraining order is to prevent irreparable harm until the court makes a final decision. *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).

19. 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) that the movant will suffer irreparable injury if the temporary restraining order is denied; (3) that the balance of equities favor the petitioner; and (4) that the temporary restraining order will not disserve the public interest. *See id.* These factors are analyzed on a "sliding scale"

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<sup>6</sup> Petitioner attempted to file his reply in ECF Dkt. 21, but refiled as ECF Dkt. 22 upon realizing that the briefing submitted as ECF Dkt. 21 somehow erased from the electronic file after submission through the Court's electronic filing system.

taking into account the intensity of each factor. *See State of Tex. v. Seatrail Intern.*, S.A., 518 F.2d 175, 180 (5th Cir. 1975). When other factors weigh 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)).

## ARGUMENT AND AUTHORITIES

### I. Petitioner is likely to succeed on his ultra vires and Due Process claims.

20. Petitioner is likely to succeed on both his *ultra vires* and Due Process claims.<sup>7</sup>

#### a. The Court has jurisdiction and may review Petitioner’s claims.

21. No statute deprives the Court of jurisdiction. Preclusion of review of constitutional claims requires “clear” intent. *Webster v. Doe*, 486 U.S. 592, 603 (1988). Congress must be “particularly clear” when barring review of habeas petitions. *Demore v. Kim*, 538 U.S. 510, 517 (2003); *see also Panetti v. Quarterman*, 551 U.S. 930, 946 (2007) (cautioning against denying review “without any clear indication that such was Congress’ intent”).

22. Petitioner’s claims challenge the extent of all Respondents’ authority under the INA to detain him without bond under 8 U.S.C. § 1225(b)(2). *See* ECF Dkt. 18, at ¶¶18-27 (arguing that § 1225(b)(2) is inapplicable to Petitioner, and that he is detained under § 1226(a)); ¶28 (describing DHS’s “coordination with DOJ” and the BIA’s recent adoption of the erroneous interpretation of 8 U.S.C. §1225(b)(2)); ¶47 (“The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention, is *ultra vires* and violates the INA.”); ¶52 (“prolonging [Petitioner’s] detention pursuant to an inapplicable statute, 8 U.S.C. 1225(b)(2),

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<sup>7</sup> Petitioner summarizes arguments filed in his Reply to Response to Petitioner’s Second Amended Petition for Writ of Habeas Corpus. ECF Dkt. 22, at ¶¶22-50. Additional authorities supporting Petitioner’s argument are cited in previously filed briefing.

violates procedural and substantive due process”).

23. 8 U.S.C. § 1226(e) does not bar judicial review. That provision bars review of discretionary decisions judgments, or actions. Habeas challenges to “the extent of the Government’s detention authority under the ‘statutory framework’ as a whole” and “constitutionality of the entire statutory scheme under the Fifth Amendment,” like Petitioner’s claims, fall outside the scope of 1226(e). *Jennings v. Rodriguez*, 583 U.S. 281, 295-96 (2018); *see also Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Najera v. United States*, 926 F.3d 140, 144 (5<sup>th</sup> Cir. 2019) (challenge was “not a matter of ‘discretionary judgment,’ ‘action,’ or ‘decision,’” and therefore fell “outside the scope of 1226(e).”); *Diallo v. Pitts*, No. 1:19-cv-216, 2020 WL 714274, at \*6 (S.D. Tex. Jan. 15, 2020); *da Silva v. Nielsen*, No. 5:18-MC-00932, 2019 WL 13218461, at \*4-\*5 (S.D. Tex. Mar 29, 2019).

24. Similarly, 8 U.S.C. § 1252(a)(2)(B)(ii) does not bar review. This provision only applies to actions expressly made discretionary by statute. *Kucana v. Holder*, 558 U.S. 233, 242-43 (2010); *Aviles-Tavera v. Garland*, 22 F.4<sup>th</sup> 478, 485 (5th Cir. 2022) (statute must “expressly and specifically vest discretion in the Attorney General”). No statute provides Respondents with discretion to detain Petitioner without bond.

25. Section 1252(b)(9) also does not deprive the Court of jurisdiction because Petitioner’s claims are not closely related to and cannot be efficaciously raised in his removal proceedings. *See Duron v. Johnson*, 898 F.3d 644, 647 (5th Cir. 2018) (§1252(b)(9) “does not...sweep within its scope claims with only a remote or attenuated connection to the removal of an alien” or preclude review of “claims that cannot be raised efficaciously” in removal proceedings); *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (1252(b)(9) does not “foreclose all review of agency actions.”); *I.N.S. v. St. Cyr*, 533 U.S. 289, 313 (2001) (Section 1252(b)(9) “applies

only with respect to review of an order of removal under [8 U.S.C. § 1252(a)(1)"].

26. Because Petitioner does not challenge the discrete actions described by 8 U.S.C. § 1252(g), namely, the decision to commence proceedings, adjudicate cases or execute removal orders this Court may review his claims. *See Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999); *Alam v. Nielsen*, 312 F.Supp.3d 574, 580 (S.D. Tex. 2018) ("Habeas challenges to immigrant detention are among the claims that lie outside of Section 1252(g)'s scope.").

27. Additionally, prudential exhaustion does not bar review because the issues presented by Petitioner are largely legal, because an administrative remedy would be inadequate, and Petitioner would suffer irreparable harm if habeas relief is unavailable until after exhaustion. *See Buenrostro-Mendez*, 2025 WL 2886346, at \*3 ("When a legal question is fit for resolution and delay means hardship a court may choose to decide the issue itself.") (internal citations omitted); *Gomez v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at \*5 (D. Mass. Jul. 7, 2025) (noting more than 200-day average processing time for BIA consideration of bond appeals).

**b. Petitioner is detained under 8 U.S.C. § 1226(a). Continuing his detention without access to bond proceedings is *ultra vires*.**

28. The plain text of 8 U.S.C. § 1226(a) indicates that it governs Petitioner's detention. It is the INA's "default" detention authority, *Jennings*, 583 U.S. at 288, and it applies to non-citizens who are detained "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a).<sup>8</sup> Section 1226(a) applies to people who are inadmissible and people

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<sup>8</sup> Section 1226(a)'s reference to a "warrant issued by the Attorney General," permits, but does not require, issuance of a warrant for detention to be governed by 8 U.S.C. § 1226(a). The INA provides for exceptions to the warrant requirement, *see* 8 U.S.C. § 1357(a)(2), and non-citizens who reside in the United States without being legally admitted and are subject to warrantless arrest may still be detained pending a final order of removal under 8 U.S.C. § 1226(a) if they are

who are deportable<sup>9</sup> and provides for the general right to seek release on bond, unless the detained individual falls within discrete categories of non-citizens who are subject to mandatory detention under 8 U.S.C. §§ 1226(c).

29. The discrete categories of individuals subject to mandatory detention under 8 U.S.C. § 1226(c) includes some non-citizens who are inadmissible, not just people who are deportable. *See* 8 U.S.C. §§ 1226(c)(1)(A), 1226(c)(1)(D), and 1226(c)(1)(E).

30. Respondents' argument that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) misreads the statute. First, the fact that 8 U.S.C. § 1226(c) excepts certain inadmissible non-citizens from §1226's bond authority proves that 8 U.S.C. § 1226(a) applies to inadmissible non-citizens, like Petitioner. *See Rodriguez v. Bostock*, 779 F.Supp.3d 1239, 1256-57 (W.D. Wash. 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Courts must interpret statutes to "give effect, if possible, to every clause and word of a statute." *Parker v. Drilling Management Services, Ltd. v. Newton*, 587 U.S. 601, 611 (2019); *Ortega v. Housing Authority of City of Brownsville*, 572 F.Supp.2d 829, 839 (S.D.

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not otherwise subject to mandatory detention under 8 U.S.C. § 1226(c). *See Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at \*4 (W.D. La. Sept. 11, 2025) ("permitting – but not requiring – the Attorney General to issue warrants"); *see also Santiago v. Noem*, 2025 WL 2792588, at \*2 (habeas granted where petitioner was "arrested without a warrant"); *Garcia Cortes v. Noem*, 1:25-cv-02677-CNS, 2025 WL 2652880, at \*4 (D. Col. Sept. 16, 2025) (same). Lack of a warrant does not make a habeas petitioner eligible for mandatory detention under Section 1225(b)(2)(A). *See, e.g., Chogollo Chafla v. Scott*, 2:25-cv-00437-SDN, 2025 WL 2688541, at \*11-\*12 (D. Me. Sept. 22, 2025) (ordering immediate release because respondents failed to produce a warrant).

<sup>9</sup> Grounds of deportability are found in 8 U.S.C. § 1227 and generally apply to people like lawful permanent residents who have been legally admitted to the United States, while grounds of inadmissibility are found in 8 U.S.C. § 1182 and apply to people, like Petitioner, who have not yet been legally admitted to the United States. *See, e.g., Barton v. Barr*, 590 U.S. 222, 234 (2020).

Tex. 2008) (courts disfavor interpretations of statutes that render language superfluous). Detaining all inadmissible non-citizens pursuant to 8 U.S.C. § 1225(b)(2)(A) would render 8 U.S.C. § 1226(c)'s explicit references to inadmissible non-citizens meaningless. There would be no reason for Congress to except inadmissible aliens from 8 U.S.C. § 1226(a)'s bond provisions because they would already be subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See, e.g., Aguilar Maldonado v. Olson, et al.*, No. 25-cv-3142 (SRN/SGE), 2025 WL 2374411, at \*12 (D. Minn. Aug. 15, 2025) (describing the presumption against superfluity when interpreting Section 1226(c) and 1225(b)(2)).

31. Earlier this year Congress confirmed 8 U.S.C. § 1226's applicability to inadmissible non-citizens like Petitioner by amending 8 U.S.C. § 1226(c) to make inadmissible non-citizens subject to mandatory detention if they meet the criteria set out in 8 U.S.C. § 1226(c)(1)(E). *See Laken Riley Act*, Pub. L. No. 119-1, 139 Stat. 3 (2025), *available at:* <https://www.congress.gov/119/plaws/publ1/PLAW-119publ1.pdf> (accessed Oct. 16, 2025). When Congress amends a statute, courts "presume it intends its amendment to have real and substantial effect." *Securities and Exchange Commission v. Hallam*, 42 F.4th 316, 337 (5th Cir. 2022). Respondents' interpretation of 8 U.S.C. § 1225(b)(2) as applicable to all inadmissible non-citizens would nullify Congress's recent amendments to 8 U.S.C. § 1226(c).

32. Moreover, new statutory provisions enacted "against a backdrop of longstanding administrative construction" should be "understood to work in harmony with what has come before." *Monsalvo Velazquez v. Bondi*, 145 S.Ct. 1232, 1242 (2025) (internal citations omitted). Petitioner, who is not subject to mandatory detention under the Laken Riley Act amendments, should be understood to be eligible for bond consistent with agency guidance issued contemporaneously with the Illegal Immigration Reform and Immigrant Responsibility Act of

1996 (“IIRIRA”). Agency guidance contemporaneous with IIRIRA clarifies that “[d]espite being applicants for admission [within the meaning of 8 U.S.C. § 1225(a)] aliens who are present without having been admitted or paroled...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 10312-01, 10323 (Mar. 6, 1997).

33. The structure of the statutory scheme also supports 8 U.S.C. § 1226(a)’s application to Petitioner. *See Biden v. Texas*, 597 U.S. 785, 799-800 (2022) (considering statutory structure when interpreting provision of the INA); *King v. Burwell*, 576 U.S. 473, 492 (2015) (provision that “may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme....”). By its title, 8 U.S.C. § 1225 concerns “expedited removal of inadmissible arriving aliens.” Section 1225(b)(1) encompasses the “inspection” of certain “arriving aliens” and other non-citizens designated by the Attorney General pursuant to 8 U.S.C. § 1225(b)(1)(A)(iii) who recently entered the United States. 8 U.S.C. § 1225(b)(1). Section 1225(b)(2)(A) contains a similar limitation to non-citizens who are “seeking admission” at the time of inspection. 8 U.S.C. § 1225(b)(2)(A). The use of the present tense necessarily implies some action that must be occurring at the time of inspection. *See Carr v. U.S.*, 560 U.S. 438, 449 (2010) (use of present-tense verbs indicates prospective orientation); *see, e.g., Martinez v. Hyde*, --- F.Supp.3d ---, 2025 WL 2084238, at \*6 (D. Mass. Jul. 24, 2025) (“seeking admission” implies some sort of present-tense action). Respondents’ interpretation of § 1225(b)(2) as applying to all inadmissible non-citizens, regardless of whether they are “seeking admission” at the time of inspection, again renders superfluous the words chosen by Congress.

34. IIRIRA’s legislative history also supports Petitioner’s construction of 8 U.S.C. § 1226(a). Prior to IIRIRA, people who resided in the United States without being legally admitted were not

subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (generally permitting release on bond of “any alien” who is not convicted of an aggravated felony and subject to other statutory criteria). When Congress passed IIRIRA, it explained that the current 8 U.S.C. 1226(a) “restates [8 U.S.C. § 1252(a)(1) (1994)] 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.

35. Recently, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) which interprets 8 U.S.C. §§ 1225(b)(2)(A) and 1226(a) consistent with DHS’s and DOJ’s recent shift from long-standing agency practice. This decision is not binding on the Court and is not entitled to deference. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (“agencies have no special competence in resolving statutory ambiguities. Courts do.”); *see also Buenrostro-Mendez v. Bondi*, 2025 WL 2886346, at \*3 n.3 (S.D. Tex. Oct. 7, 2025) (citing several cases rejecting *Matter of Yajure Hurtado*). Among other flaws, *see* ECF Dkt. 22, at ¶¶33-37, the BIA’s decision contradicts agency regulations issued contemporaneously with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), which clarify that “[d]espite being applicants for admission [within the meaning of 8 U.S.C. § 1225(a)] aliens who are present without having been admitted or paroled...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 10312-01, 10323 (Mar. 6, 1997).

36. By detaining Petitioner without bond, purportedly under the authority of 8 U.S.C. § 1225(b)(2), Respondents “go[] beyond what Congress has permitted [them] to do” and act *ultra vires*. *Ayala Chapa v. Bondi*, 132 F.4th 796, 798-99 (5th Cir. 2025) (citing *City of Arlington v.*

*FCC*, 569 U.S. 290, 297-98 (2013)). The plain text, statutory structure, and legislative history all make clear that 8 U.S.C. § 1226(a) governs Petitioner’s detention because he has resided in the United States for years without being legally admitted and was not “seeking admission” within the meaning of 8 U.S.C. § 1225(b)(2)(A) at the time of inspection.

**c. Respondents’ detention of Petitioner without bond violates Due Process.**

37. “Freedom from imprisonment...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.*

38. 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, e.g., Lopez Benitez*, 2025 WL 2371588, at \*9-\*13 (S.D.N.Y. Aug. 13, 2025); *Gashaj v. Garcia*, 234 F.Supp.2d 661, 670 (W.D. Tex. 2002). Courts weigh: (1) the private interest affected; (2) the risk of erroneous deprivation and value of additional procedural safeguards; and (3) the Government’s interest, including the administrative burdens, that additional safeguards entail *See Mathews*, 424 U.S. 319, 335 (1976).

39. Petitioner’s private interest is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also 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.”). Petitioner remains detained hours away from his family and home. He faces the prospect of detention for several more months as his removal case proceeds. Additional detention risks denying Petitioner’s ability to see his daughter in-person before she enlists in the military. Exh. 5 (Decl. of Cardenas).

40. The risk of erroneous deprivation is high in this case. The purpose of adversarial bond proceedings before a natural arbiter is to mitigate this risk. Petitioner is a 63-year-old man who has resided with his family in the Rio Grande Valley area of Texas for more than two decades. The IJ found that Petitioner was “not a danger and not a flight risk – or that any flight risk” could be mitigated by a \$4,000 bond. ECF Dkt. 20-1. Civil detention must bear some rational relationship to its only legitimate purposes, to prevent flight and reduce danger to the community. *See Zadvydas*, 533 U.S. at 690-91. Petitioner seeks release or, alternatively, the basic procedures already available to him under governing federal law to mitigate this risk.<sup>10</sup>

41. Respondents have a legitimate interest in ensuring the safety of the community and the ability to remove people who are subject to final removal orders. These interests are adequately protected by the IJ’s August 14, 2025, bond order.

## **II. Petitioner is suffering irreparable harm.**

42. 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 unlawful mandatory detention and deprived of constitutional rights. There is “no adequate remedy” for these harms and Respondents’ constitutional violations. *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2000). He faces the prospect of additional months of detention far away from his family, who face obstacles visiting him. Exh. 5, at ¶3 (Decl. of Yovanna Cardenas). Petitioner

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<sup>10</sup> Humanitarian parole procedures under 8 U.S.C. § 1182(d)(5) are inadequate to mitigate this risk because, as Respondents point out, DHS has “sole discretion” whether to grant parole. ECF Dkt. 20, at 5 ¶8. Where freedom from physical detention is at stake, greater procedural protections are required. *See, e.g., Ramirez v. Watkins*, 2010 WL 6269226, at \*20 (Nov. 3, 2010) (“if an alien makes a showing via a habeas petition that continued detention is no longer reasonable in the absence of an individualized hearing, the alien must be afforded a hearing before the habeas court at which the Government bears the burden of justifying continued detention” based on flight risk and danger to the community).

has missed several family celebrations since his detention began in August 2025. Exh. 5, at ¶5.

His daughter has delayed starting her military career to ensure that she can see her father again in—person before leaving the Rio Grande Valley.

**III. The balance of equities favors Petitioner.**

43. 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. Respondents’ legitimate interest in protecting the community and ensuring that Mr. Cardenas attends his removal proceedings may be protected by an order requiring Respondents to provide a bond hearing. On the other hand, Mr. Cardenas faces the prospect of further deprivation of his fundamental liberty interests and additional months of detention without consideration of the only factors that can justify civil detention – flight risk and dangerousness.

**IV. A restraining order and injunction serve the public interest.**

44. “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 (5th Cir. June 12, 2024) (quoting *Texas v. United States*, 40 F.4th 205, 229 (5th Cir. 2022)). An order ending Petitioner’s unlawful detention will serve the public interest.

## CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant a temporary restraining order and preliminary injunction order Respondents to release Petitioner from their custody, releasing Petitioner from Respondents’ custody in accordance with the Immigration Judge’s (“IJ”) August 14, 2025, bond order, or ordering Respondents to provide a bond hearing within seven (7) days.

Dated: October 16, 2025.

Respectfully submitted

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ATTORNEYS FOR PETITIONER

as of the filing of this application and it is assumed to be opposed.

/s/ Peter McGraw  
Peter McGraw

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on counsel for Respondent on October 16, 2025, by filing the same with the Court electronic case filing system.

/s/ Peter McGraw  
Peter McGraw