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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

QUIRINO GUERRERO LEPE, Petitioner, v. TONYA ANDREWS, in official capacity, Facility Administrator of Golden State Annex; ORESTES CRUZ, in official capacity, Field Office Director of ICE's San Francsico Field Office; TODD M. LYONS, in official capacity, Acting Director of ICE, KRISTI NOEM, in official capacity, Secretary of the U.S. Department of Homeland Security; PAM BONDI, in official capacity, Attorney General of the United States, Respondents.	No. 1:25-CV-01163-KES-SKO **REPLY TO OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER**

Introduction

In its Opposition, the government urges a radical interpretation of the immigration detention statutes. Their interpretation does not comport with the text, context, history, or logic. Nor can it coexist with Due Process. The government's interpretation, which would "require the mandatory detention of hundreds of thousands, if not millions, of individuals currently residing within the United States, is contrary to the plain text of the statute and the overall statutory scheme." *Romero v. Hyde*, No. CV 25-11631-BEM, -- F.Supp.3d--, 2025 WL 2403827, at *1 (D.

Mass. Aug. 19, 2025).

In the present case, the government attempts to apply this misreading of the law to Quirino Guerrero Lepe ("Petitioner"). According to the government, Petitioner has 32 years of continuous presence in the United States and was apprehended near his home in Contra Costa County, roughly 500 miles from the border.[1] He has never been accused, much less convicted, of a crime. In 2022, he suffered a nearly fatal stroke and has been working to recover ever since. In detention, separated from his doctors, medication, and support network, he has been experiencing frequently "intolerable" numbness along the entire right side of his body. Petitioner is a pillar of his community, a devoted and supportive husband and uncle, and a generous colleague and friend. At no point since his detention on July 1, 2025, has the government ever suggested that he is either a flight risk or a danger—the two criteria for bond in immigration proceedings.

This Reply addresses several significant errors and misconceptions in the government's Opposition ("Opp.") brief.

1. The Government's Efforts at Statutory Construction Ignore the Plainest and Most Logical Reading of the Text

The statutory text demonstrates why Petitioner is eligible for bond.

Warrant. Petitioner was arrested "on a warrant." The warrant can be found in the record. Dkt. 2-12 at 5. The word warrant appears prominently in 1226(a), the bond-eligible statute. It is nowhere to be found in 1225, the expedited removal statute. That the government issued an arrest warrant in Petitioner's case—a warrant that specifically identifies 1226(a) as its source of authority—shows why he is subject to Section 1226(a) and, thus, bond-eligible. Numerous district courts have used the existence of a warrant to reject the government's interpretation of the statute.[2]

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[1] In removal proceedings, the government bears the burden of proving "alienage" by clear and convincing evidence. "Alienage" is one of the allegations in every "Notice to Appear," the document initiating immigration removal proceedings. In the current procedural posture of Petitioner's removal case, the government has not carried this burden of proving alienage. The immigration judge set a "contested hearing" for October 29 to resolve this issue and Petitioner has announced his intention to move to suppress evidence and terminate the immigration proceedings.

[2] *See dos Santos v. Noem*, No. 1:25-CV-12052-JEK, 2025 WL 2370988, at *7 (D. Mass. Aug. 14, 2025) ("The plain text of Section 1226(a)—which provides that, following a noncitizen's arrest on a warrant, the Attorney General 'may' detain the noncitizen, 'may' release him on bond, or 'may' release him on conditional parole, 8 U.S.C. §§ 1226(a)(1)-(2)—indicates Congress's intent to establish a discretionary, rather than mandatory, detention framework for noncitizens arrested on a warrant."); Lopez-Campos v. Raycraft, No. 2:25-CV-12486, 2025 WL 2496379, at *8

The government has no counter except to say that the warrant "cannot override Congress's mandatory-detention statutory framework." Opp. 9. There is an obvious flaw in the government's reasoning: it pre-supposes what the statute means. Statutory interpretation is an effort to understand the text. The warrant provides a strong textual clue that Section 1226(a) governs Petitioner's case. At the border, where expedited removal occurs—and where Section 1225(b)(2)(A) applies—there is no need for a warrant to make an arrest. That is a clear and logical explanation for 1226(a) mentions a warrant, why 1225 does not, and why Petitioner must be treated on 1226(a).

Laken Riley Act and surplusage. The government has no satisfactory explanation for Congress's recent amendments to Section 1226, that is, the amendments made by the Laken Riley Act of 2025, Pub. L. No. 119-1, 139 Stat. 3 (2025). Again, Petitioner's argument is simple, straightforward, and supported by numerous district court decisions. In the Laken Riley Act, Congress desired to detain more people who had entered without inspection and were in removal proceedings. It did not simply declare that all those who entered without inspection were subject to mandatory detention. Rather, it provided that all of those who entered without inspection *and* had criminal histories would be subject to mandatory detention. There is absolutely no reason Congress would have create this two-pronged test—(1) entry without inspection and (2) criminal history—if Section 1225(b)(2)(A) already required detention of every person who entered without inspection. This is strong evidence that Section 1225(b)(2)(A) does not apply to all those who entered without inspection.

This point has been made over and over again by district courts around the country. One district court in Minnesota put it well:

(E.D. Mich. Aug. 29, 2025); *Romero v. Hyde*, No. CV 25-11631-BEM, -- F.Supp.3d --, 2025 WL 2403827, at *11 (D. Mass. Aug. 19, 2025) ("This argument [by the government] misunderstands the requirements of section 1226, which applies only where a noncitizen is arrested '[o]n a warrant ... pending a decision on whether the alien is to be removed from the United States.'"); Lopez Benitez v. Francis, No. 25 CIV. 5937 (DEH), -- F.Supp.3d --, 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025) ("Section 1225(b)(2) does not apply to noncitizens who are arrested on a warrant issued by the Attorney General while residing in the United States."); Gomes v. Hyde, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *1 (D. Mass. July 7, 2025) ("Because Gomes was arrested on a warrant and ordered detained under Section 1226, his detention continues to be governed by Section 1226(a)'s discretionary framework.").

> Respondents' one-size-fits-all application of § 1225(b)(2) to all aliens, with no distinctions, would violate fundamental canons of statutory construction. Importantly, it would render § 1226 utterly superfluous. . . . The Court will not find that Congress passed the Laken Riley Act to "perform the same work" that was already covered by § 1225(b)(2).

Maldonado v. Olson, No. 25-CV-3142 (SRN/SGE), ---F.Supp.3d---, 2025 WL 2374411, at *12 (D. Minn. Aug. 15, 2025).[3]

The best the government can muster in response is the claim that "Congress created belt-and-suspenders authority" and that, for reasons unexplained, Congress did so to "foreclose loopholes." Opp. at 8. But the government does not mention what loopholes this surplusage could possibly close. If the government is correct, and all of those who entered without inspection are subject to mandatory detention, then they are not loopholes in need of addressing. A more natural reading of these Laken Riley Act amendments is that Congress did not believe all those who entered without inspection were subject to mandatory detention and it wanted those who had criminal histories to be mandatorily detained.

"Extra" words in 1225(b)(2)(A). Petitioner's case cannot fit within Section 1225(b)(2)(A). The government has much to say about Section 1225(a)(1) and the expansive sweep it presumes for the term "applicant for admission" in that section. But the government has far less to say about the actual section it wants applied: Section 1225(b)(2)(A). This laconic approach to describing Section 1225(b)(2)(A) is likely a function of how poorly the text of that section fits the Government's desired interpretation. Even a quick review of the text shows why the government does not quote it in full or spend much time analyzing it:

> [I]n the case of an alien who is an applicant for admission, if the [1] examining immigration officer determines that an alien [2] seeking admission is [3] not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 240.

Section 1225(b)(2)(A) (bracketed numbers added). Numerous district courts have found it abundantly clear what this subsection means and have, thus, rejected the government's

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[3] *See also* Romero v. Hyde, No. CV 25-11631-BEM, 2025 WL 2403827, at *11 (D. Mass. Aug. 19, 2025) ("Applying section 1225 to noncitizens 'already in the country,' as Respondents argue . . . would make a recent amendment to section 1226—adopted in 2025 by the Laken Riley Act—superfluous. This is a presumptively dubious result given that 'the canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.'" (internal citations and quotation marks omitted); Gomes v. Hyde, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025); Lopez-Campos v. Raycraft, No. 2:25-CV-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025) ("Respondents' interpretation of the statutes would render this recently amended section superfluous.").

interpretation of the mandatory detention law. The text describes the "expedited removal" procedures outlined through Section 1225, in which an immigration officer—not an immigration judge—makes a credible fear determination before deciding whether the person is subject to removal. *See, generally,* 8 U.S.C. s. 1225. The mandatory detention provision in 1225(b)(2)(A) is self-evidently an instruction that people in expedited removal "shall be detained."

Here, Petitioner is *not* in expedited removal proceedings.[4] As such, Petitioner was not "examin[ed]" by an "immigration officer" and there was no one determined that he was "not clearly and beyond a doubt entitled to be admitted." Numerous district courts have used this very same analysis to reject the government's reading of Section 1225(b)(2)(A).[5] As one court put it:

> [F]or section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an "examining immigration officer" must determine that the individual is: (1) an "applicant for admission"; (2) "seeking admission"; and (3) "not clearly and beyond a doubt entitled to be admitted."

Romero v. Hyde, No. CV 25-11631-BEM, -- F.Supp.3d -- 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025) (some internal quotations marks omitted). None of that occurred in Petitioner's case. It is clear that he is not subject to Section 1225(b)(2)(A).

Indeed, the government declines to explain how Petitioner can fit within the text of this mandatory detention statute when his case is missing all of those required elements. At one point, the Opposition says that the statutory text is just a description of how "expedited removal *normally* operates at ports of entry." Opp. at 7 (emphasis added). Moments later, the Opposition says this is merely the statute's "*typical* context." Opp. at 7 (emphasis added). The government provides no explanation for why Congress would mention the "normal[]" or "typical" application, but keep secret the other, more expansive applications that the government desires to exploit. And, shortly after, the Opposition retreats to a position that the statutory text must be read in a "non-hypertechnical manner and with an eye toward context." Opp. at 7. This is a puzzling claim, given that government's reading of "applicant for admission" is nothing if not "hypertechnical."

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[4] *See infra* pages 9-11, correcting the government's errant claim that Petitioner is in expedited removal proceedings.

[5] *See, e.g.*, Lopez-Campos v. Raycraft, No. 2:25-CV-12486, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025) ("Respondents completely ignore the term 'seeking' when attempting to broaden what 'seeking admission' means");; Martinez v. Hyde, No. CV 25-11613-BEM, -- F.Supp.3d --, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), -- F.Supp.3d --, 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025).

After all, how else could it allege that Petitioner entered the country 32 years ago and was apprehended 500 miles from the border yet was still an "applicant for admission"? At the risk of belaboring this point, it is notable what happens when one presses the government about how the text of Section 1225(b)(2)(A) could fit Petitioner, given the many missing elements of the statute. Again, the government's only rejoinder is that reading the elements mentioned in the text would "improperly import technical prerequisites that are designed for one common setting into all settings." Opp. at 7. This is not a tenable way to read a statute. If the text of Section 1225(b)(2)(A) applied outside of expedited removal proceedings, Congress would have said so.

2. Statutes Cannot Change Meaning from Year to Year

Petitioner urges a straightforward, simple, and traditional reading of the immigration detention statutes—a reading that has prevailed, unchallenged for the three decades that these statutes have been on the books. This reading is also one that has been endorsed by a wall of unanimous district court decisions to have considered the issue. See Motion for Temporary Restraining Order & Points and Authorities, Dkt. 2, at 23-24 (collecting cases). By contrast, the government urges a break with this longstanding interpretation and practice. Unfortunately, the government has very little to say about this radical change it is endorsing. At the bottom of page 9, wrapped in parentheses, there is a brief acknowledgement of this radical reinterpretation of the statutes:

> (The government had previously misinterpreted Section 1226(a) to be an available detention authority for aliens who entered the country illegally).

Opp. at 9-10.

This small and quiet concession is an important one. The fact that the government "misinterpreted" these laws for thirty years shows that there are at least "serious questions" about the government's present, preferred reading. As one district court put it: "[I[f Congress's intention was so clear, why did it take thirty years to notice?" Romero v. Hyde, No. CV 25-11631-BEM, --F.Supp.3d --, 2025 WL 2403827, at *12 (D. Mass. Aug. 19, 2025). Other courts have reacted similarly, including by noting that the new interpretation of the statute conflicts not only with the

statute but also with the statute's own implementing regulations.[6] The Opposition never mentions the length or extent of this misinterpretation. Nor does it mention that the new interpretation came, not from an act of Congress or from the Supreme Court, but from a new policy by two executive branch agencies. *See* Dkt. 2-20 "Exhibit Q."

In an attempt to hurdle the wall of district court cases lined up against it, the government tosses out a few lines to attempt to distinguish Petitioner's case. One claim the Opposition makes, for example, is that Petitioner has never previously been subject to Section 1226 so that "differentiates his case from those non-binding district court cases that Lepe cites." Opp. at 10. Of course, this distinction has no force—if Section 1225(b)(2)(A) is mandatory, it should not matter whether the government has previously applied Section 1226(a) to him. More to the point, however, the government's effort at finding a distinction is wrong. Numerous district court decisions have granted relief to people without any mention that they had previously been apprehended or placed in immigration proceedings under Section 1226(a).[7] Or, to give another example, the Opposition takes issue with the use of statute headings to infer meaning, Opp. at 6. But it makes no mention of the fact that district courts have used these titles for exactly that purpose. *See, e.g.*, *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025).

The insurmountable problem facing the government's position is that statutes do not change their meaning from year to year. As a district court in Michigan explained:

> For the past 30 years, the Government has applied Section 1226(a) in seeking detention in this context, even though, as Respondents' council represented at the hearing, they believed they had the discretion to also apply Section 1225(b)(2)(A). Now that Respondents' immigration policy has changed and Section 1225(b)(2)(A) is more favorable, they want the Court to declare that the application of Section 1226(a) is incorrect. *Respondents can't have it both ways.* The plain language of the statutes, the overall structure, the intent of Congress, and over 30 years of agency action make clear that Section 1226(a) is the appropriate statutory framework for determining bond for noncitizens who are already in the country and facing removal.

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[6] And it is not "just" the statute that would have to be radically reinterpreted. So would the implementing regulations. *See, e.g.*, Romero v. Hyde, No. CV 25-11631-BEM, -- F.Supp.3d --, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025) (describing extent of revision that would be required by the government's interpretation).

[7] *See, e.g.*, *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1244 (W.D. Wash. 2025); Garcia v. Noem, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431, at *1 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM, slip op. at 16 (E.D. Mich. Aug. 29, 2025) (Dkt. No. 14); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *1 (C.D. Cal. Sept. 8, 2025).

Lopez-Campos v. Raycraft, No. 2:25-CV-12486, 2025 WL 2496379, --F.Supp.3d--, at *5 (E.D. Mich. Aug. 29, 2025) (emphasis added). Moreover, according to the Supreme Court's recent decision in *Loper Bright v. Raimondo*, federal courts should independently interpret the meaning and scope of these detention statutes using the traditional tools of statutory construction, not with any deference to the new view of the agency. *Loper Bright Enterprises v. Raimondo,* 603 U.S. 369, 385, 401 (2024); *see also Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1251 (W.D. Wash. 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *2 n.29 (W.D. La. Aug. 27, 2025).

It is not simply the statutory rights of Petitioner that are violated by the government's whipsawing reading of the statutes. Taking liberties with the meaning of the statutory text implicates the due process rights that these statutes have created.

3. Harm to Petitioner and Petitioner's Due Process Rights

Petitioner has already suffered a great deal from the government's misinterpretation of the statute. And he stands to suffer a great deal more with every additional day that he is in custody. These harms are outlined through the record in this case and described in the Petition and Motion for TRO. The Opposition incorrectly claims that "Lepe . . . lack[s] any liberty interest in avoiding removal or . . . certain additional procedures." Opp. at 11. The government makes the incorrect claim that "the Due Process Clauses provides nothing more" than what is set out in statute. Opp. at 11. Indeed, the government goes further to wrongly claim that there is only a "*limited* public interest in enforcing his constitutional rights." Opp. at 4 (emphasis added). While those in expedited removal proceedings may face diminished constitutional protections, Petitioner is not in expedited removal. He is undoubtedly entitled to Due Process. The public has an overwhelming interest in ensuring that the government abides by the nation's laws and constitution. As one district court explained:

> Section 1226(a) of the INA recognizes that the core and "most elemental of liberty interests" is to be free from restraint and physical detention. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). For centuries, the Government has acted in accordance with these principles. The recent shift to use the mandatory detention framework under Section 1225(b)(2)(A) is not only wrong but also *fundamentally unfair*. In a nation of laws vetted and implemented by Congress, we don't get to arbitrarily choose which laws we feel like following when they best suit our interests. It is clear to this Court that the plain language of both Section 1226(a) and Section 1225(b)(2)(A) mandate a

finding that Lopez-Campos is entitled to a detention hearing pending his removal proceedings. Lopez-Campos v. Raycraft, No. 2:25-CV-12486, 2025 WL 2496379, at *10 (E.D. Mich. Aug. 29, 2025) (emphasis added).

The government does not acknowledge these constitutional issues that infuse Petitioner's case. Indeed, the government is silent about the facts of Petitioner's life—facts that make mandatory detention so irreparably harmful for Petitioner. Again, according to the government, Petitioner has lived continuously in the United States for 32 years. The record demonstrates that he has never been accused of, much less convicted, of any crime. Just three years ago, he suffered a nearly-fatal stroke and has worked assiduously to regain his health. In detention, he lacks access to his medication, Gabapentin, and has experienced numbness and excruciating pain. Separated from his family, his friends, his colleagues, and his doctors, Petitioner is daily suffering irreparable harm. *See* Dkt. 2-5 at 7-11 (bond motion specifically describing Petitioner's stroke, and continued, major health challenges, made worse by detention); Dkt. 2-9 at 14 (describing letter from Petitioner's doctors raising concerns about "very high risk for a stroke, blood clots and a heart attack); Dkt. 2-9 at 27-30 (providing excerpts of medical records from 2022 stroke); (Dkt. 2-19 (describing Petitioner's deteriorating health in detention). He is limited in his ability to work on his immigration case. These are palpable harms that have built on top of each other since July 1, the day that he was detained. The government never addresses them.

Indeed, in the months that have gone by, in all the briefing for the bond hearing, at the bond hearing itself, and in all the briefing before this Court, the government has not once suggested that Petitioner is either a danger or a flight risk—the two criteria under which bond is determined. The only reason Petitioner has been denied bond is the government's strained interpretation of the statute—an interpretation that raises both statutory and Due Process concerns.

4. Contrary to the Government's Assertion, Petitioner is *not* in "expedited removal" proceedings.

Finally, Petitioner must correct a pervasive error in the government's Opposition. Throughout its Opposition brief, the government incorrectly states that Petitioner is in expedited

removal proceedings.[8] *See* Opp. at 4, 11, 12. The indisputable fact is that Petitioner is *not* in expedited removal proceedings. He is in standard removal proceedings before an immigration judge with all of the attendant rights. Nor could he be placed in expedited removal proceedings. By statute, a necessary requirement for being placed in expedited removal is the person's inability to show that they "have been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. s. 1225(b)(1)(A)(iii). Again, by the government's own claims, Petitioner has lived for 32 years continuously in California. The government would have to show that he has been in the United States for less than two years to put him in expedited removal, and the government never tried to do so.

The government's erroneous claim is no small mistake. It helps explain why the government thinks Petitioner is subject to mandatory detention. If Petitioner were in expedited removal proceedings, the government would have a case for applying Section 1225(b)(2)(A)—the subsection that governs mandatory detention *in expedited removal proceedings*. As all the district courts have explained, that is why Section 1225(b)(2)(A) is located in a statutory section whose title contains the heading "expedited removal of arriving aliens." See 8 U.S.C. s. 1225. Those who are in expedited removal are mandatorily detained. But Petitioner is not one of those people, and that is what makes it so strange to insist on his mandatory detention.

More broadly, the government uses this incorrect claim about expedited removal to argue that there is no public interest in Petitioner's constitutional rights. On page 4, the government claims that, because Petitioner is "subject to expedited removal" there is only a "*limited* public interest in enforcing his constitutional rights." Opp. at 4 (emphasis added). On page 11, the government states that "aliens subject to expedited removal *like Lepe*" "lack any liberty interest in avoiding removal or to certain additional procedures." Opp. at 11 (emphasis added). The government adds that "aliens amenable to expedited removal . . . *including Lepe*—have 'only those rights regarding admission that Congress has provide by statute" and that "the Due Process

[8] See Opp. at 4 ("subject to expedited removal"); Opp. at 11 ("aliens subject to expedited removal like Lepe"); Opp. at 11 ("aliens amenable to expedited removal . . . including Lepe"); Opp. at 12 ("any alien subject to expedited removal").

Clause provides nothing more." Opp. at 11 (emphasis added) (internal citations and quotations omitted). On page 12, the returns to this incorrect claim, asserting that injunctive relief in Petitioner's case "would permit any alien subject to expedited removal to . . . circumvent[]" Congress's "comprehensive statutory scheme" and undermine the public interest "in applying the established procedures for aliens subject to expedited removal, *including their lawful, mandatory detention*." Opp. at 12 (emphasis added).

To repeat, Petitioner is *not* in expedited removal proceedings. Nor could he be placed in expedited removal, unless the government alleged he had less than two years' presence in the country. This important factual matters helps to explain why the government's position in this case is untenable. The government's final sentence on page 12 should serve as a concession—the sentence where it notes that there are "established procedures for aliens subject to expedited removal" and those procedures do "includ[e] their lawful, mandatory detention." Opp. at 12. That is the very point Petitioner is making. Petitioner is *not* in expedited removal proceedings, and Congress never intended for the mandatory detention provision in Section 1225(b)(2)(A) to apply to those who are not in expedited removal.

Conclusion

Petitioner's mandatory detention violates his statutory and due process rights. Petitioner respectfully requests this Court to order his immediate release from custody or else order that he receive a bond hearing within 7 days to determine his bond eligibility.

DATED: September 18, 2025

BY: /s/Jonathan Abel
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