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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX, ARIZONA

Adan Resendiz-Resendiz; Plaintiff, v. Kristi Noem, Secretary, U.S. Department of Homeland Security; Pamela Bondi, Attorney General of the United States, Executive Office for Immigration Review(EOIR); Corina Almeida, Chief Counsel, Immigration and Customs Enforcement (ICE), Office of Principal Legal Advisor, Eloy; John Cantu, Field Office Director, ICE Enforcement and Removal Operations, Phoenix; Fred Figueroa, Warden, Eloy Detention Center, Defendant	**Case No._____** **Immigration Number: A[redacted]** **PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION**

I. INTRODUCTION

The above-named Plaintiff (A[redacted]), by and through undersigned counsel, respectfully requests this Honorable Court enter an emergency temporary restraining order and/or a preliminary injunction from this Honorable Court enjoining the Defendants from preventing Plaintiff's release on bond. Plaintiff requests this Court order Defendants to accept the bond and release Plaintiff from ICE custody and restrain Defendants from moving

Plaintiff out of this Judicial District pending payment of the bond and before the resolution of Plaintiff's concurrently filed Habeas petition.

On June 26, 2025, DHS took Plaintiff into custody and placed him into removal proceedings by filing a Notice to Appear with the Eloy Immigration Court and detaining him at the Eloy Detention Center located at 1705 E. Hanna Rd., Eloy, Arizona 85131. Plaintiff requested a bond redetermination and on August 18, 2025, pursuant to 8 U.S.C. § 1226(a) the Immigration Judge ordered his release upon payment of a $1,500 bond. Defendants rejected payment of the bond and continue to detain the Plaintiff in violation of law.

Defendants violated Plaintiff's right to due process and took action not in accordance with the Immigration and Nationality Act ("INA") by asserting Plaintiff is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(A). This section of the law only applies to persons "seeking admission" and does not apply to Plaintiff who maintains 15 years of ongoing continuous physical presence in the United States and never sought admission.

Plaintiff will suffer irreparable and immediate injury from continued unlawful detention unless the temporary restraining order is issued. Plaintiff is likely to succeed on the merits because Defendants filed a defective administrative stay of the bond order, and there is no legal justification for Plaintiff's continued detention. It is in the public interest to grant the motion and the balance of equities weigh in favor of Plaintiff who is not a danger, nor a flight risk, and who has two U.S. citizen children. Defendants are in no way prejudiced by Plaintiff's release pending resolution of the Habeas petition.

II. LEGAL BACKGROUND

Since the implementation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), the Immigration Courts, BIA, and Circuit Courts regularly interpreted and implemented 8 U.S.C. § 1226(a) as the statute governing the detention and release of persons inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for having entered without inspection or admission. This has never caused any controversy, or caused Congress to correct this practice and interpretation. 8 U.S.C. § 1226(a) allows the Immigration Court to hold a custody hearing and released non-citizens on parole or a bond

of at least $1500. Defendants, beginning in June of 2025, engaged in a concerted effort to hold all non-citizens who entered without admission subject to 8 U.S.C. § 1225, a statute applying to arriving aliens at the port of entry, persons who entered without inspection within the 2 years prior to apprehension, and inadmissible non-citizens "seeking admission." The Defendants are unlikely to succeed because they do not adhere to the INA's statutory definition of "admission,"*see Negrete-Ramirez v. Holder,* 741 F.3d 1047, 1051 (9th Cir. 2014), and Plaintiff cannot be considered to be "seeking admission" 15 years after entry. *See Torres v. Barr,* 976 F.3d 918, 923-926 (9th Cir. 2020)(en banc).

8 U.S.C. § 1226(a) governs the detention and release of non-citizens in removal proceedings: "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States . . . and [the immigration court] (2) may release the alien on- (A) bond of at least $1500 . . . or (B) conditional parole."

8 U.S.C. § 1226(c), amended by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), provides for the mandatory detention of inadmissible non-citizens with certain criminal convictions and conduct. The statute and the amendments made by the Laken Riley Act intentionally precludes some aliens inadmissible under 8 U.S.C. 1182(a)(6)(A)(i) from being granted bond. 8 C.F.R. §§ 1003.19(a), 1236.1(d), provide the parameters for EOIR to provide bond hearings to non-citizens pending removal proceedings.

The INA provides for mandatory detention of certain non-citizens with final orders of removal under 8 U.S.C. § 1231, suspected terrorists under 8 U.S.C. § 1226a, non-citizens subject to expedited removal under 8 U.S.C. § 1225(b)(1), and those "seeking admission" and being reviewed for admissibility at the time of arrival under 8 U.S.C. § 1225(b)(2).

8 U.S.C. § 1225 governs the processing of arriving aliens, and is not a detention statute. The only mention of "mandatory detention" comes under 8 U.S.C. § 1225(b)(1)(B)(IV) stating that applicants for admission pending asylum interviews "subject to the procedures under this clause shall be detained pending final determination of credible fear of persecution . . . ." 8 U.S.C. § 1225(b)(1)(A)(iii)(II) explicitly excludes from expedited removal non-citizens who can show 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. § 1225(b)(2)(A) applies to a non-citizen "who is an applicant for admission, if the examining 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 1229a of this title." The subsection applies to an "applicant for admission," with this term being modified and limited to those "seeking admission." If applicants for admission are to always be considering seeking admission, the inclusion of the condition of those "seeking admission" would be superfluous.

Pursuant to *Loper Bright Enterprises v. Raimondo,* 44 S. Ct. 2244(2024), this Court is not bound to the Agency's interpretation of INA. The term "applicant for admission," as defined under 8 U.S.C. § 1225(a)(1), concerns both the non-citizen who is "present in the United States who has not been admitted" and the non-citizen "who arrives" at the port of entry, otherwise known as an "arriving alien." 8 U.S.C. § 1225(b)(2)(A) explicitly applies to "applicants for admission" "seeking admission." 8 U.S.C. § 1101(a)(13)(A) defines "admission" to mean "the lawful entry of the alien *into* the United States after inspection and authorization by an immigration officer." (Emphasis added). The literal and plain meaning of "seeking admission" means the non-citizen is contemporaneously attempting to lawfullly enter the United States. If inspected by the officer after entry, the 2 year physical presence exclusion under 8 U.S.C. § 1225(b)(1)(A)(iii)(II) applies.

Who then does 8 U.S.C. § 1225(b)(2)(A) apply to if not those present without admission? 8 U.S.C. §§ 1101(a)(13)(B) and (C) provide that paroled non-citizens and certain lawful permanent residents presenting themselves at the port of entry can be processed for removal proceedings under 1225(b)(2)(A) as inadmissible aliens seeking admission. *See also* 8 C.F.R. § 235.3(b)(3) ("If an alien appears to be inadmissible under other grounds contained in section 212(a) of the Act, and if the Service wishes to pursue such additional grounds of inadmissibility, the alien shall be detained and referred for a removal hearing before an immigration judge pursuant to sections 235(b)(2) and 240 of the Act for inquiry into all

charges.")

Recently, in *Matter of Q. Li,* 29 I&N Dec. 66 (BIA 2025), Defendants applied mandatory detention under 8 U.S.C. § 1225(b)(2) to applicants for admission who are "arrested and detained without a warrant *while arriving* in the United States" acknowledging the temporal limit of the phrase. (Emphasis Added).

Without directly interpreting the statutory definition of "admission", Defendants issued *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), holding that all non-citizens present without inspection, regardless of how many years they have been in the country, are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and are considered to be seeking admission in perpetuity.

Matter of Yajure Hurtado, 29 I&N Dec. at 221, remains at odds with Ninth Circuit precedent. In *Torres v. Barr,* 976 F.3d 918, 923-926 (9th Cir. 2020)(en banc), the Ninth Circuit provides a thorough analysis, finding that applying for admission means doing so from outside the United States or at a port of entry, seeking physical entry into the country. The *Torres* decision holds that the legal and factual understanding of seeking admission is limited in time, it cannot continue without limit once the non-citizen is already in the United States. *Id.* at 926. "Accordingly, inadmissibility must be measured at the point in time that an immigrant actually submits an application for entry into the United States." *Id; See also; Negrete-Ramirez v. Holder,* 741 F.3d 1047, 1051 (9th Cir. 2014) ("The definition refers expressly to *entry into* the United States, denoting by its plain terms passage into the country from abroad at a port of entry.")

Pursuant to 8 C.F.R. § 1003.19(i)(2) ICE may file for an automatic stay of the IJ's bond decision if filed within one day of that decision. 8 C.F.R. § 1003.6(c)(1) governs the application of the automatic stay and requires a "certification by a senior legal official" approving the notice of appeal and declaring the "contentions justifying the continued detention of the alien have evidentiary support, and the legal arguments are warranted by existing law or by a non-frivolous argument. . . ." The effect of the automatic stay "shall lapse if DHS fails to file a notice of appeal with the Board within ten business days." *Id.*

III. STATEMENT OF FACTS

Plaintiff is a forty-three (43) year-old native and citizen of Mexico who, on or about June of 2010, entered the Untied States without inspection. Plaintiff has two U.S. citizen children, ages 20 and 12, with an established residence in Tucson, Arizona. On June 26, 2025, DHS took Plaintiff into custody and placed him into removal proceedings before Eloy EOIR by issuing a Notice to Appear charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). Thereafter, DHS issued new policy instructing ICE to hold anyone they alleged to be inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). On July 22, 2025, the Eloy EOIR, conducted a custody redetermination hearing, where Plaintiff contested the ICE argument that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). On July 23, 2025, the IJ issued a summary decision denying bond on the basis of no jurisdiction. The bond order further notes: "Assuming, arguendo, that the Court did have jurisdiction to adjudicate a bond redetermination in this matter, the Court would set bond at $1500." The IJ necessarily found Plaintiff to not pose a danger to the community and to not be a flight risk.

On August 4, 2025, the BIA issued a precedent decision in *Matter of Akhmedov,* 29 I&N Dec. 166 (BIA 2025) finding a non-citizen's custody, who "unlawfully" entered the United States in 2022, was subject to the provisions of 8 U.S.C. § 1226(a). On the basis of *Matter of Akhmedov*, Plaintiff argued changed circumstances and requested a second custody redetermination.

On August 18, 2025, the IJ granted the custody redetermination ordering Plaintiff's released upon posting a $1,500 bond. To order the bond, the IJ necessarily reviewed the evidence and determined Plaintiff is neither a danger nor a flight risk. That same day, Plaintiff's sponsor submitted the $1,500 payment through the ICE CeBONDS online payment system but, on August 19, 2025, the CeBONDS system showed a status of "Not Releasable." On that same day, ICE filed a form E-43, employing an automatic stay of the bond order under 8 C.F.R. § 1003.19(i)(2). The E-43 is signed by Assistant Chief Counsel Ryan Elbert, and is not signed by a senior legal official. ICE has not filed a notice of appeal of the bond order and

did not provide a certification of "non-frivolous argument." *See* 8 C.F.R. § 1003.6(c)(1).

On September 5, 2025, the Board of Immigration Appeals issued *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), implementing Defendants' concerted policy goal of holding all persons who entered without inspection subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Plaintiff remains detained at the Eloy Detention Center, pending removal proceedings. Defendants unilaterally and arbitrarily advanced Plaintiff's removal hearings, disrupting his legal defense and causing additional litigation.

VI. ARGUMENT

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Resources Defense Counsel Inc.,* 129 S.Ct 365, 375 (2008).

A. Plaintiff is likely to succeed on the merits of their argument that 8 U.S.C. § 1225(b)(2)(A) does not apply to him because he is not "seeking admission" as defined under the INA.

Plaintiff is likely to succeed on their claim that 15 years after entering the United States without inspection, he cannot be held under mandatory detention as an applicant for admission "seeking admission." "Admission" as defined in the INA under 8 U.S.C. § 1101(a)(13)(A) means "the lawful entry of the alien *into* the United States after inspection and authorization by an immigration officer." (Emphasis added). Plaintiff is charged as inadmissible under 8 U.S.C. § 1158(a)(6)(A)(i) for having entered the United States without inspection. As has been the regular practice of the Court for over 28 years, the Immigration Judge held a custody redetermination under 8 U.S.C. § 1226(a), finding Plaintiff is neither a danger nor a flight risk and ordered his release upon the posting of a $1,500 bond.

Defendants refused to accept the bond payment and denied Plaintiff's released on the argument that he is subject to mandatory detention under the expedited removal/inspection of arriving aliens statute as contained in 8 U.S.C. § 1225. Specifically, Defendants have engaged in a concerted effort to force ICE to argue all persons who entered the United States without admission and inspection are subject to mandatory detention under 8 U.S.C. §

1225(b)(2)(A). Defendants intentionally brought this argument so that they could direct EOIR, through the Board of Immigration Appeals to publish *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), holding exactly what DHS argued. This Agency precedent is without legal any persuasiveness, as it does not address the statutory definition of "admission." Defendants Kristi Noem and Pam Bondi predetermined the outcome prior to any litigation through the courts.

8 U.S.C. § 1225(b)(2)(A) states a non-citizen "who is an applicant for admission, if the examining officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, . . . shall be detained for a proceeding under 1229a of this title." The Ninth Circuit has previously held that section 1225(b)(2)(A) cannot apply to persons with long residence in the United States because there is a temporal limit to someone "seeking admission."

In *Torres v. Barr,* 976 F.3d 918, 923-926 (9th Cir. 2020)(en banc), the Ninth Circuit provides a thorough analysis, finding that applying for admission means doing so from outside the United States or at a port of entry, seeking physical entry into the country. The *Torres* decision holds that being an application for admission is limited in time, and it cannot continue without limit once the non-citizen is already in the United States. *Id.* at 926. "Accordingly, inadmissibility must be measured at the point in time that an immigrant actually submits an application for entry into the United States." *Id; See also; Negrete-Ramirez v. Holder,* 741 F.3d 1047, 1051 (9th Cir. 2014) ("The definition refers expressly to *entry into* the United States, denoting by its plain terms passage into the country from abroad at a port of entry.") By the plain meaning of the statue and the Ninth Circuit's statutory analysis, the term "seeking admission" cannot apply to a person already inside the United States for over 15 years.

Pursuant to *Loper Bright Enterprises v. Raimondo,* 44 S. Ct. 2244(2024), this Court is not bound to the Agency's interpretation of INA. Even if this case is litigated on appeal, the ultimate decision of Plaintiff's custody will be determined by the Ninth Circuit, but at this moment, no appeal has been filed, and Plaintiff is not the party who would seek to appeal the

Immigration Court's decision to grant bond. Plaintiff has no other recourse.

At this moment, the bond order is valid, no appeal has been filed, and the administrative stay filed by the Defendants is defective and has since lapsed by rule. The E-43 is defective because it was signed by ICE Assistant Chief Counsel Ryan Elbert, who is not a "senior legal official" as required by 8 C.F.R. § 1003.6(c)(1). In addition, the regulation requires a certification from the senior legal official, which has not been provided. Finally, under 8 C.F.R. § 1003.6(c)(1), the effect of the stay lapsed because an appeal was not filed within 10 business days.

Plaintiff is likely to succeed arguing the bond is valid because the plain reading of the statute indicates he is subject to the general detention statute pursuant to 8 U.S.C. 1226(a), and not the expedited removal/inpsection provisions under § 1225(b). Congress specifically excepted from the harsh provisions of § 1225(b), persons who established two years of physical presence after entering without admission. 8 U.S.C. § 1225(b)(1)(A)(iii)(II). When persons seek admission, and they are not subject to expedited removal under § 1225(b)(1), such as inadmissible lawful permanent residents, they are then processed under § 1225(b)(2)(A). If congress wanted to subject all non-citizens inadmissible for having entered without inspection, they would have specifically stated such in § 1225, or they would have included non-citizens inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) in the enumerated list of persons subject to mandatory detention under 8 U.S.C. § 1226(c).

Finally, if the accepted widespread interpretation, practice, and implementation of releasing persons like the Plaintiff under 1226(a) was not congressional intent, congress would have stepped in to clarify the law. The only indication of congressional intent concerning the custody statutes came in the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), which amended § 1226 to provide for the mandatory detention of inadmissible non-citizens with certain criminal convictions and conduct. The statute and the amendments made by the Laken Riley Act intentionally precludes some aliens inadmissible under 8 U.S.C. 1182(a)(6)(A)(i) from being granted bond. If 8 U.S.C. § 1225(b)(2)(A) clearly applied to all persons inadmissible under § 1182(a)(6)(A)(i), there would be no conceivable reason for the

Laken Riley Act to include provisions specifying certain non-citizens inadmissable under § 1182(a)(6)(A)(i) arrested for shoplifting are subject to mandatory detention.

By the plain reading of the statute, Plaintiff who entered 15 years ago, and never sought admission, cannot be considered "seeking admission." 8 U.S.C. § 1225(b)(2)(A) does not apply to Plaintiff.

B. Plaintiff suffers irreparable harm from his continued unlawful detention.

Plaintiff remains detained despite the Immigration Judge ordering his release upon a posting of a $1500 bond. Defendants' refusal to accept the bond and release Plaintiff keeps him separated from his children, and prevents him from returning to work to support his family. He is not a danger and not a flight risk, so Plaintiff suffers the emotional harm of being detained without any good factual argument for why he should be detained. Should Plaintiff ultimately win relief from removal, he will be personally and financially set back by the months of detention. If he does not win relief, he would have missed out on the opportunity to prepare and plan to return to his native country. In every way, he is prejudiced by the continued detention, and this harm cannot be undone.

C. The balance of equities favors Plaintiff.

Defendants advance a novel argument that goes against decades of practice and interpretation, all with the goal of subjecting millions of people like Plaintiff to mandatory detention. Plaintiff has accrued 15 years of continuous physical presence in the United States. This comes with establishing himself in the community, in the economy, and with his family. Defendants do not argue Plaintiff poses any danger or flight risk, and if in fact not subject to mandatory detention, there will not have been any justification for the public resources used to detain Plaintiff. Two U.S. citizen children await their father's release. Defendants await the outcome of their legal arguments without suffering any real prejudice.

D. Granting the restraining order serves the public interest.

Detaining those who pose no danger and no flight risk constitutes misuse of government and public resources. Family unity remains an important public interest as stated throughout the INA and its attending regulations. *See e.g.* 8 U.S.C. §§ 1153(a), (d),

1158(b)(3), 1182(a)(9); 8 C.F.R. §§ 212.7(e), 236, Subpart B. Releasing Plaintiff back to his family and community maintains family unity, an important public interest. Treating people with dignity while they face removal proceedings engenders faith in the system that is both harsh, but also provides pathways to legalization. There is merit to preventing Defendants from continuing to detain Plaintiff on the basis of a novel argument not supported by decades of legal practice and interpretation. For such a dramatic shift, there has been no notice. The public interest is served by the orderly implementation of the nation's immigration laws.

V. CONCLUSION

Plaintiff respectfully requests the Court grant their motion for temporary restraining order to restrain defendants from detaining Plaintiff while the concurrently filed habeas petition is litigated.

RESPECTFULLY SUBMITTED, this day 17th day of September, 2025,

Zava Immigration Law Group PLLC

s/Jessica Anleu

Jessica Anleu
Attorneys for Plaintiff

CROSSROADS LAW GROUP PLLC

s/ Gabriel G. Leyba, Esq.

Gabriel G. Leyba

CERTIFICATE OF SERVICE

2 On the 17th day of September 2025 I, Jessica Anleu, the undersigned, served via certified U.S. Mail, the attached **Motion for Temporary Restraining Order/Preliminary Injuncntion** on each person/entity listed below addressed as follows:

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