

1 Nera Shefer, Esq.
2 Shefer Law Firm, P.A.
3 Florida Bar# 0814121
4 Admitted pro hac vice
5 800 SE 4th. Ave #803
6 Hallandale Beach, Florida 33009
7 Telephone: (786) 295-9077
8 Attorney for Respondent
9 Admitted *Pro Hac Vice*

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

GARCIA-ROSALES, Alejandro,
Petitioner,

Case No. 25-cv-03391-SHD-DMF

v.

KRISTI NOEM, Secretary of the United States Department of Homeland Security, in her official capacity; **U.S. Department of Homeland Security**; **TODD LYONS**, Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement, in his official capacity; **U.S. Immigration and Customs Enforcement**; **JOHN CANTU**, Field Office Director for ICE’s Enforcement and Removal Operation’s (“ERO”) Phoenix, Arizona Field Office, in his official capacity; **LUIS ROSA, JR.**, Warden of the Central Arizona Florence Correctional Complex, in his official capacity; **SIRCE OWEN**, Acting Director of EOIR, in her official capacity; **Executive Office for Immigration Review**,
Respondents.

Agency No. 

**PETITIONER’S REPLY TO
RESPONSE TO FOR
TEMPORARY
RESTRAINING ORDER**

Petitioner rejects the government’s claim that Congress intended the mandatory detention of every noncitizen until the end of removal proceedings. The statute cannot be read in isolation; it must be harmonized with § 1226’s bond authority and § 1182(d)(5)’s parole provision, both of which show

1 that Congress intended for noncitizens to be allowed release in appropriate cases. And as the Supreme
2 Court made clear in *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), and *Demore v. Kim*, 538 U.S. 510,
3 517 (2003), civil immigration detention is constitutionally limited in scope and purpose. The
4 government’s reading would convert a targeted detention scheme into blanket, indefinite
5 incarceration—something Congress never enacted and the Constitution does not permit.
6

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 DHS argues that Petitioner is subject to “mandatory detention” under 8 U.S.C. § 1225
9 (b)(2)(A) by virtue of being an “applicant for admission” under § 1225 (a)(1), pursuant to a July 8,
10 2025 change in DHS policy.¹ Basic statutory construction compels the conclusion that Petitioner is
11 actually detained under § 1226 and should be released on bond. Caselaw supports this conclusion.
12

13 **I. Caselaw Supports Petitioner’s Interpretation.**

14 In *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) the Supreme Court started its inquiry by
15 observing that, in order to “implement its immigration policy, the Government must be able to decide
16 (1) who may enter the country and (2) who may stay here after entering.” *Jennings*, 583 U.S. at 287.
17 This makes sense, as “aliens who have once passed through our gates, even illegally, may be expelled
18 only after proceedings conforming to traditional standards of fairness encompassed in due process of
19 law”. *Shaughnessy v. United States ex rel. Mezei*, 345 U. S. 206, 212 (1953); accord, *Zadvydas*, 533
20 U.S. at 693. ,
21

22 In *Jennings* the Supreme Court reversed a Ninth Circuit holding that there was a statutory right
23 to periodic bond hearings. It held that “U. S. immigration law authorizes the Government to detain
24 certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the
25

26
27 ¹ See, Exhibit 4, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for
28 Admission (last visited September 8, 2025).

1 Government to detain certain aliens *already in the country* pending the outcome of removal
2 proceedings under §§ 1226(a) and (c). The primary issue is the proper interpretation of §§ 1225(b),
3 1226(a), and 1226(c) (emphasis provided).” *Jennings*, 583 U.S. at 289.

4
5 As noted, § 1226 applies to aliens *already present* in the United States.
6 Section 1226(a) creates a default rule for those aliens by permitting—but
7 not requiring—the Attorney General to issue warrants for their arrest and
8 detention pending removal proceedings. Section 1226(a) also permits the
9 Attorney General to release those aliens on bond, “[e]xcept as provided
10 in subsection (c) of this section.” Section 1226(c) in turn states that the
11 Attorney General “shall take into custody any alien” who falls into one
12 of the enumerated categories involving criminal offenses and terrorist
13 activities. § 1226(c)(1). Section 1226(c) then goes on to specify that the
14 Attorney General “may release” one of those aliens “only if the Attorney
15 General decides” both that doing so is necessary for witness-protection
16 purposes and that the alien will not pose a danger or flight risk. §
17 1226(c)(2) (emphasis added).

18 *Jennings*, 583 U.S. at 303.

19 In *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), the Supreme Court held that, absent special
20 circumstances, resident aliens who demonstrate that they are unlikely to be removed in the reasonably
21 foreseeable future, primarily because no country will accept them, cannot be “indefinitely” detained
22 pending their removal. *Zadvydas*, 533 U.S. at 693. In *Zadvydas*, the aliens had already been ordered
23 removed from the country and § 1231(a)(1)(A) mandates that such removal be completed within 90
24 days.

25 During its discussion of the relevant statutes, the Supreme Court noted that: “While removal
26 proceedings are in progress, *most aliens may be released on bond* or paroled. 66 Stat. 204, as added
27 and amended, 110 Stat. 3009-585, 8 U. S. C. §§ 1226(a)(2), (c) (1994 ed., Supp. V) (emphasis
28 added).” *Zadvydas*, 533 U.S. at 683.

In *Demore v. Kim*, 538 U.S. 510 (2003), the Court ruled that the mandatory detention of
deportable criminal aliens under § 1226(c) does not violate the Due Process Clause of the Fifth

1 Amendment, even when applied to a lawful permanent resident alien. Kim was convicted of an
2 aggravated felony and was taken into custody under § 1226(c). The Supreme Court upheld its
3 "longstanding view that the Government may constitutionally detain deportable aliens during the
4 limited period necessary for their removal proceedings." *Id.* at 526. The Supreme Court distinguished
5 *Zadvydas* by emphasizing that mandatory detention under § 1226(c) has "a definite termination point"
6 and "in the majority of cases it lasts for less than the 90 days . . . considered presumptively valid in
7 *Zadvydas.*" *Id.* at 529.

9 The Ninth Circuit has held that § 1226(a) is the "default" detention statute for aliens in
10 removal proceedings:

11 Four statutes grant the Government authority to detain noncitizens who
12 have been placed in removal proceedings: 8 U.S.C. §§ 1225(b) ("Section
13 1225(b)"), 1226(a) ("Subsection A"), 1226(c) ("Subsection C"), and
14 1231(a) ("Section 1231(a)"). A noncitizen's place "within this statutory
15 scheme can affect whether his detention is mandatory or discretionary,
16 as well as the kind of review process available to him if he wishes to
17 contest the necessity of his detention." *Prieto-Romero v. Clark*, 534 F.3d
18 1053, 1057 (9th Cir. 2008).

19 Subsection A is the default detention statute for noncitizens in
20 removal proceedings and applies to noncitizens "[e]xcept as provided in
21 [Subsection C]." 8 U.S.C. § 1226(a). Subsection A states that "[o]n
22 a warrant issued by the Attorney General, an alien *may* be arrested and
23 detained pending a decision on whether the alien is to be removed from
24 the United States." *Id.* (emphasis added). The statute also provides for
25 release on bond or conditional parole. *Id.* at § 1226(a)(2). Because of
26 Subsection A's permissive language—specifically, the word "may"—
27 detention under Subsection A is discretionary. *See Prieto-Romero*, 534
28 F.3d at 1059. (emphasis in original).

23 *Avilez v. Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland*, 83 F.
24 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1095 (WD Wash. 2025); *Prieto-*
25 *Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th
26 Cir. 2008).

1 On July 28, 2025, the U.S. District Court for the Central District of California, Eastern
2 Division, issued a Temporary Restraining Order (TRO) enjoining DHS from categorically denying
3 initial bond hearings to aliens under DHS’s July 8, 2025 DHS Guidance Notice. *See, Lazaro*
4 *Maldonado Bautista et al. v. Santacruz, Jr., et al.*² In that case, the Court stated that:

5
6 The Court accepts that detention under § 1225 applies to “applicants
7 for admission,” which fall into two categories as articulated in *Jennings*. *See Jennings*
8 *v. Rodriguez*, 583 U.S. 281, 287 (2018). But Petitioners are not “applicants for
9 admission.” Section 1225 subjects “[a]ny alien subject to the procedure under [§
10 1225]” to mandatory detention. § 1225(b)(1)(B)(iii)(IV). In contrast, as discussed
11 above, § 1226(a) confers procedural protections to individuals apprehended and
12 detained under that section of the INA. The juxtaposition of the procedural protections
13 between these subsections suggests Congress intended that they apply to a different
14 set of individuals.

15 Viewing the nature of detention as a crucial difference between these statutory
16 sections, the Court does not find any irreconcilable conflict between § 1225 and §
17 1226. Detention under § 1226 is permissive; detention under § 1225 is mandatory. The
18 Ninth Circuit previously concluded “permissive and mandatory descriptions are in
19 harmony, as they apply to different situations.” *Fifty-Six Hope Rd. Music, Ltd. v.*
20 *A.V.E.L.A., Inc.*, 778 F.3d 1059, 1081 (9th Cir. 2015).

21 The separate nature of these two subsections is further evidenced by the lack of
22 the phrase “applicant for admission” in the entirety of § 1226. Therefore, the Court
23 finds Respondents’ argument that Petitioners are “applicants for admission”
24 unconvincing.

25 Thus caselaw from both the United States Supreme Court and the Ninth Circuit makes clear
26 that § 1226 is the standard provision under which noncitizens are detained, with the option of bond
27 review, unless they fall under one of the prohibited categories of § 1226(c.)

28 **II. Statutory Interpretation Supports Petitioner’s Interpretation.**

As Justice Scalia explained: “Statutory construction ... is a holistic endeavor. A provision that
may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because

² *See* Exhibit 10, Temporary Restraining Order entered 7/28/2025 in *Lazaro Maldonado Bautista et al. v. Santacruz, Jr., on behalf of themselves and others similarly situated, et al.*, Plaintiffs-Petitioners, v. *Kristi Noem, Secretary, Department of Homeland Security, et al.*, Defendants-Respondents, U.S. District Court for the Central District of California, Eastern Division, Case No. 5:25-cv-01873-SSS-BFM.

1 the same terminology is used elsewhere in a context that makes its meaning clear, or because only
2 one of the permissible meanings produces a substantive effect that is compatible with the rest of the
3 law.” *United Savings Ass’n v. Timbers of Inwood Forest Associates*, 484 U.S. 365, 371 (1988)
4 (internal citations omitted).

5 Thus, “every clause and word of a statute’ should have meaning.” *U. S., ex rel. Polansky v.*
6 *Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023). A plain reading of § 1225 harmonizes it with §
7 1226. The relevant provisions of § 1225 provide that:

9 **(a)(1) Aliens treated as applicants for admission.**— An alien present in the
10 United States who has not been admitted or who arrives in the United States
11 (whether or not at a designated port of arrival ...) shall be deemed for the purposes
12 of this Act an applicant for admission.

13 * * *

14 **(a)(3) Inspection** All aliens (including alien crewmen) who are applicants for
15 admission or otherwise seeking admission or readmission to or transit through the
16 United States shall be inspected by immigration officers.

17 ***

18 **(b)(1)(A)(iii) Application to certain other aliens**

19 **(I) In general** The Attorney General may apply clauses (i) and (ii) of this
20 subparagraph to any or all aliens described in subclause (II) as designated by
21 the Attorney General. Such designation shall be in the sole and unreviewable
22 discretion of the Attorney General and may be modified at any time.

23 **(II) Aliens described** An alien described in this clause is an alien who is not
24 described in subparagraph (F),³ who has not been admitted or paroled into the
25 United States, and who has not affirmatively shown, to the satisfaction of an
26 immigration officer, that the alien has been physically present in the United
27 States continuously for the 2-year period immediately prior to the date of the
28 determination of inadmissibility under this subparagraph.

(b)(2) Inspection of other aliens

(A) In general

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant
for admission, if the examining immigration officer determines that an alien
seeking admission is not clearly and beyond a doubt entitled to be admitted,
the alien shall be detained for a proceeding under section 1229a of this title.

³ § 1225 (b)(1)(F) **Exception** Subparagraph (A) shall not apply to an alien who is a native or
citizen of a country in the Western Hemisphere with whose government the United States does not
have full diplomatic relations and who arrives by aircraft at a port of entry.

1 As the Honorable Brian E. Murphy stated in *Diaz Martinez v. Hyde*, — F. Supp. 3d —,
2 2025 WL 2084238 (D. Mass. July 24, 2025)⁴ “for section 1225(b)(2)(A) to apply, several
3 conditions must be met—in particular, an “examining immigration officer” must determine
4 that the individual is: (1) an “applicant for admission”; (2) “seeking admission”; and (3) “not
5 clearly and beyond a doubt entitled to be admitted.” Here, there is no evidence that these
6 three elements were met.
7

8 Rather, it is far more likely that Petitioner was detained under the “default” provision of §
9 1226. The relevant sections of § 1226 provide that:
10

11 **(a) Arrest, detention, and release** On a warrant issued by the Attorney
12 General, an alien may be arrested and detained pending a decision on
13 whether the alien is to be removed from the United States. Except as
14 provided in subsection (c) and pending such decision, the Attorney
15 General—

16 **(1)** may continue to detain the arrested alien; and

17 **(2)** may release the alien on—

18 **(A)** bond of at least \$1,500 with security approved by, and containing
19 conditions prescribed by, the Attorney General; or

20 **(B)** conditional parole; but

21 **(3)** may not provide the alien with work authorization (including an
22 “employment authorized” endorsement or other appropriate work
23 permit), unless the alien is lawfully admitted for permanent residence or
24 otherwise would (without regard to removal proceedings) be provided
25 such authorization.
26

27 The plain text of § 1226(a) demonstrates that it applies to anyone who is detained “pending a
28 decision on whether the [noncitizen] is to be removed from the United States.” It goes on to explicitly

⁴ Filed as Exhibit 9 with Ex Parte Motion for Temporary Restraining Order.

1 confirm that this authority includes not just persons who are deportable, but also noncitizens who are
2 inadmissible.⁵

3 § 1226’s plain text demonstrates that § 1225(b)(2) should not be read to apply to everyone
4 who is in the United States “who has not been admitted,” § 1225(a)(1). § 1226(a) covers those who
5 are not now seeking admission but instead are already residing in the United States—including those
6 who are charged with inadmissibility—while § 1225(b)(2) covers only those “seeking admission,”
7 i.e., those who are apprehended upon arrival in the United States (and who are not subject to the
8 procedures of § 1225(b)(1)). A contrary interpretation would ignore § 1226(a)’s plain text and
9 structure and render meaningless § 1226’s language that specifically addresses individuals who have
10 entered without inspection.
11

12
13 “A statute should be construed so that effect is given to all its provisions, so that no part will
14 be inoperative or superfluous, void or insignificant....” *Hibbs v. Winn*, 542 U.S. 88, 101 (2004).
15 *Accord, Sprietsma v. Mercury Marine*, 537 U.S. 51, 63 (2003) (interpreting word “law” broadly could
16 render word “regulation” superfluous in preemption clause applicable to a state “law or regulation”).
17 *See also Bailey v. United States*, 516 U.S. 137, 146 (1995) (“We assume that Congress used two terms
18 because it intended each term to have a particular, nonsuperfluous meaning.”).

19
20 A related principle applies to statutory amendments: there is a “general presumption” that,
21 “when Congress alters the words of a statute, it must intend to change the statute’s meaning.” *Stone*
22 *v. INS*, 514 U.S. 386, 397 (1995) (“When Congress acts to amend a statute, we presume it intends its
23 amendment to have real and substantial effect.”).

24
25
26 ⁵ Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people who have
27 previously been admitted, such as lawful permanent residents and certain visa holders, while grounds
28 of inadmissibility (found in § 1182) apply to those who have not been admitted to the United States.
See, e.g., Barton v. Barr, 590 U.S. 222, 234 (2020).

1
2 Respondents attempt to brush off Petitioner’s references to the recent amendments to § 1226
3 under the Laken Riley Act as merely a “congressional effort to be doubly sure” that unlawful
4 noncitizens are detained. Response at page 8, lines 14-19. However, “the canon against
5 surplusage is strongest when an interpretation would render superfluous another part of the
6 same statutory scheme.” *See Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013).
7

8 **III. Petitioner Has Met His Burden To Obtain A TRO.**
9

10 Petitioner is likely to succeed on his claims that he is detained under § 1226(a). He has been
11 residing in the United States for 22 years and has never sought admission. Respondent has no criminal
12 record; no gang affiliations; and no health issues. In July of 2021 he filed a Consideration of Deferred
13 Action for Childhood Arrivals (DACA), Form I821D, with the U.S. Citizenship and Immigration
14 Services (USCIS), which remains pending. The Immigration Judge specifically found that Petitioner
15 posed no danger to property or persons if released and held that a \$10,000.00 bond would mitigate
16 any flight risk
17

18 Petitioner is also suffering irreparable harm the longer he is detained at the Florence Arizona
19 Detention Center. The Supreme Court has established that the "loss of freedoms, for even minimal
20 periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 355
21 (1976). Thus, by virtue of Petitioner’s ongoing loss of liberty, he has demonstrated significant
22 irreparable harm. This factor weighs in his favor.
23

24 The final two factors for a preliminary injunction—the balance of hardships and public
25 interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435
26 (2009). Here, Petitioner faces weighty hardships: loss of liberty, separation from family, significant
27 stress and anxiety, and difficulty in communicating with his attorney.
28

1 The government, by contrast, faces minimal hardship: the administrative costs associated with
2 three bond hearings. “[T]he balance of hardships tips decidedly in plaintiffs’ favor” when “[f]aced
3 with such a conflict between financial concerns and preventable human suffering.” What is more,
4 because the policy preventing Petitioner from obtaining bond “is inconsistent with federal law, . . .
5 the balance of hardships and public interest factors weigh in favor of a preliminary injunction.”
6 *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (Moreno I); *see also*
7 *Moreno Galvez*, 52 F.4th at 832 (affirming in part permanent injunction issued in Moreno II and
8 quoting approvingly district judge’s declaration that “it is clear that neither equity nor the public’s
9 interest are furthered by allowing violations of federal law to continue”). This is because “it would
10 not be equitable or in the public’s interest to allow the [government] . . . to violate the requirements
11 of federal law, especially when there are no adequate remedies available.” *Valle del Sol Inc. v.*
12 *Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Indeed, Defendants “cannot suffer harm from an
13 injunction that merely ends an unlawful practice.” *Rodriguez*, 715 F.3d at 1145.”

14
15
16 **CONCLUSION**

17 For all the foregoing reasons, Petitioner respectfully requests the Court grant this motion for
18 a Temporary Restraining Order and order him released immediately.
19

20 DATED this 26th Day of September, 2025.

21 By: /s/ Nera Shefer
22 Nera Shefer, Esq.
23 Shefer Law Firm, P.A.
24 800 SE 4th. Ave #803
25 Hallandale Beach, Florida 33009
26 Florida Bar# 0814121
27
28